

20 March 2020

Roseanna Cunningham MSP
Cabinet Secretary for Environment, Climate Change and Land Reform
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Cabinet Secretary,

The Royal Zoological Society of Scotland (RZSS) recognises the enormity of the COVID-19 outbreak and the pressures on government to protect public health and the economy.

I must make you aware that the internationally important conservation work that our charity undertakes is at severe risk, including our cutting-edge genetic research and reintroduction programmes for endangered species.

With approximately 90 percent of our funding coming from our visitors and members, we expect our income to reduce considerably. At a time when the value of our investment reserves has diminished greatly due to this crisis, the threats we face will be greater still if our wildlife parks are closed.

Where necessary, we will access financial support available from the programmes being put in place by government. However, the need to repay such support in the future will mean all our resources will be needed to sustain our parks and look after the animals in our collections. We may therefore be forced to drastically cut and possibly end conservation funding this year and next as a minimum – and you will appreciate that restarting is not easy once such programmes are stopped.

I am writing to ask you to consider, as and when government funds are available, finding a way to support the continuation of our world-leading conservation work – and I set out the case below.

We estimate that reduced visitor numbers or the closure of Edinburgh Zoo and Highland Wildlife Park due to COVID-19 would result in losses of up to £1.5 million over the Easter period alone, which would increase substantially should the impact extend further.

This would seriously compromise our efforts to save critically endangered species such as the pine hoverfly and the Scottish wildcat. RZSS is leading the Saving Wildcats project, supported by an EU Life grant, with the wild survival of this magnificent species a priority conservation outcome. We have underwritten £1 million to enable this work but may soon be unable to meet the current £600,000 funding shortfall.

Our ground-breaking international conservation science and research programmes are also under threat, including our globally significant Living Links primate research collaboration with the University of St Andrews and partners.

The health and welfare of the animals in our care is of course paramount. However, given the huge uncertainties we all face, there is a possibility that food for our animals, medicine and staffing costs may become unaffordable and prevent the continuation of numerous captive breeding programmes at both of our parks.

[REDACTED]

On a related matter, we are yet to receive the Scottish Government loan agreed in August to cover additional costs for the new giant panda habitat at Edinburgh Zoo, which has increased the strain on our resources during this very challenging period. Any assistance in rapidly resolving this would be greatly appreciated.

RZSS is – and we believe must remain – a national asset of world renown which is at the forefront of conservation, science and research. However, the financial threat we face is grave. I wished to draw your attention at the earliest opportunity to the strong possibility that a grant, or support of a similar nature, may be the only way in these exceptional times to enable this essential work to continue.

I am copying to the office of the First Minister.

Thank you for your consideration of this pressing matter. I would be pleased to provide you with any further information required.

Yours sincerely,



Jeremy A. Peat
Chairman
The Royal Zoological Society of Scotland

1 April 2020

Kate Forbes MSP
T3.21
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Finance Secretary

Royal Zoological Society of Scotland

I am writing to you as Chair of Trustees at RZSS.

As you may be aware I wrote to Roseanna Cunningham MSP on 20th March informing her of the severe financial difficulties we face following the, wholly understandable, decision to close both of our parks (Edinburgh Zoo and the Highland Wildlife Park) to visitors. A copy of that letter is *attached* for ease of reference. We have yet to receive a substantive response but I know that members of our team are in close contact with the Cabinet Secretary's advisers.

Meanwhile I have recently received copies of letters sent by Andrew Rosindell MP to the Prime Minister, the Chancellor of the Exchequer and the Secretary of State for Environment, Food and Rural Affairs seeking support for the UK's zoos and aquariums. Further I have received a copy of a letter sent by the UK's main charitable zoos, including RZSS, to the Chancellor.

As acknowledged in that final letter, 'there may be different approaches in funding zoos in the devolved nations'. Therefore I am sending to you, as *attached*, copies of the two letters to the Chancellor. I am also sending to Roseanna Cunningham, but thought that you would be interested in your Governmental role in the letters to the Chancellor.

Yours sincerely



Jeremy A Peat OBE FRSE
Chair of Trustees; RZSS



T: 0300 244 4000

E: scottish.ministers@gov.scot

Jeremy A. Peat
Chairman
The Royal Zoological Society of Scotland
RZSS Edinburgh Zoo
134 Corstorphine Road
Edinburgh
EH12 6TS

 [@rzss.org.uk](mailto:_____@rzss.org.uk)

Our Reference: 202000022636

Your Reference: COVID-19

16 April 2020

Dear Mr Peat,

Many thanks for your letter of 20 March to the Cabinet Secretary for the Environment, Climate Change, and Land Reform, Roseanna Cunningham, outlining your concerns regarding the impact of Covid19 on the Royal Zoological Society of Scotland. Thanks also for your further correspondence to her of 1 April in which you forward on copies of related correspondence that you and others have had with both the UK Chancellor of the Exchequer and our own Cabinet Secretary for Finance. I am responding as this matter falls within my portfolio.

I do, of course, appreciate that this is an extremely worrying time, and I understand that RZSS will have concerns for the health of your staff, the welfare of the animals at both Edinburgh Zoo and the Highland Wildlife Park, and for the future of your important research and conservation activities. I am very conscious that much of that work focuses on delivering conservation objectives that are key to the environmental work of the Scottish Government, including delivering the reintroduction of beavers to Scotland and the upcoming EU Life work to save the Scottish Wildcat from extinction.

I am aware that my animal welfare officials have been in direct contact with the CEO and Finance Director of RZSS to discuss matters in further detail, and have been liaising with colleagues elsewhere in the Scottish Government and in the British Embassy in China in an effort to help.

You may also be interested to note that animal welfare officials are currently working with Defra, Devolved Administrations, and the Zoo Expert Committee to develop guidance aimed specifically at the zoo sector on how and where they can access financial help. When this is

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finalised, RZSS will, of course receive a copy of this. In addition, a questionnaire is being developed that will be sent to all UK zoos seeking information on the nature and scale of the financial and other challenges facing them due to Covid19. I shall consider the results from this work carefully in due course. Meanwhile, my officials are actively discussing any and all avenues of possible support for the zoo sector with Defra and Devolved Administrations.

With regard to RZSS's particular issues, my understanding is that the £500k loan from the Scottish Government is progressing, and is in the hands of respective lawyers. As you are aware, this was previously agreed in August of last year to fund costs incurred by RZSS over and above the initial grant payment (£2.1 million in September 2018) to build the new panda enclosure. In addition, my officials have informed me that you have written to the Vice Administrator of the National Forestry and Grassland Administration in China requesting that RZSS [REDACTED] I have pleasure in informing you that the Cabinet Secretary will be writing to the Vice Administrator re-affirming the Scottish Government's support for RZSS and the valuable work that you do and asking for any support that they may be able to provide at this difficult time.

I will finish by reassuring you that the Scottish Government will do all that it can to support RZSS and the wider zoo sector in Scotland during these difficult times.



MAIRI GOUGEON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



Cabinet Secretary for Environment, Climate
Change and Land Reform
Roseanna Cunningham MSP



Scottish Government
Riaghaltas na h-Alba
gov.scot

T: 0300 244 4000
E: scottish.ministers@gov.scot

Mr Chunliang Li
Vice Administrator, National Forestry and
Grassland Administration
18 Hepingli East Street
Beijing
China

23 April 2020

Dear Vice Administrator

I am writing to you as the Cabinet Secretary for Environment, Climate Change and Land reform. Animal health and welfare also comes under my portfolio.

My colleague, the Minister for Trade, Investment and Innovation, had the pleasure of meeting your colleague, Mr. [REDACTED] during his visit to China in July 2018. They discussed the importance of the Giant Pandas at Edinburgh Zoo – a great symbol of the friendship between Scotland and China.

Co-operation and solidarity between countries is ever more important at this challenging time as we collectively respond to the COVID-19 global pandemic. My officials have been in touch with officials at Edinburgh Zoo, who have reported that the Giant Pandas are in good health with a plentiful supply of bamboo. They have also confirmed that, in line with Government advice, the Zoo is currently closed to visitors and it is anticipated that it will remain closed for a minimum of three months. This will of course have financial implications.

Any support that you can give to the Royal Zoological Society of Scotland, which runs Edinburgh Zoo, during this difficult period, with regard to the Giant Panda conservation programme, would be very much appreciated.

With best wishes

A handwritten signature in black ink, appearing to read 'R. Cunningham'. The signature is fluid and cursive, with the first letter 'R' being large and prominent.

ROSEANNA CUNNINGHAM

Copied to:

Mr Qingwen Li, the Secretary General, China Wildlife Conservation Association
Mr Qiang Ma, Chinese Consul General Edinburgh



T: 0300 244 4000
E: scottish.ministers@gov.scot

Mr Chunliang Li
Vice Administrator, National Forestry and Grassland Administration
18 Hepingli East Street
Beijing
People's Republic of China

29th May 2020

Dear Vice Administrator

Many thanks for your letter dated 30 April. It was a pleasure to host your visit last September, and I am pleased that you are happy that the pandas are being well looked after during these challenging times.

I am grateful for your understanding of the pressures that the Royal Zoological Society of Scotland are currently facing and very much appreciate [REDACTED] [REDACTED]

[REDACTED] will help to ensure that this important conservation project successfully endures through the pandemic.

You may be interested to note that [REDACTED] Counsellor and Head of the Scottish Government Office in China, hopes to return to the British Embassy in Beijing soon. He would be very happy to discuss matters further with you on his return.

With Best Wishes

ROSEANNA CUNNINGHAM

Copied to:

Mr Qingwen Li, the Secretary General, China Wildlife Conservation Association
Mr Qiang Ma, Chinese Consul General Edinburgh



Utilisation Request

To: The Scottish Ministers
From: Royal Zoological Society of Scotland

Royal Zoological Society of Scotland
£500,000 Loan Agreement dated *15 June* 2020 (the "Loan Agreement").

1. We refer to the Loan Agreement.
2. We wish to borrow a Loan as follows:-
 - a. Amount: £500,000
 - b. Utilisation Date:
 - c. Payment Instructions:
 - i. Acc name: The Royal Zoological Society of Scotland
 - ii. Sort code: [REDACTED]
 - iii. Acc no: [REDACTED]
3. We confirm that each condition specified in Clause 3 (Conditions of Utilisation) of the Loan Agreement which requires to be satisfied on the date of this Utilisation Request is so satisfied.

By [REDACTED]

Jeremy Peat
RZSS Chair
For and on behalf of
Royal Zoological Society of Scotland

EXECUTION VERSION

LOAN AGREEMENT
between
THE SCOTTISH MINISTERS
and
ROYAL ZOOLOGICAL SOCIETY OF SCOTLAND

MACROBERTS

LLP

For the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015, this Loan Agreement is delivered on 15 June 2020.

between

(ONE) THE SCOTTISH MINISTERS in terms of the Scotland Act 1998, Victoria Quay, Leith, Edinburgh EH6 6QQ (the **Scottish Ministers**); and

(TWO) ROYAL ZOOLOGICAL SOCIETY OF SCOTLAND a charity registered in Scotland with the Office of the Scottish Charity Regulator, with registered charity number SC004064 and its Head Office at 134 Corstorphine Road, Edinburgh EH12 6TS (the **Borrower**).

WHEREAS

It is intended that the Scottish Ministers will provide certain credit facilities to the Borrower on the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

Acceptable Form means, in relation to any document, a form which is acceptable to the Scottish Ministers;

Account means each bank account held by the Borrower from time to time;

Agreement means this agreement (including the Schedule);

Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration;

Available Facility means the principal capital sum of FIVE HUNDRED THOUSAND POUNDS (£500,000) to the extent not cancelled or reduced under this Agreement (which total Available Facility, for the avoidance of doubt does not include accrued interest on the capital sum);

Availability Period means the period from and including the date of this Agreement to and including the date 60 days thereafter;

Business Day means a day (other than a Saturday) on which banks are open for business in Edinburgh;

Charged Property means ALL and WHOLE the subjects at Edinburgh Zoo, 134 Corstorphine Road, Edinburgh, EH12 6TS tinted pink on the plan annexed and executed as relative to the Standard Security, which subjects form PART and PORTION of the subjects more particularly described in (FIRST) Feu Charter by The Lord Provost, Magistrates and Council of the City of Edinburgh in favour of the Chargor dated 17 March 1914 and recorded in the Division of the General Register of Sasines applicable to the County of Edinburgh on 07 April 1914; (SECOND) Feu Charter by The Lord Provost, Magistrates and Council of the City of Edinburgh in favour of the Chargor dated 03 April 1930 and recorded in the said Division of the General Register of Sasines on 20 May 1930; and (THIRD) Disposition by Mrs. Ruby Pringle Laird or Long and Mrs. Edith Pringle Laird or Simpson in favour of the Chargor dated 09 February and 01 May 1942 and recorded in the said Division of the General Register of Sasines on 12 November 1942;

Dangerous Substances means any substances capable of causing harm to man or any other living organism or damaging the environment;

Disposal means any sale, transfer or other form of disposal of any asset by the Borrower where the value of the asset exceeds £100,000;

Environmental Law means all laws, regulations, directives, codes of practice, circulars, guidance notices and court decisions (whether in the UK or the European Union) concerning the protection of human health or welfare or the environment or the conditions of the work

place or the generation, transportation, storage, treatment or disposal of Dangerous Substances;

Event of Default means each of the events listed in Clause 12;

Facility means the term loan facility made available to the Borrower under this Agreement as described in Clause 2;

Final Repayment Date means, subject to the terms of this Agreement, the date occurring 5 years after the first Utilisation Date;

Finance Documents means this Agreement, the Standard Security and each other document agreed by Scottish Ministers and the Borrower to be a Finance Document from time to time;

Financial Indebtedness means any indebtedness for or in respect of:

- a) monies borrowed other than any borrowed pursuant to this Agreement;
- b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the mark to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs a) to h) above;

Financial Information means the information to be delivered to the Scottish Ministers pursuant to Clause 10.1 of this Agreement;

GAAP means generally accepted accounting principals in the UK;

Loan means the loan made or to be made under the Facility or the principal amount outstanding for the time being together with all interest thereon and all costs, charges and expenses due or to become due by the Borrower to the Scottish Ministers;

Loan Period means the period from the date of this Agreement to, and including, the Final Repayment Date;

Material Adverse Effect means a material adverse effect on:

- a) the financial condition of the Borrower; or

- b) the ability of the Borrower to perform its obligations under the Finance Documents; or
- c) the rights or remedies of the Scottish Ministers under any of the Finance Documents.

Permitted Security Right means (i) liens and rights of set off securing obligations which are not overdue beyond their standard payment date, arising by operation of law in the ordinary course of trading and (ii) Security granted to the Scottish Ministers or with the prior written approval of Scottish Ministers.

Permitted Transferee means any Non-Departmental Public Body or Public Corporation (both as defined or set out in the Scottish Public Finance Manual from time to time) or such other entity established by the Scottish Government for the purpose of financing growth, or any other entity, provided that such other entity is controlled by the Scottish Ministers;

Potential Event of Default means an event which, with the giving of notice, the lapse of time or the making of any determination would constitute an Event of Default provided such event is incapable of being remedied prior to the expiry of such notice, lapse of time or determination;

Repeating Representations means each of the representations set out in Clauses 9.1 to 9.9 inclusive and Clauses 9.11 to 9.19 inclusive.

Representations and Warranties means those representations and warranties made in terms of Clause 10 of this Agreement;

Schedule means the schedule annexed to this Agreement;

Security means a mortgage, charge, assignation in security, standard security, pledge, lien (other than a lien arising solely by operation of law in the normal course of business, the aggregate amount of which is not material), deposit, undertaking, guarantee, indemnity or any other security agreement or arrangement having a similar effect;

Standard Security means the standard security over the Charged Property granted by the Borrower in favour of Scottish Ministers;

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same);

Utilisation means a utilisation of the Facility;

Utilisation Date means the date of a Utilisation, being the date on which the Loan is to be made;

Utilisation Request means a notice substantially in the form set out in Part 2 of the Schedule;

VAT means:

- a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph a) above, or imposed elsewhere

in each case as applicable in Scotland;

- 1.2 Words denoting the singular number only include the plural and vice versa and words denoting any gender include all genders and words denoting persons include firms and corporations and vice versa.

- 1.3 Headings are used in this Agreement for convenience only and shall not affect its construction or interpretation.
- 1.4 In this Agreement, unless otherwise specified, references to Clauses and to the Schedule are to Clauses of and the Schedule to this Agreement.
- 1.5 In this Agreement, a reference to any document or this Agreement means this Agreement or that document as supplemented, amended or varied from time to time.
- 1.6 A reference in any way to any party hereto shall be construed so as to include its successors in title, permitted assignees and permitted transferees to, or of, its rights and/or obligations under the Finance Documents.
- 1.7 The expression **party** means each or any of the parties from time to time to this Agreement, so long as they remain a party.
- 1.8 Where the words **include(s)** or **including** are used they are illustrative and shall not limit the scope of the words preceding them.
- 1.9 Any notice, instruction, notification, direction, request, consent or approval contemplated herein shall be made or given in writing.
- 1.10 A "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality);
- 1.11 A "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- 1.12 A provision of law is a reference to that provision as amended or re-enacted.

2. AMOUNT, NATURE AND PURPOSE OF THE LOAN

- 2.1 Subject to the terms of this Agreement, the Scottish Ministers agree to make available to the Borrower a term loan facility in an aggregate amount not exceeding the amount of the Available Facility.
- 2.2 The Borrower shall apply all amounts borrowed by it under the Facility towards (i) costs of the development of a new panda enclosure at Edinburgh Zoo at 134 Corstorphine Road, Edinburgh EH12 6TS; and (ii) the payment of any costs and expenses payable under or in connection with this Agreement (but, for the avoidance of doubt, not to meet interest payments due under this Agreement).

3. CONDITIONS OF UTILISATION

- 3.1 The Scottish Ministers will only be obliged to comply with their obligations under this Clause 3 in relation to any Utilisation if on the date of this Agreement the Scottish Ministers have received and are satisfied with all of the documents and other evidence listed in Part 1 of the Schedule, including the duly completed Utilisation Request;
- 3.2 If the conditions set out in this Agreement have been met, and subject to there being no Potential Event of Default or Event of Default having occurred which is continuing unwaived and to the Utilisation Request being made for a date within the Availability Period, the Scottish Ministers shall advance a Loan on the Utilisation Date specified in a Utilisation Request.
- 3.3 The Borrower shall draw down the Facility in full in one amount within the Availability Period.

4. CANCELLATION OF FACILITY

Any amount of the Facility which, at that time, is unutilised shall be immediately cancelled at the end of the Availability Period.

5. INTEREST

- 5.1 For so long as no Event of Default has occurred which is continuing unwaived, interest is payable on the Loan at a fixed rate of 0.5% per annum payable annually in arrears and on the date of any early repayment or prepayment (as may be agreed by the Scottish Ministers at its sole discretion) or cancellation and on the Final Repayment Date.
- 5.2 Following the occurrence of any Event of Default, interest is payable on any overdue sum at the rate of 2.94% per annum.

6. REPAYMENT

- 6.1 The Loan shall be repaid by way of instalments of £100,000 together with interest in accordance with Clause 5 on each anniversary of the Utilisation Date until the Final Repayment Date.
- 6.2 If it becomes unlawful for the Scottish Ministers to perform any of their obligations as contemplated by this Agreement or to fund or maintain their participation in any Loan then upon the Scottish Ministers notifying the Borrower, the Available Facility will be immediately cancelled and the Borrower shall repay the Loan made to it on the last day of the calendar month occurring after the Scottish Ministers have so notified the Borrower or, if earlier, the date specified by the Scottish Ministers in a notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).
- 6.3 Any notice of cancellation given by the Scottish Ministers under this Clause 6 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation is to be made and the amount of that cancellation. Unless agreed by the Scottish Ministers in writing, the Borrower shall not repay or prepay all or any part of the Loan except at the times and in the manner expressly provided for in this Agreement. No amount of the Available Facility cancelled under this Agreement may be subsequently reinstated. Amounts repaid shall not be available for re-borrowing.

7. FEES AND EXPENSES

- 7.1 All reasonable costs charges and expenses incurred by a party to this Agreement in connection with the negotiation, preparation, execution and carrying into effect of the Finance Documents up to the amounts notified to the Borrower in writing prior to the date of this Agreement shall be borne by the Borrower.
- 7.2 All reasonable costs, charges and expenses in each case properly incurred (including legal expenses on a full indemnity basis and VAT) of the Scottish Ministers incurred directly in connection with the enforcement or preservation of rights under the Finance Documents will be paid on demand by the Borrower.
- 7.3 The Borrower shall promptly, on demand, pay to the Scottish Ministers the costs of: -
- 7.3.1 the valuation referred to at Part 1 of the Schedule (Conditions Precedent to Utilisation);
 - 7.3.2 a Valuation obtained by the Scottish Ministers no more than once in any 12 Month period; and
 - 7.3.3 a Valuation obtained by the Scottish Ministers at any time when an Event of Default or a Default is continuing.
- 7.4 Any valuation not referred to in paragraph 7.3 above will be at the cost of the Scottish Ministers.
- 7.5 The Borrower must supply to the Scottish Ministers a copy of any valuation obtained promptly upon obtaining it.

8. PAYMENTS AND TAX

- 8.1 All payments by the Borrower hereunder shall be made without set-off or counterclaim in same day funds to such account of the Scottish Ministers in such place as the Scottish Ministers

shall notify to the Borrower from time to time.

- 8.2 All payments due to be made by the Borrower hereunder, whether of principal, interest or otherwise, shall be made free and clear of and without deduction for any present 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.
- 8.3 The Borrower shall within 10 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 a Finance Document.
- 8.4 All amounts expressed to be payable under a Finance Document to the Scottish Ministers 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 accordingly if VAT is or becomes chargeable on any supply made by the Scottish Ministers to the Borrower under a Finance Document and the Scottish Ministers are required to account to the relevant tax authority for the VAT, the Borrower shall pay to the Scottish Ministers (in addition to and 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).

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Borrower makes each of the representations and warranties set out in this Clause 9.
- 9.2 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.
- 9.3 The representations and warranties set out in this Clause 9 are deemed to be made by reference to the facts and circumstances then existing on the date of this Agreement.
- 9.4 It is a registered charity in Scotland, duly registered with the Office of the Scottish Charity Regulator and has the power to carry on its charitable purpose as it is being conducted.
- 9.5 It has the power (and all necessary authorisations have been obtained) to enter into the Finance Documents to which it is a party and to perform its obligations under the Finance Documents and has complied, or will comply, with all material statutory and other legal requirements relative to its business.
- 9.6 No limit on the powers of the Borrower will be exceeded as a result of the borrowing contemplated by the Finance Documents.
- 9.7 On execution each of the Finance Documents:
- 9.7.1 will constitute legal, valid and binding obligations of the Borrower enforceable in accordance with its terms (save in respect of any legal reservations customarily included in legal opinions given to lenders);
 - 9.7.2 does not and will not breach any law or regulation applicable to the Borrower;
 - 9.7.3 does not and will not breach the constitution of the Borrower; and
 - 9.7.4 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 or governmental authority.

- 9.8 All Authorisations required to enable the Borrower lawfully to enter into, exercise its rights and comply with its obligations under each Finance Document and to make each Finance Document admissible in evidence in Scotland have been obtained or effected and are in full force and effect.
- 9.9 All Authorisations necessary for the conduct of the charitable purpose for which the business of the Borrower is being conducted have been obtained or effected and are in full force and effect.
- 9.10 The choice of Scots law as the governing law of each of the Finance Documents will be recognised and enforced by the Scottish courts.
- 9.11 It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.
- 9.12 It is not necessary that any of the Finance Documents be registered, filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to any of the Finance Documents, save for registration of the Standard Security at the Land Register of Scotland.
- 9.13 In each case:
- (a) in respect of any matters occurring on or before the date of this Agreement, save as disclosed to the Scottish Ministers or their advisers or matters of which the Scottish Ministers or any of their wholly owned companies are aware; and
 - (b) in respect of any matters occurring after the date of this agreement, save as disclosed to the Scottish Ministers or their advisors:
 - a. no litigation, arbitration or administrative proceedings is/are pending nor, to the Borrower's knowledge after due enquiry, threatened against the Borrower or any of its assets which could or might have a Material Adverse Effect;
 - b. the borrowing and repayment by the Borrower of the Loan will not contravene any existing applicable law or regulation or any contractual or other restriction or limitation binding on it;
 - c. no Event of Default is continuing unwaived or might reasonably be expected to result from the drawing of any part of the Loan or the entry into, or the performance of, the Finance Documents or any transaction contemplated by the Finance Documents;
 - d. no other event or circumstance is outstanding which constitutes or, so far as the Borrower is aware (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the above), would constitute, a default or a termination event (however described) under any other agreement or instrument (except where such a default or termination event would not be an Event of Default under this Agreement) which is binding on the Borrower or to which any of their assets are subject which would have a material adverse effect on its ability to perform its obligations under the Finance Documents;
 - e. any financial projections contained in the Financial Information represent a fair and reasonable assessment of the anticipated future performance of the Borrower based on the assumptions (if any) stated in the Financial Information; and
 - f. so far as the Borrower is aware, the Financial Information did not omit any information which, if disclosed, might reasonably be expected to adversely affect the decision of a person considering whether to provide financial assistance to the Borrower.
- 9.14 It has not taken any corporate action, nor have any steps been taken, or legal proceedings started or threatened against it for its winding up or dissolution, or for the appointment of a trustee in sequestration or similar officer of it or all or any part of its assets or revenues.

- 9.15 It holds all necessary insurances, and for insured sums, which a prudent operator of the business carried out by the Borrower would hold.
- 9.16 For the purposes of the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), its centre of main interest is situated in Scotland and it has no "establishment" in any other jurisdiction.
- 9.17 It owns, or has rights to use under licence, all of its assets, including the intellectual property rights, necessary for the operation of its business and is not in breach of any law, rule or order.
- 9.18 Nothing has occurred since the date of any information referred to in this Clause 9 which, if disclosed, would make that information untrue or misleading in any material respect.
- 9.19 The information contained in the officer's certificate to be delivered to the Scottish Ministers under this Agreement is true, complete and accurate in all respects.
- 9.20 The Repeating Representations are deemed to be made by the Borrower on the Utilisation Date by reference to the facts and circumstances then existing on the date of the Utilisation Request.

10. UNDERTAKINGS BY THE BORROWER

The Borrower undertakes to the Scottish Ministers that throughout the Loan Period it shall:

- 10.1 deliver to the Scottish Ministers such information as is required, including
 - 10.1.1 copies of its annual report and consolidated financial statements no later than 9 months after the end of the relevant financial year;
 - 10.1.2 as soon as reasonably practicable after the same become available (but in any event within 30 days of the month end to which they relate) monthly financial reports including a profit and loss, balance sheet and actual cashflow against budget (to be submitted within one month of the end of the relevant month and in a format acceptable to the Scottish Ministers acting reasonably); and
 - 10.1.3 an annual operating budget within 30 days after the beginning of each financial year;
- 10.2 maintain its existence and carry on its activities in accordance with its constitutional documents substantially in the form carried on as at the date of this Agreement and obtain and maintain in force all licences, consents, permits and insurances necessary for its business and assets;
- 10.3 not amend its constitutional documents without the prior written consent of the Scottish Ministers, which consent shall not be unreasonably withheld;
- 10.4 take all steps and actions reasonably available to it for the purpose of perfecting and giving effect to the terms hereof;
- 10.5 supply to the Scottish Ministers promptly upon becoming aware of them, details of any litigation, arbitration or administrative proceedings which are current, threatened or pending, and which might, if adversely determined, have a material adverse effect on the ability of the Borrower to perform its obligations under this Agreement;
- 10.6 promptly upon becoming aware of it, inform the Scottish Ministers of the occurrence of an Event of Default or Potential Event of Default (and the steps, if any, being taken to remedy it);
- 10.7 promptly to notify the Scottish Ministers of the proposal to take a loan from one of its officers or trustees, and co-operate with the Scottish Ministers to procure repayment of such loans are postponed behind repayment of the Loan to the Scottish Ministers.
- 10.8 operate each Account and any other bank account held by it in accordance with the Financial Transparency (EC) Regulations 2009;

- 10.9 not to create or attempt to create or allow to be created or to exist any Security over the assets which are subject to the Standard Security without the prior written consent of the Scottish Ministers, other than a Permitted Security Right;
- 10.10 not to make any loans or advance or enter into any guarantee or indemnity other than in the ordinary course of business unless with the prior consent of the Scottish Ministers;
- 10.11 not to change its charitable purpose, nor the nature of the business undertaken by it from that undertaken as at the date of this Agreement;
- 10.12 promptly upon a request by the Scottish Ministers, supply to the Scottish Ministers a certificate signed by two of its officers on its behalf certifying that no Event of Default is continuing (or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy it);
- 10.13 notify the Scottish Ministers in writing of any actual or threatened claim against it in respect of an alleged breach of Environmental Law or remedial obligation or liability under such law which could, if well-founded, (1) have a Material Adverse Effect or (2) constitute a material liability of the Borrower (which shall be judged solely by the Scottish Ministers acting reasonably);
- 10.14 indemnify the Scottish Ministers against all costs and expenses suffered or properly incurred by them which arise as a result of (1) any actual or threatened breach of Environmental Law, (2) any actual or threatened release of or exposure to a Dangerous Substance on, at or from the premises or operations of the Borrower or (3) any actual or threatened claim referred to in paragraph 10.15 above whether such claim has a Material Adverse Effect or not;
- 10.15 not make any Disposal, or agree to do so, other than in the ordinary course of its business whether absolutely or in security, without the prior written consent of the Scottish Ministers (which shall not be unreasonably withheld), without prejudice to the Borrower's ability to grant Security over its assets which are not secured by the Standard Security;
- 10.16 maintain all of its assets which are necessary for the operation of its business in a good state or repair and maintenance and in good working order; and
- 10.17 comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

11. SECURITY

- 11.1 The parties agree that the Facility shall be secured by the Standard Security and any other security documents granted in favour of the Scottish Ministers from time to time.
- 11.2 Any Security granted in favour of the Scottish Ministers will be discharged on repayment in full of all sums due under this Agreement.

12. EVENTS OF DEFAULT

- 12.1 If any of the following events shall occur:
 - 12.1.1 any sum owing under any Finance Document is not paid on the date it falls due save where such default was due to administrative error and is remedied within 3 Business Days; or
 - 12.1.2 the Facility is used for a purpose other than that specified in Clause 2.2, without the prior written consent of the Scottish Ministers; or
 - 12.1.3 the Borrower defaults under any other provision of this Agreement or any other Finance Document and, if capable of remedy, the default is not remedied within 15 Business Days after notice to the Borrower requesting action to remedy the same; or
 - 12.1.4 any representation or warranty of the Borrower made in or deemed made pursuant to

any provision of this Agreement proves to have been incorrect in a material respect and, if capable of remedy, is not remedied within 15 Business Days after notice to the Borrower requesting action to remedy the same;

- 12.1.5 the holder of any Security takes possession or a trustee in sequestration or similar officer is appointed of the whole or any part of the undertaking, property, assets or revenues of the Borrower; or
 - 12.1.6 the Borrower enters into any composition or arrangement with its creditors or proceedings are commenced in relation to the Borrower under any law, regulation or procedure relating to reconstruction or re-adjustment of debts; or
 - 12.1.7 the Borrower is adjudicated or found bankrupt or insolvent or any order is made by any competent court or any petition (other than a frivolous or vexatious petition) is presented for the winding-up or dissolution of, or for the appointment of a trustee in sequestration or similar officer of, the Borrower or of a substantial part of its assets save for the purposes of amalgamation or reorganisation (not involving insolvency) the terms of which shall have been previously approved in writing by the Scottish Ministers; or
 - 12.1.8 in relation to borrowings (including any grant, loan or subsidy received or receivable by the Borrower) of the Borrower raised other than under this Loan Agreement ("**Other Borrowings**") any amount of Other Borrowings in excess of £250,000 become prematurely due and payable or capable of being declared due and payable, or any amount of Other Borrowings or any sums payable in respect thereof in each case in excess of £250,000 are not paid when due or within any applicable grace period or any Security securing any such borrowing becomes enforceable or a demand is made upon any guarantee given by the Borrower which is not paid when due (taking into account any applicable grace periods); or
 - 12.1.9 the Borrower ceases or threatens to cease to carry on business (declaring that any temporary closure due to COVID-19 related circumstances is not such a cessation) or a substantial part of the business properties or assets of the Borrower is seized or appropriated;
- 12.2 then on the occurrence of any of those events the Scottish Ministers may, whilst such event is continuing:
- 12.2.1 cancel the Facility whereupon it shall immediately be cancelled;
 - 12.2.2 declare that all or part of the Loan, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;
 - 12.2.3 declare that all or part of the Loan be payable on demand, whereupon they shall immediately become payable on demand; and/or
 - 12.2.4 exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

13. 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 as a consequence of the occurrence of any Event of Default.

14. DISCLOSURE OF INFORMATION

- 14.1 Subject to Clauses 14.2 and 14.3, 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.

- 14.2 Clause 14.1 and 15 shall not apply to the extent
- 14.2.1 that such disclosure is a requirement of law placed upon the party making the disclosure;
 - 14.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 14.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 14.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 14.2.5 such information was independently developed without access to the other party's Confidential Information.

14.3 Nothing in this Agreement shall prevent either party from disclosing the other party's Confidential Information:

14.3.1 to any consultant, contractor or other person engaged by the Borrower or the Scottish Ministers; or

14.3.2 for the purpose of the examination and certification of the Borrower's Accounts.

14.4 In this Clause 14

Confidential Information means information that ought to be considered as confidential and may include information whose disclosure would or would be likely to prejudice the commercial interests of any person, trade secrets, intellectual property rights, or know-how of any party;

FOISA means the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such act from time to time together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation;

EISR means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation; and

Information has the meaning given in section 73 of FOISA.

14.5 The Borrower acknowledges that the Scottish Ministers are subject to the requirements of the FOISA and the EISR and the Borrower shall assist and cooperate with the Scottish Ministers to enable them to comply with their information disclosure obligations.

14.6 The Scottish Ministers shall be responsible for determining in their absolute discretion whether Information is exempt from disclosure in accordance with the provisions of the FOISA or the EISR.

14.7 For the avoidance of doubt, the Borrower shall be entitled to disclose the terms of this Agreement to any commercial lender which is giving consideration to the provision of loan finance to the Borrower.

15. PUBLICITY

Subject to clause 14.2, the Borrower agrees there shall be no publicising of this Agreement nor a disclosure of the role of the Scottish Ministers in the provision of the Facility without the prior written consent of the Scottish Ministers.

16. ASSIGNATION AND FURTHER ASSURANCE

16.1 The Borrower may not assign or transfer its rights and/or obligations under this Agreement.

- 16.2 The Scottish Ministers may assign or transfer their rights and/or obligations, at their own cost, under the Finance Documents but only following the expiry of the Availability Period and provided that all interests under the Finance Documents are transferred or assigned simultaneously to the same Permitted Transferee.

17. MISCELLANEOUS

- 17.1 Every notice under this Agreement shall be in writing and may be given or made by hand, post or e-mail to the Borrower or the Scottish Ministers at their respective addresses given above (or to such other address as either party may intimate to the other party in writing from time to time as being the appropriate address for service of notices) and, in the case of an e-mail, to any e-mail address published as belonging to them for this purpose. Every notice shall be deemed to have been received, in the case of an e-mail, at the time of despatch (provided that if the date of despatch is not a working day, it shall be deemed received on the next such working day) and in the case of a letter at the time of its delivery if delivered personally or four days after its posting if sent by mail.
- 17.2 No failure or delay by the Scottish Ministers in exercising any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy. The rights and remedies herein are cumulative and not exclusive of any rights and remedies provided by law.
- 17.3 No variation of this Agreement shall be effective unless it is effected by way of a written agreement, duly executed by the Scottish Ministers and by the Borrower.
- 17.4 The Borrower consents to the registration of this Agreement for execution.
- 17.5 For the avoidance of doubt, nothing in this Agreement will infer any obligation on the Scottish Ministers to provide any further assistance to the Borrower.
- 17.6 The Borrower will, at its own cost and whenever required by the Scottish Ministers, do all such acts and sign and deliver all such deeds, instruments, notices or other documents of any kind, in such form as the Scottish Ministers may reasonably require, in order to exercise any of the powers and rights given herein or by law.

18. COUNTERPARTS, DELIVERY ETC

- 18.1 This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.
- 18.2 Where this Agreement is executed in counterparts:
- 18.2.1 it shall not take effect until all counterparts have been delivered;
 - 18.2.2 all counterparts shall be held as undelivered for the purposes of The Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the parties agree the date on which they are to be treated as delivered; and
 - 18.2.3 such date of delivery shall be inserted in the blank provided for that purpose on page 1 of this Agreement.

19. LAW AND JURISDICTION

This Agreement is governed by and shall be construed in accordance with the laws of Scotland and the Borrower irrevocably submits to the exclusive jurisdiction of the Scottish Courts: **IN WITNESS WHEREOF** this Agreement consisting of this and the preceding 12 pages, together with the Schedule of two parts annexed, is executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date specified on page 1 of this Agreement: -

SUBSCRIBED for and on behalf of the said
SCOTTISH MINISTERS

at Edinburgh

on 10 June 2020

by



Authorised Signatory

*Deputy Director,
Natural Resources
Scottish Government*

KEITH CONNAL

Print name

in the presence of:

Witness: ..

Full Name: ..

Address: ..

SUBSCRIBED for and on behalf of the said
ROYAL ZOOLOGICAL SOCIETY OF SCOTLAND

by

.....
Director / Authorised Signatory

.....
Print name

at

on

in the presence of:

.....Witness

Full Name:

Address:

.....
Director / Authorised Signatory

.....
Print name

at

on

in the presence of:

.....Witness

Full Name:

Address:

19. LAW AND JURISDICTION

This Agreement is governed by and shall be construed in accordance with the laws of Scotland and the Borrower irrevocably submits to the exclusive jurisdiction of the Scottish Courts: **IN WITNESS WHEREOF** this Agreement consisting of this and the preceding 12 pages, together with the Schedule of two parts annexed, is executed as follows and are delivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 on the date specified on page 1 of this Agreement: -

SUBSCRIBED for and on behalf of the said **SCOTTISH MINISTERS**

at

on

by

Authorised Signatory

Print name

in the presence of:

Witness:

Full Name:

Address:

.....

.....

SUBSCRIBED for and on behalf of the said **ROYAL ZOOLOGICAL SOCIETY OF SCOTLAND**

by

~~Director~~ / Authorised Signatory

at

in the presence of:

SERENY ALEXANDRA PEAT

Print name

on *11th June 2020*

..... Witness

Full Name: _____

Address: _____

Print name

~~Director~~ / Authorised Signatory

at

in the presence of:

Edinburgh

on *11th June 2020*

..... Witness

Full Name: _____

Address: _____

This is the Schedule in 2 parts referred to in the foregoing Agreement between Royal Zoological Society of Scotland and the Scottish Ministers.

SCHEDULE

PART 1

Conditions Precedent

1. A copy of the constitutional documents of the Borrower;
2. This Agreement duly executed by the Borrower;
3. Resolution of the board of the Borrower approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
4. An officer's certificate in Acceptable Form, in respect of the Borrower;
5. The Standard Security executed by the Borrower;
6. A copy of the Report on Title over the Charged Property.
7. Payment of any fees to the Land Register of Scotland in connection with the registration of the Standard Security;
8. A Legal Report against the Charged Property in satisfactory terms;
9. A valuation of the Charged Property showing a minimum value of no less than £2,100,000.
10. A copy of the insurance policy relating to the Charged Property containing (in form and substance reasonably satisfactory to the Scottish Ministers) an endorsement naming the Scottish Ministers as sole loss payee in respect of insurance proceeds.
11. The Borrower's Annual Report and Consolidated Financial Statements for the year ended 31 December 2019; and
12. A signed Utilisation Request.

PART 2

Utilisation Request

To: The Scottish Ministers
From: Royal Zoological Society of Scotland

Royal Zoological Society of Scotland
£500,000 Loan Agreement dated [] 2020 (the "Loan Agreement").

1. We refer to the Loan Agreement.
2. We wish to borrow a Loan as follows:-
 - a. Amount: []
 - b. Utilisation Date: []
 - c. Payment Instructions: []
3. We confirm that each condition specified in Clause 3 (Conditions of Utilisation) of the Loan Agreement which requires to be satisfied on the date of this Utilisation Request is so satisfied.

By []

For and on behalf of
Royal Zoological Society of Scotland