

PRIVATE & CONFIDENTIAL

Small Company Enterprise Centre
Mid-sized Business S0777
PO Box 3900
Glasgow
G70 6AA

██████████ 2014

Re: ██████████ – Social Investment Tax Relief
Application for Advance Assurance

Dear Sirs,

We are sending you the documents enclosed with this letter on behalf of our client, ██████████, to apply for advance assurance in respect of the availability of social investment tax relief in relation to the loan proposed to be made to ██████████ on the terms outlined in enclosed application.

If you have any queries, please contact either ██████████ or ██████████ of this office.

Yours sincerely,

██████████
For and on behalf of ClearlySo Limited

Application for advance assurance in relation to Social Investment Tax Relief

Name of social enterprise: [Company]

Legal Structure: Private company limited by guarantee and registered charity

Taxpayer Ref: []

Charity Registration Number: Charity Commission, []

Registered Company Number: []

Date of Formation: Incorporated [].

Investment (amount and type): £[] debt: 3-year term at []% interest per annum, subordinated to all other debts of [Company] (except amounts due under other unsecured debentures ranking equally with this loan), no capital repayment during 3 year term.

Proposed Use of Funds:

Company will use the funds exclusively to meet the operating expenses of its [XXX] business. [XXX] is being rolled out to non-profits [REDACTED]
[REDACTED]
[REDACTED]. The revenues from [REDACTED]
[REDACTED] will be applied to meet operating costs of [XXX] (including any additional development costs of the business if deemed necessary) and also to provide further finance to enable [Company] to pursue its own charitable purposes.

[REDACTED]
year, including:

- Salary [REDACTED] - £[]k
- Salary of [REDACTED] - £[]k
- [REDACTED] - £[]k
- [REDACTED] - £[]k
- [REDACTED] - £[]k
- PR Agency - £[]k

Further details of the way in which the funds will be used are set out in the business plan which accompanies this application.

Description of any Side Agreement:

Not applicable – there will be no side agreements.

Details of trading or other activities to be carried on by the social enterprise and any subsidiary, and a note of which social enterprise or social enterprises will use the money raised:

[Company] is a registered charity and consequently meets the trading requirement set out in paragraph 257MJ(1) of Schedule 11 of the Finance Act 2014 and, other than operating the [XXX] project, does not currently undertake any trading activities and operates as a charity funded by donations and grant funding.

[Company]'s charitable activities are directed at [REDACTED]

[Company] is the UK's biggest funder of [REDACTED]. [Company] is a small, hugely ambitious charity made up of a team of [REDACTED] who are motivated to make a real impact.

[Company] has developed XXX, [REDACTED]

[Company] has a wholly-owned subsidiary, [REDACTED], a dormant private company limited by shares, but the only entity which will use the investment raised will be [Company] and it will use the investment raised solely for the purposes described above.

Details of all de minimis State aid received in the 3 years preceding the proposed date of investment:

No de minimis State aid received in the 3 preceding years.

Gross Assets

For the purposes of section 257MC Income Tax Act 2007 the gross assets of [Company] and its subsidiary will be approximately £[REDACTED] when the proposed investment is made.

Employees

[Company] and its subsidiary have the equivalent of [REDACTED] and 0 full time employees (including directors) respectively.

Unquoted Status

[Company] is not, and there are no arrangements in place for it to become, a “quoted company” for the purposes of section 257MD Income Tax Act 2007.

Any other information likely to be relevant to the application:

- [Company] is neither a subsidiary of another company nor under control of another company: all members of the company are individuals unconnected with the investors.
- Save for its interest in its subsidiary, [Company] has no interest in the share capital of, and is not a member of, any other corporate entity.
- Neither [Company] nor its subsidiary is a member of any partnership.
- None of the proposed investors are connected with the company (other than by the proposed loan): none are employees, directors, members (or other existing investors), customers or suppliers.
- None of the investors will hold more than 30% of the loan capital of the company.

Accompanying documents:

Enclosed with the application are copies of the following documents:

the certificates of incorporation (and certificates of incorporation on change of name) and the memorandum and articles of association of:

- [Company]
- [Subsidiary]

the latest available accounts of the social enterprise, [Company] and of its subsidiary [Subsidiary].

a draft loan agreement prepared on the basis set out in this application:

- the draft agreement has not yet been negotiated with investors but provided to them and they have indicated a willingness to advise on its key terms (including those included to ensure compliance with the requirements for this relief). We shall of course notify HMRC of any material changes to this draft agreement
- clause 9 of the agreement ensures that the investors under it remain unsecured and subordinated to other creditors, including on a winding up of [Company]

the latest draft of any prospectus, information memorandum, business plan or similar document to be issued to potential investors – in this case a business plan for the XXX business for which the loan is to be used

Assurances requested from HMRC

Based on the information supplied we should be grateful if you would provide an assurance that:

- The loans to be made to [Company] as described in this document (the “New Loans”) will be “qualifying debt investments” for the purposes of Part 5B of the Income Tax Act 2007,
- [Company] meets all of the conditions set out in Chapter 4 of Part 5B of the Income Tax Act 2007,
- All requirements for SI relief in Part 5B of the Income Tax Act 2007 are met in relation to the New Loans, and
- HMRC would, on receipt of a compliance statement under section 257PB, authorise [Company] to issue compliance certificates (under section 257PC Income Tax Act 2007) to all investors who subscribe for the New Loans

- ENDS -

FACILITY AGREEMENT

- (1) []
- (2) THE INVESTORS NAMED HEREIN

BETWEEN:

- (1) [], a private company limited by guarantee, incorporated in England and Wales (Registered No. []) and registered in England as a charity (Registered No.[]) (the "**Borrower**"); and
- (2) **THE INVESTORS** named in Part 2 of Schedule 1 (together the "**Investors**" and each an "**Investor**")

IT IS AGREED as follows:

The Investors have agreed to make available to the Borrower the following term loan facility (the "**Facility**");

1. **Amount and availability:** The amount of the Loan shall be equal to the total commitments recorded in Schedule 1 (the "**Loan**"). The Loan shall be available for drawing in one amount on the date of this agreement. In this agreement references to a business day shall mean a day (other than a Saturday or Sunday) on which banks are open for general business in London.
2. **Apportionment of total commitments:** No single Investor's commitment shall comprise more than 30 per cent of the total amount of the Loan at any time.
3. **Purpose:** The proceeds of the Loan shall be utilised by the Borrower to fund the development and implementation of [] venture (as further described in the business plan annexed to this agreement) ("**XXX**"). XXX may be developed and implemented by the Borrower or, by way of a documented inter-company loan, a subsidiary of the Borrower which is a "**90% social subsidiary**" (as such term is defined in section 257MV of the Income Tax Act 2007) of the Borrower.
4. **Conditions precedent:** The obligation of the Investors to make the Loan available is subject to all Investors having received the documents and other evidence referred to in Schedule 2 to this agreement.
5. **Further conditions precedent:** The obligation of the Investors to make the Loan available is subject to the further conditions precedent that on the proposed date of drawdown of the Loan:
 - 5.1 no event of default set out in clause 13 (Events of default) below has occurred or is continuing or would occur as a result of drawing down the Loan; and
 - 5.2 the representations and warranties in clause 11 (Representations and warranties) below are true.
6. **Repayment:** Subject to clause 13 (Events of default) below, the Borrower shall repay the principal amount outstanding under the Facility together with any accrued and unpaid interest then due and any other amounts due under this agreement on the first business day after the third anniversary of the date on which the Loan was made available to the

Borrower (the "**Repayment Date**"). The Borrower may not repay the Loan or any part of it before the Repayment Date.

7. **Interest:** Interest on the Loan is [] per cent per annum. Interest is payable 6 monthly in arrears at the end of April and October in each year and on the date of repayment of the Loan. All interest is calculated on the basis of a 365 day year and for the actual number of days elapsed.
8. **Default interest:** Default interest shall not be payable.
9. **Security and ranking:** The Loan will be unsecured and the Investors shall not be entitled to request from the Borrower any security, undertaking or other instrument having any similar effect. The Investors agree that if an event of default occurs under clause 13.4 or clause 13.5 below (and insofar as the law allows) the Loan is postponed and subordinated in right of payment to the debts of any other creditor of the Borrower and repayment of the Loan is prohibited and may not occur until all debt owed to all other creditors of the Borrower have been irrevocably paid and discharged in full. The Investors shall not take any steps to seek repayment of the Loan or to enforce this agreement as against the Borrower in contravention of this clause 9.
10. **Payments:** The Borrower will make all payments under this agreement for value on the due date in sterling to each Investor at its bank account described in Part 2 of Schedule 1 or such other account that the Investor may notify to the Borrower. The Borrower shall pay amounts due under this agreement to the Investors in equal proportion to each Investor's share of the Loan. The Investors agree that if any Investor receives a payment exceeding an amount that is proportionate to its share of the Loan, that Investor will hold that excess amount on trust for the other Investors and shall pay any such amount or amounts to such Investor or Investors as is required to give effect to this clause.

If any payment becomes due on a day which is not a business day, the due date of such payment will be extended to the next business day in the same calendar month (if there is one) or the preceding business day (if there is not).

The Borrower will make all payments under or in respect of the Facility without set-off or counterclaim and free and clear of any withholding or deduction, save as may be required by law. If the Borrower is required to make any such withholding or deduction the Borrower shall pay such additional amounts so that the affected Investor receives and retains a net amount equal to the full amount had no such withholding or deduction been made.

11. **Representations and warranties:** The Borrower represents and warrants on the date of this agreement and on the date on which the Loan is advanced to the Borrower:
 - 11.1 that this agreement creates legally binding obligations on the Borrower enforceable in accordance with its terms, is within the Borrower's powers, has been duly authorised and does not conflict with any law or document binding on the Borrower and that all consents and authorisations required in connection with the Borrower's entry into, performance, validity and enforceability of, and the transactions contemplated by, this agreement have been obtained or effected; and

- 11.2 that no event of default is outstanding, unremedied or unwaived.
12. **Financial statements:** The Borrower shall provide copies of its annual financial statements to each Investor within 28 days of the end of its financial year .
13. **Events of default:** If:
- 13.1 the Borrower fails to pay any amount of principal when due under this agreement; or
 - 13.2 the Borrower fails to pay any amount of interest within 20 business days of the due date in accordance with this agreement; or
 - 13.3 the Borrower remains in default under any other financial obligation to any person for a period of not less than 20 business days; or
 - 13.4 an administrator is appointed in relation to the Borrower, or a receiver or manager or administrative receiver is appointed in relation to the Borrower or any of its assets, or the Borrower enters into liquidation or enters into a compromise or arrangement with its creditors, or any analogous procedure or step is taken in any jurisdiction; or
 - 13.5 any distress or execution is levied on or affects any of the property or assets of the Borrower,
- then at any time thereafter the Investors may by written notice terminate all of their obligations under this agreement and/or demand immediate repayment of the Loan, together with accrued interest and all other amounts owing under this agreement, and such demand shall be complied with by the Borrower immediately.
14. **Right to enforce:** Each investor shall have independent power to enforce its rights under clause 13 of this agreement. The Investors shall act by agreement of a majority of 66.6 per cent by aggregate commitments in all other matters arising under this agreement.
15. **Costs and expenses:** Each party to this agreement will bear its own costs.
16. **Transfers:** Neither the Borrower nor the Investors shall assign, transfer or novate or dispose of any interest in its rights or obligations under this agreement without prior written consent of the parties. Any assignment, transfer or novation by an Investor must not contravene clause 2 (Apportionment of total commitments).
17. **Notices:** Any communication to be made under or in connection with this agreement shall be made in writing and, unless otherwise stated, may be made by fax, email or letter. The contact details of the Borrower for any communication or document to be made or delivered under or in connection with this agreement are set out in Part 1 of Schedule 1. The contact details for the Investors for any communication or document to be made or delivered under or in connection with this agreement are set out in Part 2 of Schedule 1. Any party to this agreement may change its contact details by giving five business days' notice to the other parties.

18. **Third Parties:** Except insofar as this agreement expressly provides that a third party may in his own right enforce a term of this agreement, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
19. **Amendment:** No modification or variation of this agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties to this agreement.
20. **Counterparts:** 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.
21. **Applicable law:** This agreement governed by and construed in accordance with the law of England and Wales.
22. **Jurisdiction:** The parties to this agreement irrevocably agree for the exclusive benefit of the Investors that the courts of England and Wales shall have exclusive jurisdiction over any claim, dispute or matter arising under or in connection with this agreement or its enforceability or the legal relationships established by this agreement and that accordingly any proceedings in respect of any such claim, dispute or matter may be brought in such courts.

SCHEDULE 1

Part 1 – Borrower

[] (Registered No. [])

Address:

Fax:

Part 2 - Investors

Name of Investor	Commitment
 _____	 £ _____
Address:	
Fax:	
Account for payments:	
 _____	 £ _____
Address:	
Fax:	
Account for payments:	
 _____	 £ _____
Address:	
Fax:	
Account for payments:	
 _____	 £ _____
Address:	
Fax:	
Account for payments:	
 _____	 £ _____
Total commitments:	£ _____

SCHEDULE 2

Conditions Precedent

1. This agreement duly executed by the Borrower.
2. A copy of the constitutional documents of the Borrower certified as correct, complete and in full force and effect as at a date no earlier than the date of this agreement by a director of the Borrower.
3. A copy of a resolution of the board of directors of the Borrower (in each case) certified as correct, complete and in full force and effect as at a date no earlier than the date of this agreement by a director of the Borrower:
 - 3.1 approving the terms of, and the transactions contemplated by, this agreement and resolving that it execute this agreement;
 - 3.2 authorising a specified person or persons to execute this agreement;
 - 3.3 authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any request for drawing) to be signed and/or despatched by it under or in connection with this agreement; and
 - 3.4 a copy of the letter to HM Revenue & Customs seeking advance assurance that the Loans will be eligible for Social Investment Tax Relief pursuant to Part 5B of the Income Tax Act 2007, together with a copy of the letter from HM Revenue & Customs providing those assurances.

EXECUTION

Signed by the Borrowers

SIGNED on behalf of)
[])
(Registered No. []))
acting by a director in the)
presence of:)

Signature of witness:

Name of witness:

Address:

Occupation:

Signed by the Investors

SIGNED by)
_____)
in the presence of:)

Signature of witness:

Name of witness:

Address:

Occupation:

SIGNED by)
_____)
in the presence of:)

Signature of witness:

Name of witness:

Address:

Occupation:

SIGNED by

)

_____)
in the presence of:)

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Signature of witness:

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Name of witness:

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Address:

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Occupation:

.....

SIGNED by

)

_____)
in the presence of:)

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Signature of witness:

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Name of witness:

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Address:

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Occupation:

.....

ANNEX

XXX: Business Plan