

LENDING FACILITY AGREEMENT

Between:

- (1) **The Scottish Ministers**, St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG (“the **Scottish Ministers**”)
- (2) **Scottish Rugby Union Limited**, a company incorporated under the Companies Act 2006, with registered number SC132061 and registered office at BT Murrayfield, Edinburgh EH12 5PJ and any subsidiaries within the meaning of section 1159 of the Companies Act 2006 (“the **Prospective Borrower**”)

Whereas:

(A). The Prospective Borrower is the governing body for the sport of rugby union in Scotland.

(B). The Scottish Ministers have set up a fund of £5 m and propose to make available a credit facility to the Prospective Borrower in the period up to and including 31 July 2021 (“the Draw Down Period”) to allow the Prospective Borrower to draw down borrowings for the purpose described in clause 2.1 of this Agreement.

(C). The Prospective Borrower shall be entitled to draw down in borrowings up to the total of £5 million in one or more tranches without limit.

(D). The borrowings shall be interest free (except in the event of repayment demanded by the Scottish Ministers in the case of an event of default as described in clause 8 of this Agreement) and shall be unsecured.

(E). Any borrowings by the Prospective Borrower must be repaid by 1st August 2042, or such other date as the Scottish Ministers and the Prospective Borrower may agree, in equal annual instalments starting on or by 1st September 2022, and the same date in subsequent years, (“the period of repayment of the borrowings”) but without penalty the Prospective Borrower may make early repayment of any annual instalment or instalments.

(F). If during the Draw Down Period or any period of repayment of the borrowings public health rules continue to materially affect the Prospective Borrower's finances, the Scottish Ministers may, at their sole discretion: i) extend the Draw Down Period; and/or ii) allow the Prospective Borrower to begin repayments later than 1st September 2022; and/or iii) extend the period of repayment of the borrowings beyond 1st August 2042.

IT IS AGREED AS FOLLOWS:

Borrowing Facility

1. The Scottish Ministers agree to make available a credit facility to the Prospective Borrower during the Draw Down Period to allow the Prospective Borrower to draw down the borrowings.

Purpose of the credit facility and any borrowings

2.1 The purpose of the credit facility and the borrowings drawn down is to allow the Prospective Borrower to assist grassroots rugby clubs in Scotland with the damage caused to them as a result of their compliance with Covid-19 public health rules.

2.2 The Prospective Borrower must use all the borrowings for reasons relating to the purpose set out in Clause 2.1.

2.3 The Prospective Borrower must not, without the prior written consent of the Scottish Ministers, use the borrowings to:

- i) repay any director loans;
- ii) repay any loans from persons with significant control (as defined in section 790C of the Companies Acts 2006); and/or
- iii) refinance existing borrowings

for a period of 12 months from the last draw down date of borrowings, except where the refinance is necessary to deal with the financial impact of the Covid-19 pandemic.

2.4 The Prospective Borrower must not pay any shareholder dividend before it has repaid the borrowings to the Scottish Ministers, except for prior contractual dividend obligations (e.g. preference share obligations).

Drawdown

3.1 It is agreed that the Prospective Borrower shall be entitled during the Draw Down Period to draw down borrowings up to a total of £5 million in one or more tranches without limit.

3.2 Any borrowings by the Prospective Borrower must be repaid by 1st August 2042, or such other date as the Scottish Ministers and the Prospective Borrower may agree in equal annual instalments starting on or by 1st September 2022, and the same date in subsequent years, but without penalty the Prospective Borrower may make early repayment in full or part of any annual instalment or instalments.

3.3 Any tranche of borrowing to be drawn down under clause 3.1 must be preceded by a draw down request in writing to the Scottish Ministers to be received by Scottish Ministers at least five business days prior to the date when it is requested that the borrowings be paid (“the draw down date”).

3.4 A draw down request under clause 3.3 must detail a) the amount of borrowings requested in any tranche; b) the draw down date in respect of the borrowings requested in any tranche; c) the bank and account number into which the borrowings are to be paid; and d) the expenditure to be covered by the borrowings.

Variation of Draw Down Period and period for repayment of borrowings

4.1 If during the Draw Down Period or any period of repayment of the borrowings, public health rules continue to materially affect the Prospective Borrower’s finances, the Scottish Ministers may, at their sole discretion:

- i) extend the Draw Down Period; and/or
- ii) allow the Prospective Borrower to begin repayments later than 1st September 2022; and/or
- iii) extend the period of repayment of the borrowings beyond 1st August 2042.

4.2 In the event that the Prospective Borrower suffers a significant loss of income, for example through reduced income from the sale of rights to televise matches, the Scottish Ministers may, on the Prospective Borrower’s request,

extend the period of repayment of the borrowings for such period as the Scottish Ministers consider reasonable.

Undertakings by the Prospective Borrower

5.1 The Prospective Borrower undertakes to the Scottish Ministers that throughout the period of repayment of the borrowings it shall deliver to the Scottish Ministers a) such information as the Scottish Ministers may at any time reasonably require; and b) each of the following:

- i) details of any changes in senior management (as defined in clause 7.3) of the Prospective Borrower;
- ii) quarterly financial reports including a profit and loss, balance sheet and actual cash flow against budget (to be submitted within two month of the end of the relevant quarter and in a format acceptable to the Scottish Ministers);
- iii) annual audited accounts to be received no later than nine months after the end of the relevant financial year.

5.2 If at any time throughout the period of repayment of the borrowings or any extension of such period, the Prospective Borrower becomes aware of any material adverse change or threatened material adverse change in the financial position of the Prospective Borrower, the Prospective Borrower undertakes to notify the Scottish Ministers immediately.

Borrowings interest free and unsecured

6.1 The borrowings shall be interest free, except if early repayment is sought under clause 8 in case of an event of default.

6.2 The borrowings shall be unsecured.

Senior management

7.1 Until the borrowings have been repaid in full to the Scottish Ministers, the Prospective Borrower must not pay any cash bonuses to its senior management, except with the prior written approval of the Scottish Ministers.

7.2 The Prospective Borrower must not give any pay rise to any member of its senior management except where:

- i) the pay rise is as a result of the member of senior management being promoted or taking on additional responsibilities and such pay rise does not have a material

negative impact on the Prospective Borrower's ability to repay the borrowings (in the Scottish Minister's absolute discretion); or

ii) the pay rise was agreed in writing before the date of this Agreement and any such pay rise does not have a material negative impact on the Prospective Borrower's ability to repay the borrowings (in the Scottish Minister's absolute discretion) or

iii) the pay rises are in line with inflation (as measured by the Retail Price Index).

7.3 For the purposes of this Agreement, "senior management" includes all members of the Board of the Prospective Borrower and those classed as directors or senior managers of the Prospective Borrower under section 414C of the Companies Act 2006 but does not include coaching staff.

Events of Default

8.1 In the event of the Prospective Borrower committing an event of default, the Scottish Ministers may claim back all unpaid borrowings plus interest on such borrowings at the rate of 1% above the Bank of England base rate.

8.2. The following are events of default:

i) if the Prospective Borrower uses or has used all or any part of the borrowings for a purpose other than a purpose permitted by clause 2.2;

ii) if the Prospective Borrower ceases or fails to comply with its obligations set out in clauses 2.3, 2.4. or 7;

iii) if the Prospective Borrower enters administration or has a voluntary arrangement with its creditors or is unable to pay its debts as they become due; and

iv) the Prospective Borrower is in any breach of any other term of this Agreement or any other loan instrument and the default is not remedied within a reasonable period after notice to the Prospective Borrower requesting action to remedy the same.

Public Services Reform (Scotland) Act 2010

9. The Scottish Ministers must comply with section 31(3) of the Public Services Reform (Scotland) Act 2010 and are obliged to and entitled under this Agreement to publish an annual statement of all payments over £25,000 and that in line with openness and transparency, the Scottish Ministers are entitled under this Agreement to publish a monthly report of all payments over £25,000 with

disclosure where a payment is made in excess of £25,000 in the form of the name of the payee, the date of the payment, the subject matter and the amount of payment in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

Application for Credit Facility

10.1 This Agreement is separate from and follows a successful application for a credit facility which has been accepted by the Scottish Ministers.

10.2 Applications in terms of clause 10.1 were only competent until 31st March 2021 with details published separately.

Non-subordination

11 Except by prior written agreement by the Scottish Ministers and the Prospective Borrower, the Prospective Borrower's obligations under this Agreement are not to be subordinated to any of the Prospective Borrower's other obligations.

Legal costs

12 Each party shall be responsible for payment of their own legal expenses in connection with the negotiation, completion and registration (but not enforcement) of this Agreement.

Law and jurisdiction

13. This Agreement is governed by and shall be construed in accordance with the laws of Scotland and be subject to the exclusive jurisdiction of the Scottish Courts.

SUBSCRIBED for and on behalf
of the said **SCOTTISH MINISTERS**
at Edinburgh
on 25th March 2021
by

[redacted] **Alan Morrison**

Authorised Signatory

Print name

SUBSCRIBED for and on behalf
of the said **SCOTTISH RUGBY UNION LIMITED**
at Edinburgh
on 26 March 2021
by [redacted]

Mark Dodson

Director

Print name