

MINUTE OF VARIATION OF FACILITY AGREEMENT

Between:

- (1) **The Scottish Ministers**, St Andrew’s House, 1 Regent Road, Edinburgh EH1 3DG (“**the Scottish Ministers**”)
- (2) **Registered name**, a company incorporated under the Companies Act 2006, with registered number [insert] and registered office at [insert] and any subsidiaries within the meaning of section 1159 of the Companies Act 2006 (“**the Borrower**”)

Whereas:

(A). The Borrower and the Scottish Ministers are party to an agreement whereby the Scottish Ministers made available a credit facility to the Borrower of up to £1.818 million (“**the borrowings**”) dated [insert date] (“**the Facility Agreement**”).

(B). The borrowings were made available to the Borrower on the basis that the Scottish Ministers had set up a credit facility of £20 million to be shared between the members of the Scottish Professional Football League’s Scottish Premiership Division.

(C). Not all of the £20 million has been allocated to date, the Scottish Ministers are also now in a position to increase the Premiership Support Fund to £25 million and therefore can now increase the borrowings available to the Borrower. Accordingly, the Scottish Ministers and the Borrower therefore wish to make the following amendments to the Facility Agreement with effect from the last date of execution of this Minute of Variation (“**the Variation Date**”).

IT IS AGREED AS FOLLOWS:

1. Terms defined in the Facility Agreement

In this Minute of Variation, expressions defined in the Facility Agreement and used in this Minute of Variation have the meaning set out in the Facility Agreement.

2. Variation

With effect from the Variation Date, the Scottish Ministers and the Borrower agree the following amendments:

a)	Clause 3.1 amended:	This clause is amended to read as follows: It is agreed that the Prospective Borrower shall be entitled during the Draw Down Period to draw down borrowings up to a total of £[insert] million from the Premiership Division Support Fund in one or more tranches without limit.
----	---------------------	---

b)	Clause 7.2 amended:	<p>This clause is amended to read as follows:</p> <p>The Prospective Borrower must not give any pay rise to any member of its senior management except where:</p> <p>i) the pay rise is as a result of the member of senior management getting 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);</p> <p>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); and</p> <p>iii) any pay rise not as a consequence of clause 7.2i) or 7.2ii) is in line with inflation (as measured by the Retail Price Index,</p>
c)	Clause 10.2 amended	<p>This clause is amended to read as follows:</p> <p>Applications in terms of clause 10.1 were only competent until 31st March 2021 with details published separately.</p>

3. Status of the Facility Agreement

Other than as amended or modified by this Minute of Variation, the Facility Agreement shall continue in full force and effect. The Facility Agreement will however cease to apply to the extent that it is in conflict with or inconsistent with the terms and conditions of this Minute of Variation, and will be amended by this Minute of Variation to the extent that it amends the Facility Agreement.

4. Headings

The headings of the clauses are intended for convenience only and shall not affect the interpretation of this Minute of Variation.

5. Scots Law and Jurisdiction

The parties agree that this Minute of Variation shall be governed by and construed in accordance with the laws of Scotland, and the parties hereby submit to the exclusive jurisdiction of the Scottish courts. IN WITNESS WHEREOF these presents are executed as follows:

For and on behalf of the Scottish Ministers

Name of signatory

Date

Place (town)

Signed for and on behalf of the Borrower

Name of Signatory

Date

Place (town)

LENDING FACILITY AGREEMENT

Between:

- (1) **The Scottish Ministers**, St Andrew's House, 1 Regent Road, Edinburgh EH1 3DG ("the **Scottish Ministers**")
- (2) **Registered name**, a company incorporated under the Companies Act 2006, with registered number [] and registered office at **[insert]** and any subsidiaries within the meaning of section 1159 of the Companies Act 2006 ("the **Prospective Borrower**")

Whereas:

(A). The Prospective Borrower is

(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 to cope financially with the immediate impact of the Covid-19 pandemic, primarily in supporting rugby activity in order to protect jobs and infrastructure.

(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.

(E) 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.

(F) 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 monthly 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 monthly instalment or instalments.

(G) 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 assist the Prospective Borrower with losses of income and additional costs resulting from its compliance with Covid-19 public health rules.

2.2 The Prospective Borrower must use all the borrowings for working capital and general cash flow requirements.

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 monthly 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 monthly 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 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 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 ii) 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 six month Sterling Overnight Index Average (SONIA).

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
on
by
.....
Director/Authorised Signatory Print name

SUBSCRIBED for and on behalf
of the said **[NAME OF BORROWER]**
at
on
by
.....
Director/Authorised Signatory Print name