

DATE 27th January 2014.

between

DARLINGTON BOROUGH COUNCIL
BORROWER

And

SIEMENS FINANCIAL SERVICES LIMITED

LENDER

Loan Agreement

Signed for and on behalf of the Borrower

THIS AGREEMENT is dated

PARTIES

- (1) **DARLINGTON BOROUGH COUNCIL** whose main offices are located at Town Hall, Feethams, Darlington, County Durham DL1 5QT (the "**Borrower**").
- (2) **SIEMENS FINANCIAL SERVICES LIMITED** incorporated and registered in England and Wales with company number 040100 whose registered office is at Sefton Park, Bells Hill, Stoke Poges, Buckinghamshire, SL2 4JB (the "**Lender**").

BACKGROUND

The Lender has agreed to provide the Borrower with an unsecured term loan facility of an amount equal to and not exceeding £5,000,000.00 (Five Million pounds) (the "**Total Amount**").

AGREED TERMS

1: DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Appendix means the appendix attached to this agreement.

Breakage Costs means the amount the Lender reasonably determines in good faith to be its total loss, cost, liability and expense directly or indirectly resulting from or attributable to any early repayment, recovery of the Loan (other than on an Option Date) or if pursuant to the provisions of clause 4.1 the Total Amount is not advanced and calculated by reference to the loss of the right to receive interest for the balance of the Period, as applicable, and/or any agreements or arrangements (whether entered in actually with third parties or established internally as between different divisions of the Lender) entered into, recorded or booked in order to manage or protect the Lender in respect of the risk movements in interest rates.

Borrower's Bank Account means the account in the Borrower's name with National Westminster Bank having account number 04123010 and sort code 02-30-10.

Business Day means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business in London.

Draw Down Date means 30th June 2014.

Event of Default means any event or circumstance listed in clause 13.

Final Repayment Date means the Fifteenth anniversary of the Start Date or if that is not a Business Day, the next succeeding Business Day in that calendar month if there is one, or the immediately preceding Business Day, if there is not.

First Period means the period commencing on the Start Date and ending on the first Option Date.

Interest Payment Date means the last day of an Interest Period.

Interest Period means each successive period of 6 months for which interest is calculated and payable on the Loan under clause 5.

Interest Rate means the interest rate set out in clause 5.1 below.

Loan the principal amount of the loan made or to be made by the Lender to the Borrower under this agreement or (as the context requires) the principal amount outstanding for the time being of that loan.

Option Date means each of the following: (i) the date falling on the Fifth anniversary of the Start Date and (ii) the date falling on the Tenth anniversary of the Start Date, save in each case where that date is not a Business Day, in which case the Option Date shall be the next succeeding Business Day in that calendar month, if there is one, or the immediately preceding Business Day, if there is not.

Loan Agreement
Page 2 of 11

Signed for and on behalf of the Borrower

Potential Event of Default: means any event or circumstance specified in clause 13 which would (with the expiry of a grace period, the giving of notice, the making of any determination under this agreement or any combination thereof) be an Event of Default.

Period: means each period commencing on an Option Date and ending on the next succeeding Option Date or the Final Repayment Date (as applicable).

Replacement Rate: means the interest rate applicable for the Period notified by the Lender to the Borrower prior to the relevant Option Date.

Start Date: means the Draw Down Date, or such other date on which the Lender in its sole discretion has agreed to advance the Loan to the Borrower.

Sterling and £1 means the lawful currency for the time being of the United Kingdom.

Termination Sum: means the aggregate total of: (a) all accrued but unpaid interest; (b) the Loan; (c) Breakage Costs (if any); and (d) any other due but unpaid amounts.

1.2 A reference to this agreement (or any provision of it) or any other document shall be construed as a reference to this agreement, that provision or that document as it is in force for the time being and as amended, varied or supplemented from time to time in accordance with its terms, or with the agreement of the relevant parties.

1.3 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any former statute, statutory provision or subordinate legislation which it amends or re-enacts.

1.4 A reference to writing or written includes faxes and email.

1.5 References to a certified copy of a document mean a copy certified to be a true, complete and up-to-date copy of the original document, in writing and signed by a duly authorised officer of the Borrower.

1.6 A reference to an authorisation includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration or resolution.

1.7 A reference to a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any government, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

2. THE FACILITY

The Lender grants to the Borrower an unsecured Sterling term loan facility equal to and not exceeding the Total Amount on the terms, and subject to the conditions, of this agreement.

3. DRAWING

Subject to clause 4, the Lender shall make one advance equal to the Total Amount to the Borrower on the Draw Down Date.

4. CONDITIONS PRECEDENT

4.1 The Lender is not obliged to make any advance:

- a) unless, within 3 Business Days of the date on which the Lender submits an execution copy of this Agreement to the Borrower, the Lender has received from the Borrower: (i) a duly executed certificate substantially in the form of the Appendix; (ii) evidence satisfactory to it demonstrating that the Borrower has not exceeded its borrowing limits and that such limits will not be exceeded by its entering into this agreement; and (iii) a copy of this agreement executed by a duly authorised officer of the Borrower; or
- b) unless, on or immediately prior to the Draw Down Date, the Lender has received from the Borrower: i) a duly executed certificate substantially in the form of the Appendix; and ii) evidence satisfactory to it demonstrating that the Borrower has not exceeded its borrowing limits; or

Loan Agreement

Signed for and on behalf of the Borrower

- b) if in the Lender's sole opinion there has been a material adverse change in the financial standing of the Borrower between the date of this agreement and the Draw Down Date, which opinion shall be notified to the Borrower in writing on or prior to the Business Day immediately prior to the Draw Down Date.

5. INTEREST

5.1 Subject to the provisions of clause 5.2, the Interest Rate for the First Period is 3.82%.

5.2 The Lender shall have the right to reset the Interest Rate, and will advise the Borrower accordingly, if:

- a) the Lender does not receive a copy of this agreement duly signed by the Borrower within 3 Business Days of the date on which the Lender submits an execution copy to the Borrower;
- b) the Lender, in its sole discretion, agrees to advance the Loan on any day other than the Draw Down Date is.

5.3 Interest on the Loan shall be calculated on a daily basis and assuming a year of 365 days and shall be paid semi-annually on the Interest Payment Date for each Interest Period and on each Option Date and/or the Final Repayment Date, as applicable.

5.4 The initial Interest Period shall start on the Start Date. Each subsequent Interest Period shall start on the last day of the previous Interest Period applicable to it. If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period shall, instead, end on the next Business Day in that calendar month, if there is one, or the preceding Business Day, if there is not.

5.5 If the Lender has not exercised its Call Option pursuant to clause 6 below, the Lender will recalculate the interest rate applicable to the Loan for each Period and will notify the Borrower of the Replacement Rate five Business Days prior to the Option Date. If the Borrower wishes to accept the Replacement Rate it shall, not later than two clear Business Days prior to the then applicable Option Date, advise the Lender accordingly in writing and provide to the Lender a duly executed certificate substantially in the form of the Appendix in respect of the circumstances prevailing as at that date. If accepted, the Replacement Rate shall apply for the duration of that Period.

5.6 If the Borrower fails to make any payment due under this agreement on the due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment, at the Interest Rate or the Replacement Rate, as then applicable.

6. CALL OPTION

6.1 The Lender shall have the option, at its sole discretion, to call for the repayment of the Loan in full on each Option Date (the "Call Option").

6.2 If the Lender wishes to exercise the Call Option in respect of any Option Date it shall notify the Borrower in writing five Business Days prior to the applicable Option Date and the Borrower shall repay the Loan in full on that Option Date together with all accrued but unpaid interest thereon and any other sums due and payable hereunder.

7. COSTS

7.1 The Borrower shall pay, within three Business Days of demand, all costs and expenses (together with any value added tax thereon) that the Lender incurs in connection with the preservation and enforcement of the Loan and/or this agreement.

8. REPAYMENT

8.1 If the Borrower is offered a Replacement Rate pursuant to the terms of clause 5 but does not accept it or fails to deliver the certificate pursuant to the terms of clause 5.5 above, the Borrower shall repay the Loan in full on the applicable Option Date together with all accrued but unpaid interest thereon and any other sums due and payable hereunder.

8.2 If the Loan has not been prepaid or repaid in full on or prior to the second Option Date, the Borrower shall repay the Loan in full, together with all accrued but unpaid interest outstanding on the Final Repayment Date.

Loan Agreement
Page 4 of 11

Signed for and on behalf of the Borrower

8.3 The Borrower shall give the Lender five Business Days notice if it wishes to make a prepayment in respect of the Loan. Any prepayment shall be in full and not part only and made on an Interest Payment Date or an Option Date.

8.4 If the Borrower prepays the Loan to the Lender on any date other than an Option Date it shall pay to the Lender the Termination Sum plus an amount equal to 0.05% of the Total Amount.

9. **BREAKAGE COSTS FROM EARLY REPAYMENT**

9.1 The Borrower acknowledges that the Lender may enter into, record or book agreements or arrangements on the assumption that its sources of funds will include payments of interest under this agreement. Those agreements and arrangements may be with third parties or be internal agreements or arrangements made with different divisions of the Lender. The Borrower further acknowledges that in order to fix the interest rate for the first period the Lender may be required to enter into such agreements or arrangements on the date of execution of this agreement notwithstanding that the Total Amount will not be advanced until the Draw Down Date. The Borrower therefore agrees and accepts that the Lender may suffer Breakage Costs which the Borrower will be required to pay, which will vary depending on prevailing financial market conditions if:

- a) the Borrower makes any prepayment of the Loan;
- b) the Borrower fails to satisfy the obligations set out in clause 4.1a) or clause 4.1b);
- c) the Lender elects to withhold the advance pursuant to the provisions of clause 4.1b).

9.2 The Lender and the Borrower agree that the Lender will calculate the Breakage Costs by utilising information consisting of relevant market data in the relevant market which may be obtained from a source within the Lender or any third party.

9.3 If the Borrower wishes to make a prepayment, it may request a statement from the Lender setting out an estimate of the Breakage Costs and the aggregate Termination Sum (which estimate shall not be binding) in respect of the proposed prepayment and showing in reasonable detail how such amount was calculated.

10. **PAYMENTS**

10.1 All payments made by the Borrower under this agreement shall be in Sterling and in immediately available cleared funds to the Lender at its account number 70707074 with sort code 20-71-06 with Barclays Bank plc of 4th Floor, Block A, Apex Plaza, Forbury Road, Reading, Berkshire or such other account as the Lender may notify the Borrower. All payments must quote SFS reference number 7897750.

10.2 All payments made by the Borrower under this agreement shall be made in full, without set-off, counterclaim or condition and free and clear of and without any deduction or withholding, provided that, if the Borrower is required by law or regulation to make such deduction or withholding, it shall pay to the Lender such additional amount as is necessary to ensure that the net amount received by the Lender after the required deduction or withholding is equal to the amount that the Lender would have received had no such deduction or withholding been made.

11. **REPRESENTATIONS AND WARRANTIES**

11.1 The Borrower represents and warrants on the date of this agreement:

- (a) It has the power and authority to execute, deliver and perform its obligations under this agreement and the transactions contemplated by it. No limit on its powers will be exceeded as a result of the borrowing contemplated in this agreement.
- (b) The execution, delivery and performance of its obligations under this agreement will not breach any legal, contractual, governmental or administrative statute, regulation, directive, order or restriction applicable to it or any provision of its constitution or standing orders.
- (c) It has taken all necessary actions, resolutions, requirements and procedures and obtained all required authorisations to enable it to execute, deliver and perform its obligations under this agreement and the

Loan Agreement

Signed for and on behalf of the Borrower

transactions contemplated by it and to make it admissible in evidence in its jurisdiction of incorporation. All such authorisations are in full force and effect.

- (d) Its obligations under this agreement are legal, valid, binding and enforceable in accordance with its terms.
 - (e) No Event of Default or Potential Event of Default has occurred or is continuing or is reasonably likely to result from making the Loan or the entry into, the performance of, or any transaction contemplated by this agreement.
 - (f) No material litigation, arbitration or administrative proceedings are taking place, pending or, to the Borrower's knowledge, threatened against it.
- 11.2 Each of the representations and warranties in this clause 11 is deemed to be repeated by the Borrower:
- (a) on the Start Date;
 - (b) on each date immediately succeeding each Interest Payment Date and on each Option Date in respect of the representations and warranties set out in clause 11.1(d) to (f) (inclusive) only, by reference to the facts and circumstances existing on each such date.

12. COVENANTS

- 12.1 The Borrower covenants with the Lender that, as from the date of this agreement until all its liabilities under this agreement have been discharged:
- (a) It will promptly, after becoming aware of them, notify the Lender of any material litigation, arbitration or administrative proceedings or claim of the kind described in clause 11.1(f).
 - (b) It will deliver its audited annual financial statements to the Lender on or before 31st October each calendar year.
 - (c) It will promptly obtain all consents or authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it to perform its obligations under this agreement and to ensure the legality, validity, enforceability and admissibility in evidence of this agreement in its jurisdiction of incorporation.
 - (d) It will comply in all respects with all laws if failure to do so has or is likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this agreement.
 - (e) It shall promptly notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.

13. EVENTS OF DEFAULT

- 13.1 Each of the events or circumstances set out in this clause 13 (other than this clause 13.1 and clause 13.11) is an Event of Default.
- 13.2 The Borrower fails to pay any sum payable under this agreement, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within three Business Days of its due date.
- 13.3 The Borrower fails (other than by failing to pay), to comply with any provision of this agreement (and if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within fourteen Business Days of the Lender notifying the Borrower of the default and the remedy required.
- 13.4 Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this agreement is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made.
- 13.5 The Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due or the value of the Borrower's assets is less than its liabilities (taking into account contingent and prospective liabilities).

Loan Agreement

Signed for and on behalf of the Borrower

13.6 Any action, proceedings, procedure or step is taken for the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Borrower or any of its material assets.

13.7 A distress, attachment, execution, expropriation, sequestration or another analogous legal process is levied, enforced or sued out on, or against, the Borrower's material assets and is not discharged or stayed within 21 days.

13.8 Any provision of this agreement is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect.

13.9 Any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform any of its obligations under, or otherwise comply with the terms of, this agreement.

13.10 The Loan is transferred other than with the Lender's prior written consent (whether pursuant to any statutory provision governmental regulation, assignment, transfer or otherwise), to any other party.

13.11 At any time after an Event of Default has occurred which is continuing, the Lender may, by notice to the Borrower declare that the Loan (and all accrued interest and all other amounts outstanding under this agreement) is immediately due and payable, whereupon they shall become immediately due and payable and the Lender shall be entitled to take such action to recover all amounts outstanding hereunder as it sees fit.

14. SET-OFF

The Lender may apply any credit balances (whether or not then due) to which the Borrower is at any time beneficially entitled on any account with the Lender in (or towards) satisfaction of any sum then due and payable (but unpaid) by the Borrower to the Lender under this agreement. If such balances are in different currencies, the Lender may convert either balance at a market rate of exchange for the purpose of the set-off. If the Lender exercises its rights under this clause 14 it shall promptly notify the Borrower of the set-off that has been made.

15. CALCULATIONS, ACCOUNTS AND CERTIFICATES

The Lender shall maintain accounts evidencing the amounts owed to it by the Borrower, in accordance with its usual practice. Entries in these accounts shall be prima facie evidence of the existence and amount of the Borrower's obligations as recorded in them.

16. REMEDIES, WAIVERS, AMENDMENTS AND CONSENTS

16.1 Any amendment to this agreement shall be in writing and signed by, or on behalf of, each party.

16.2 No delay or failure to exercise any right or remedy under this agreement on the part of the Lender shall operate as a waiver of any such right or remedy. No single or partial exercise of any right or remedy under this agreement by the Lender shall prevent any further or other exercise or the exercise of any other right or remedy under this agreement.

16.3 Rights and remedies under this agreement are cumulative and do not exclude any other rights or remedies provided by law or otherwise.

17. MISCELLANEOUS

17.1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

17.3 The Lender may assign any of its rights under this agreement or transfer all its rights or obligations by novation.

Loan Agreement

Signed for and on behalf of the Borrower

- 17.4 The Borrower may not assign any of its rights or transfer any of its rights or obligations under this agreement unless it has obtained the Lender's prior written consent.
- 17.5 This agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.
- 17.6 A person who is not a party to this agreement cannot enforce, or enjoy the benefit of, any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.
18. **NOTICES**
- 18.1 Each notice or other communication required to be given under, or in connection with, this agreement shall be in writing, delivered personally or sent by pre-paid first-class letter or fax and sent:
- (a) to the Borrower at:
- Darlington Borough Council, Town Hall, Peethams Darlington DL1 2RQ
Fax: N/A
Attention: Finance Manager- Treasury Management
- to the Lender at:
- Siemens Financial Services Limited, Grafton Park, Belle Hill, Stoke Poges, Buckinghamshire SL2 4JS
Email address: ralph.britten@siemens.com - Fax: 01753 434499
Attention: The Company Secretary
- or to any other addresses or fax numbers that are notified in writing by one party to the other from time to time.
- 18.2 Any notice or other communication given by either party shall be deemed to have been received:
- (a) if sent by fax or email, when received in legible form;
- (b) if given by hand, at the time of actual delivery; and
- (c) if posted, on the second Business Day following the day on which it was despatched by pre-paid first-class post.
- 18.3 A notice or other communication given as described in clause 18.2(a), clause 18.2(b) or clause 18.2(c) on a day which is not a Business Day, or after normal business hours in the place of receipt, shall be deemed to have been received on the next Business Day.
19. **GOVERNING LAW AND JURISDICTION**
- 19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 19.2 The parties to this agreement irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Loan Agreement
Page 6 of 14

Signed for and on behalf of the Borrower

This agreement has been entered into on and is effective from the date stated at the beginning of it.

Signed by

For and on behalf of

SIEMENS FINANCIAL SERVICES LIMITED

Director

S-J. MASON

Z. BRITTO.
SECRETARY.

DARLINGTON BOROUGH COUNCIL having decided that the Loan arrangements set out in this agreement are in its best interests, accepts the terms and conditions of this agreement.

Signed:

Name: Paul Wildsmith

Position: Director of Resources

Date: 27th January 2014

*The relevant officer as prescribed by s151 Local Government Act 1972 plus any other signatory necessary pursuant to council policy or the minutes to ratify the actions of the relevant officer.

Loan Agreement
Page 6 of 11

Signed for and on behalf of the Borrower

APPENDIX

To: Siemens Financial Services Limited

[Address]

[Date]:

Dear Sirs,

We write with reference to the following agreement:

A loan agreement (the "Loan Agreement") between Darlington Borough Council (the "Borrower") and Siemens Financial Services Limited (the "Lender") [signed by the Borrower on or around the date hereof / dated [DATE]¹ and we certify to you as follows:

1. The Borrower is constituted under the Local Government Act 1972 as from time to time amended, varied or re-enacted and has the power and capacity to enter into the Loan on the terms set out in the Loan Agreement and has taken all necessary corporate and other action required by applicable law or regulations to authorise the execution and performance of the same;
2. In our view:
 - (a) all relevant provisions in the Local Government Act 1972, the Local Government Act 2003 and other legislation deriving therefrom have been and are being complied with by the Borrower and the Borrower will not by entering into and performing its obligations under the Loan Agreement be in breach of any restriction upon its power to borrow or enter into credit arrangements or cause any restriction upon its ability to do so to be exceeded;
 - (b) the borrowing of the Loan will facilitate or is conducive or incidental to the discharge of a statutory function of the Borrower; and
 - (c) the terms and conditions of the Loan Agreement, including but not limited to the [Interest Rate/Replacement Rate]², appear to us, having taking all such independent advice as we consider appropriate, to be in line with prevailing market terms;
3. The current indebtedness of the Borrower does not exceed its borrowing limits and such limits will not be exceeded by its borrowing of the Loan; and

¹ Delete wording as applicable. A specific date to be inserted where the Loan Agreement has been signed and dated by the Borrower and the Lender.

² Delete wording as applicable and in accordance with the Definitions and whether any Options have been exercised.
Loan Agreement

Signed for and on behalf of the Borrower

4. The [relevant]³ representations and warranties set out in clause 11 of the Loan Agreement are true in all material respects.

Capitalised terms set out in this letter shall have the same meaning as set out in the Loan Agreement, unless otherwise defined herein.

We are sending you under cover of this certificate, copies of the [minutes]⁴ of the Borrower and/or [Committees]⁵ of the Borrower authorising the execution and delivery on behalf of the Borrower of the Loan Agreement and this certificate and specifying officers authorised to sign and/or deliver the Loan Agreement.

The copy documentation has been certified by []*.

We have made all enquiries and obtained all advice necessary to enable us to enter into the Loan Agreement and issue this certificate to you. We acknowledge that if you enter the Loan Agreement you may do so in full reliance upon this certificate. We are duly authorised to give this certificate on behalf of the Borrower in accordance with the documentation provided hereunder.

Signed by:

.....*

Name:

Position:

*The relevant officer as prescribed by s151 Local Government Act 1972 plus any other signatory necessary pursuant to council policy or the minutes to ratify the actions of the relevant officer

¹ Wording in brackets applicable only in respect of certificates delivered in relation to Option Dates -- to be removed from initial certificate.

³ Insert the names of the relevant documentation confirming that the Borrower is operating within its internal lending requirements, within its borrowing limits and within its current regulations.

⁵ Insert the names of the relevant documentation confirming that the Borrower is operating within its internal lending requirements, within its borrowing limits and within its current regulations.

Loan Agreement

Signed for and on behalf of the Borrower

