

Model Template Grant and Loan Agreements

Introductory Note

The Model Documents are intended to be used as a starting point for adaptation and/or negotiation by the parties as required to reflect the particular circumstances. Individual parties are free to depart from the terms of the Model Documents and should always satisfy themselves of the appropriateness of any documents before signing. Neither the Model Documents nor this Introductory Note constitutes legal advice and the parties should consider seeking specific legal advice where appropriate.

1. Introduction

- 1.1 We have been asked by Access - the Foundation for Social Investment (“**Access**”) to develop a model template loan agreement (the “**Model Loan Agreement**”) and a model template grant agreement (the “**Model Grant Agreement**”, together with the Model Loan Agreement, the “**Model Documents**”) to be published on Access’s website and freely available for use by charities, social enterprises, social investors and others.
- 1.2 The Model Documents are based on the model loan and grant agreements that we originally prepared for the Growth Fund, a programme managed by Access and funded by the Big Lottery Fund and Big Society Capital. This programme was set up to enable social investors to provide "blended" grants and loans of up to £150,000 to charities and social enterprises to help them deliver more social impact.
- 1.3 In recognition of the fact that many smaller charities, social enterprises and social investors and intermediaries do not always have easy access to full legal services, the Model Documents have been prepared as a free, publicly available resource for those who require a clear and reasonably short-form starting point for drafting their own grant and/or loan agreement(s).

2. Model Grant and Loan Agreements: Key Features

- 2.1 The Model Documents have been designed to be clear and easy to read, relatively short-form and to contain reasonable terms that are proportionate to the value of the loans and grants being provided (which, under the original programme, had been up to £150,000 per recipient).
- 2.2 Although the original funding programme documents anticipated a “blended” structure, where both a loan and grant were being provided to the recipient by the same funding provider, this is not required for the Model Documents to be used: each of the Model Loan Agreement and Model Grant Agreement can also be used for “stand-alone” loan-only or grant-only arrangements. Optional wording has been included – as shown in square brackets in the Model Documents - to enable the documents to also be used for “blended” loan and grant arrangements (as provided by either the same funder or by different funders).
- 2.3 As the original programme itself was partly financed from public sources – as funding was provided by the Big Lottery Fund and Big Society Capital (which are in turn wholly or partly publicly financed) – the original funding documents incorporated certain protections in relation to assets and intellectual property that were acquired and/or developed using public monies,

as well as provisions relating to state aid. For the Model Documents, these have all been included as optional provisions only, as they are only likely to apply where the relevant funding has originated wholly or partly from public sources.

2.4 Other key features of the Model Documents include:

2.4.1 as well as optional provisions for “blended” finance and publicly funded programmes, the Model Documents contain language in square brackets for other types of optional provisions (for example, in relation to repayment and fee options for the Model Loan Agreement) as well as commentary in footnotes throughout to assist the parties with the drafting process. Prior to finalising any documents based on the Model Documents, the parties should ensure that all square brackets for optional provisions are removed (or the relevant optional provisions are deleted, as applicable) and all footnotes are removed;

2.4.2 the Model Documents have been drafted on the basis that all parties are incorporated entities with separate legal personality (and are not, for example, trusts or other unincorporated associations), all relevant activities of the parties and the project(s) being funded are located in England and Wales, and the currency of the grant and/or loan being provided is sterling; and

2.4.3 the Model Loan Agreement further assumes that:

- (a) the loan is being provided by a single funder, rather than a group or “club” of funders (and therefore no particular organisation or person is acting as an agent on behalf of the other funders, in relation to payment mechanics or otherwise);
- (b) the loan is a term loan facility, rather than a revolving loan, so cannot be re-drawn once it has been issued;
- (c) no security or guarantees are being provided by any party in relation to the loan; and
- (d) the borrower of the loan is not an unincorporated association or an individual; if either of these categories apply, the proposed loan may potentially fall within the scope of being a “regulated credit agreement” and consumer credit requirements (which are now overseen by the Financial Conduct Authority) may apply.

If these features and/or assumptions of the Model Documents do not apply to the particular circumstances of the parties using them, appropriate amendments to the Model Document(s) will need to be made, and the parties may wish to consider obtaining appropriate legal advice.

3. Further Considerations for Charitable Funders

3.1 If a funder which is a registered charity (a “**Charitable Funder**”) is contemplating using the Model Documents in relation to a proposed investment (by way of loan, grant or both), its trustees will need to satisfy themselves as to the basis for proposed investment, for example whether it is wholly in the furtherance of its charitable objects without any expectation of financial return (being a “**programme-related investment**”) or one which is a combination of the furtherance of its charitable objects and achieving a financial return (being a “**social**”

investment”), in each case with reference to the charity law obligations of the trustees of the relevant Charitable Funder.

- 3.2 For further information regarding trustees’ duties in relation to charity investment powers, we would recommend that Charitable Funders review and consider the Charity Commission’s guidance on charities and investment matters ([CC14](#)), the Charity Commission’s [interim guidance on the statutory social investment power](#) and HMRC guidance on [approved charitable investments and loans](#).
- 3.3 It is important that, before, any investment decision is made, the trustees of Charitable Funders have carefully considered the issues, taken any advice they think necessary, and then recorded the rationale for the investment. The most common way to do this is in minutes of the trustee board meeting which approves the investment.
- 3.4 The trustees of Charitable Funders may also wish to consider the scope of their charity law obligations in relation to other aspects of proposed investment (where applicable), such as:
- 3.4.1 grants by Charitable Funders to [non-charitable organisations](#); and
- 3.4.2 the differences between grants and contracts for services ([including their tax implications](#)).
- 3.5 Please note that the attached links to briefing articles provide high-level overviews of certain issues which apply to these topics, but they are not intended to constitute comprehensive legal advice and the parties should consider seeking specific legal advice where appropriate.

Although every care has been taken in the preparation of the Model Documents, none of Bates Wells Braithwaite, Access, the Big Lottery Fund, Big Society Capital or any participant in The Growth Fund provides any representation or warranty as to suitability of any of the Model Documents for any particular transaction, programme or social investment, or for any particular lender, funder, borrower or recipient, or as to the completeness of the contents of this Introductory Note.

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