

## Example of an application to HMRC for an advance assurance

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### **EXPLANATORY NOTES:**

*This is an example of an application to HMRC for an advance assurance that investors subscribing for loan notes issued by a company as a “social impact bond” (i.e. where the issuer of the loan note is accredited as a “social impact contractor” pursuant to section 257JD of the Income Tax Act 2007 (“ITA”)) would be eligible to claim Social Investment Tax Relief (“SITR”).*

*The company is a private company limited by shares. The company also raised debt funding from another lender who was not eligible to claim SITR. The company is not controlled by any one single shareholder.*

*This Appendix (amended only to remove commercially sensitive information), together with the documents listed in paragraph 9, was submitted by email to The Small Company Enterprise Centre at HMRC ([enterprise.centre@hmrc.gsi.gov.uk](mailto:enterprise.centre@hmrc.gsi.gov.uk)).*

*HMRC issued the assurances requested at paragraph 10 of the Appendix.*

## APPENDIX

To an email from Neil Pearson Consulting Limited to HM Revenue & Customs on [] 201[] relating to  
investments in  
[] LIMITED

### 1. Introduction

- 1.1. We are instructed on behalf of [] Limited (the “**Company**”) and its investors.
- 1.2. On []201[] (the “**First Completion Date**”) the Company raised £[] from a number of investors as working capital.
- 1.3. The Company is now seeking to raise up to an additional £[] (the “**New Investments**”) from investors who will be seeking to claim Social Investment Tax Relief (“**SITR**”) on those investments pursuant to Part 5B of the Income Tax Act 2007 (“**ITA**”).
- 1.4. The Company will be seeking accreditation as a “social impact contractor” pursuant to section 257JD of ITA.
- 1.5. The purpose of this email is to seek advance assurance that, on the assumption that the Company is accredited in accordance with section 257JD of ITA, the New Investments will qualify for SITR.

### 2. The Company

- 2.1. The Company was incorporated in England and Wales on [] 201[] with company number []. Its registered office is at [].
- 2.2. [The Company does not yet have a corporation tax reference] or [The Company’s corporation tax reference is []].
- 2.3. The Company was incorporated for the sole purpose of bidding for and, if successful, performing, a payment by results contract with [] to []. The Company has not yet commenced any trade or any activity other than bidding for that contract.

- 2.4. For the purposes of section 257MD of ITA, none of the shares, stocks or debentures in the Company are, or will immediately following the New Investments be:
- 2.4.1. listed on a recognised stock exchange; or
  - 2.4.2. listed on a designated stock exchange outside the United Kingdom, or
  - 2.4.3. dealt in outside the United Kingdom by such means as may be designated by HMRC.
- 2.5. The Company has no interest in any other trust or body corporate. It has no intention to acquire any interests in any other trust or body corporate.
- 2.6. The Company has received a grant from [].
- 2.7. We are informed that on the date the New Investments are made the Company will not (save for the receipt of monies as described in paragraph 2.6 above) have received any aid which is State Aid (whether by way of investment, loan, grant funding or otherwise) which is de minimis aid which fulfils the conditions laid down in Commission Regulation (EU) No 1407/2013 (de minimis aid) (as that Regulation may be amended or replaced from time to time).
- 2.8. The Company is not, and has no intention to become, a partner or member of any partnership.
- 2.9. At the time the New Investments are made the Company will have less than 500 employees (including directors).
- 2.10. We are informed that for the purposes of section 257MC of ITA the gross assets of the Company will be:
- 2.10.1. less than £15m immediately before the New Investments are made; and
  - 2.10.2. less than £16m immediately afterwards.

### **3. The Company's Share and Loan Capital**

- 3.1. The Company's share capital comprises [] ordinary shares of £[] each ("**Ordinary Shares**") issued at a price of £[] per share.

- 3.2. These shares are held by the [] organisations that founded the Company (the “**Founders**”), namely:
- 3.2.1.[] - a company limited by guarantee registered in England and Wales with number [], which holds [] Ordinary Shares; and
- 3.2.2.[] - a company limited by guarantee registered in England and Wales with number [], which also holds [] Ordinary Shares.
- 3.3. On the First Completion Date the following occurred:
- 3.3.1.the Founders adopted new articles of association of the Company (the “**New Articles**”);
- 3.3.2.the Company entered into a loan agreement (the “**Secured Loan Agreement**”) with [] (the “**Senior Lender**”) and the Senior Lender loaned to the Company the sum of £[] (the “**Secured Loan**”); and
- 3.3.3.The Company entered into a grant agreement with [] (the “**Social Impact Contract**”) under which the Company undertakes to [] in return for payment by reference to achieved outcomes.
- 3.4. Accordingly, immediately before the New Investments are made:
- 3.4.1.the issued share capital of the Company will comprise:
- 3.4.1.1. [] Ordinary Shares held by []; and
- 3.4.1.2. [] Ordinary Shares held by []; and
- 3.4.2.the loan capital of the Company will comprise £[] of Secured Loans held by the Senior Lender.
- 3.5. On [] 201[] the Company applied to the Cabinet Office for accreditation as a “social impact contractor” pursuant to section 257JD of ITA (“**Accreditation**”). It is hoped that Accreditation will be granted in [] 201[].
- 3.6. Once accreditation has been received the Company will raise up to £[] by way of the issue of up to £[] 7% fixed rate unsecured loan notes (the “**SITR Loan Notes**”). The cash from investors

subscribing for the SITR Loan Notes will be held by the Company's solicitors in an escrow account and will be released to the Company on the date the SITR Loan Notes are issued.

#### 4. The Social Impact Contract

4.1. The Company's sole activity will be the performance of its responsibilities to deliver the agreed outcomes under the Social Impact Contract as described in this paragraph 4.

4.2. The Social Impact Contract will run from [] 201[] to [] 201[].

During the term of the contract the Company is commissioned by [] (the "Department") to work in [] with [].

4.3. The Company will seek to achieve the following:

4.3.1. []

4.4. For each of these key objectives, the Company has been set a number of target outcomes (set out in detail in Annex [] to the Social Impact Contract).

4.5. Achievement of those objectives will be measured in accordance with the processes described in Annex [] to the Social Impact Contract. This includes requirements to submit documentary evidence (of a type listed in the contract) which is then open to audit/spot-check.

4.6. Over the term of the contract the Company must report regularly to the Department on its activities and the extent to which outcomes are being achieved. In the event of significant underperformance the Department may terminate the Social Impact Contract.

4.7. If and to the extent that those objectives are achieved the Company will be entitled to receive payments from the Department. The amount received varies dependent on performance and will not exceed £[].

4.8. In order to perform its obligations under the Social Impact Contract the Company will enter into agreements with each of the Founders under which each may provide staffing and other

resources. Employees of the Founders may be seconded to the Company or may enter into joint employment contracts with the Company and the relevant Founder.

## 5. The Shareholders Agreement

5.1. There is no shareholders agreement between the Founders. The only document regulating the relationship between the two, and how the Company is to be managed, is the New Articles.

## 6. The New Articles

6.1. The key terms of the New Articles are described in this paragraph 6.

### 6.2. Directors:

6.2.1. Each member is entitled to appoint and replace one director to the Board. Accordingly the Board currently comprises one director appointed by [] and one director appointed by []. The Directors must also (with Senior Lender consent) jointly appoint a non-executive independent Chair. That Chair is currently [] but an individual will be appointed to this role in due course;

6.2.2. The Directors may also appoint other directors;

6.2.3. Directors' meetings will be held at least quarterly;

6.2.4. The quorum for a directors meeting is two directors. Each director has one vote save that in the event of an equality of votes the Chair *will* have a casting vote.

### 6.3. Shareholder meetings:

6.3.1. The quorum for shareholder meetings must comprise at least two people;

6.3.2. Each shareholder may cast one vote for each Ordinary Share he holds. In the event of an equality of votes, the Chair *will* have a casting vote.

### 6.4. Other share rights:

6.4.1. All Ordinary Shares rank equally for voting, dividends, capital distributions and on a winding up;

6.4.2. Dividends shall only be paid if and when the Secured Loans and the SITR Loan Notes have been repaid in full and only where the directors have approved the amount of the payment;

6.4.3. The directors may refuse to register any transfer of shares.

## 7. SITR Loan Notes

7.1. The key terms of the SITR Loan Notes are described in this paragraph 7.

7.2. Once the Accreditation and HMRC advance assurances have been received, subscribers will be required to transfer to the Company the monies to be invested. Once those monies have been received by the Company, the SITR Loan Notes will be issued.

7.3. Clause 4 of the instrument constituting the SITR Loan Notes states that the SITR Loan Notes:

7.3.1. rank equally with each other;

7.3.2. are subordinated to all other debts of the Company;

7.3.3. on a winding up, rank equally with the shares in the Company; and

7.3.4. are unsecured.

7.4. The SITR Loan Notes are repayable on  201 $\square$  at face value (no redemption premium is payable).

7.5. The holders of not less than 50% of the SITR Loan Notes may demand repayment prior to that date if a receiver, custodian or other similar officer is appointed in respect of the Company or over a substantial part of its assets or any third party takes steps to appoint such an officer.

7.6. If SITR Relief is withdrawn in respect of the SITR Loan Notes, or any note holder requests early repayment, the Company and any note holder *may* agree to early repayment of principal. However neither party is obliged to do so.

7.7. Whilst the principal remains outstanding interest will accrue at the rate of % per annum payable quarterly in arrears. If the Company fails to pay interest or principal when due, additional interest shall be payable at % per annum.

7.8. Monies loaned pursuant to the SITR Loan Notes must be applied by the Company within 24 months in paying all salary and other costs in delivering the outcomes under the Social Impact Contract (including paying the Founders for services rendered in that respect), legal and other costs in entering in the various contracts described in this Appendix, insurance premia payable by the in respect of insurances required to deliver the outcomes under the Social Impact Contract and any other costs or expenses of the Company agreed between the note holders and the Company.

7.9. The Company provides certain representations and warranties to investors with regard to the conditions required in order to claim SITR.

7.10. The Company covenants to deliver financial information to investors, and also to submit compliance statements under Part 5B of ITA in order to allow investors to claim SITR.

7.11. The SITR Loan Notes may not be dealt in on any market or exchange.

## **8. The Secured Loan**

8.1. The key terms of the Secured Loan are described in this paragraph 8.

8.2. []

## **9. Documents Enclosed**

9.1. We have enclosed with this email and Appendix copies of the final execution versions of the following documents:

9.1.1. The main body of the Social Impact Contract;

9.1.2. Annex [] to the Social Impact Contract;

9.1.3. The Secured Loan Agreement;

9.1.4. The debenture securing obligations to repay the Secured Loan;

9.1.5. The instrument constituting the SITR Loan Notes;

9.1.6. The certificate of incorporation of the Company; and

9.1.7. The New Articles.

## **10. HMRC Assurances**

10.1. On the basis of the information provided, and on the assumption that Accreditation is granted before the SITR Loan Notes are issued, we should be grateful for assurances from HMRC that:

10.1.1. The SITR Loan Notes will be “qualifying debt investments” for the purposes of Part 5B of ITA;

10.1.2. The Company meets all of the conditions set out in Chapter 4 of Part 5B of ITA,

SAMPLE

10.1.3. All requirements for Sitr in Part 5B of ITA are met in relation to the Sitr Loan Notes,  
and

10.1.4. HMRC would, on receipt of a compliance statement under section 257PB of ITA,  
authorise the Company to issue compliance certificates (under section 257PC of ITA) to  
all investors who subscribe for Sitr Loan Notes.

[ ] 201[ ]

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