

# FACILITY AGREEMENT CONFIRMATION

To: [Insert RBS/NatWest (as applicable)] (the “Bank”)

Customer: [Insert customer name]

Project Name: [Insert project name if applicable]

[Insert details of facility agreement (any existing supplemental agreements) and supplemental agreement] together the “Facility Agreement”.

We, [insert external counsel details] confirm that the Facility Agreement-

- accurately reflects the terms and conditions set out in the Credit Papers and that there has been no material weakening of the protections available to the Bank in the template facility agreement provided to us[, save in the following respects which have previously been notified to and agreed by the Bank :-
  - 
  - ]
- contains the Minimum Standards set out below.

For [insert external counsel details]

Authorised Signature

Dated:

Topic	Minimum Standard <sup>1</sup>
1. Purpose	The purpose as detailed in the Transaction Papers
2. Repayment**	A definable repayment date and repayment profile as detailed in the Transaction Papers.
3. Law and regulation**	An undertaking that the Customer will maintain or ensure the holding of all certificates, licences, registrations and authorisations required, and comply with all applicable laws and regulations.
4. Change of Control / Ownership**	The ability for the Bank to stop any further drawings and require repayment of the facility if control/and or ownership of the Customer changes without the consent of the Bank.
5. Material Adverse Change**###	An event of default if any circumstances occur which cause the Bank to believe that the Customer's obligations will not be met.
6. No default**	The ability for the Bank to prevent drawdown if an Event of Default has occurred or would be caused by the drawdown.
7. Non-Financial Undertakings**	The Facility Agreement must contain each of the following undertakings: <ul style="list-style-type: none"><li>• Negative Pledge – even subsequent second ranking security can be detrimental to the bank's interest since it introduces new creditors that could disrupt enforcement procedures;</li></ul>

<sup>1</sup> Other than Minimum Standard 12 (Transferability and disclosure of information), regulated agreements (CCA, MCOB etc.) and agreements for Professional Practice Loans, do not need to comply with the Minimum Standards

	<ul style="list-style-type: none"> <li>Restrictions on disposals;</li> <li>Restrictions on change in business; and</li> <li>Restrictions on additional indebtedness.</li> </ul>
8. Changes to customer profile**	<p>The following Events of Default:</p> <ul style="list-style-type: none"> <li>a failure by the Customer to pay any amount payable under the Facility Agreement on its due date;</li> <li>a failure by the Customer to comply with any financial covenants or any other terms of the Facility Agreement;</li> <li>any confirmation given or information provided by or on behalf of the Customer which the Bank considers material, proves inaccurate;</li> <li>a default by the Customer (including any failure to pay on demand) under (i) any liability to the Bank or (ii) any other borrowing or arrangement for obtaining finance with any other creditor</li> <li>insolvency proceedings relevant to the customer type.</li> </ul> <p>Information Undertakings to provide annual and other financial information as detailed in the Transaction Papers.</p>
9. Events of Default**	<p>The event of default which is triggered if the Customer fails to comply with 'any other term of this agreement or any security'* must not be qualified by reference to a materiality/material adverse effect concept.</p> <p>* i.e. the event of default which covers all the other undertakings in the facility agreement/finance documents which are not already the subject of a specific event of default.</p>
10. Illegality and Compliance with know your customer / sanctions requirements**	<p>Provisions in the Facility Agreement:</p> <ul style="list-style-type: none"> <li>Illegality: to allow the Bank to prevent drawdown and require mandatory prepayment, should it become unlawful for the Bank to perform its obligations under the agreement or to continue to provide the facility; and</li> <li>KYC/Sanctions: requiring the Customer to provide all documents and information required by the Bank to comply with its customer account opening and identity requirements.</li> </ul>
11. Ratings Triggers	No ratings downgrade triggers against the Bank should be included in the Facility Agreement
12. Transferability and disclosure of information	<p>The ability for the Bank to:</p> <ul style="list-style-type: none"> <li>give to anyone any information concerning the Customer, the Facility Agreement and any associated security in connection with any proposed transfer, or financial arrangement by reference to, the Facility Agreement.</li> <li>allow any person to take over any of its rights or duties</li> </ul>
13. No Customer right to set-off	A requirement that all payments made by a Customer to the Bank must be made without any set-off or deduction.
14. Enforcement and preservation costs	A requirement for the Customer to pay all costs and (including legal fees) incurred by the Bank in connection with Facility Agreement or any security including preserving, defending or enforcing the Bank's rights.
15. Set-off	A right for the Bank to set off any amount due to the Bank under the Facility Agreement against any amount owing by the Bank to the Customer.
16. Increased costs**	A requirement for the Customer to pay to the Bank the amount certified by the Bank as an increased cost attributable to the Facility Agreement.
17. Security**	<p>The following Events of Default:</p> <ul style="list-style-type: none"> <li>a failure by the Customer to comply with any term of any security;</li> <li>a guarantor or other grantor of security serves notice to discontinue that security or fails to comply with any of its terms</li> </ul>
18. No Assignment or Transfer by customer	The Customer may not assign or transfer the benefit of the Facility Agreement

19. Governing law and jurisdiction	The Facility Agreement must be governed by the law of England and Wales or Scotland, and the Customer must submit to the jurisdiction of the courts of England and Wales or Scotland.
20. Accession	If the facility agreement allows for accession by other borrowers, this must be subject to the Bank's unfettered consent.
21. Embedded Derivatives	The agreement must not contain any embedded derivatives. An agreement will contain an embedded derivative if it provides: <ul style="list-style-type: none"> <li>• for interest or other return to be calculated other than on the basis of a fixed or orthodox floating rate (for example, interest or other return calculated on the basis of an RPI-linked or commodity-linked rate will be an embedded derivative); and/or</li> <li>• for principal to be repaid in a different currency to the currency in which the facility was originally advanced and the conversion of the facility from its existing currency into the new currency is not calculated at the spot rate of exchange.</li> </ul>
22. Interest Rates: Reference Rate Floors	The facility agreement must contain drafting which floors the relevant interest rate at zero in the event that rate goes negative.  Where the relevant interest reference rate is the Sterling Overnight Indexed Average (SONIA) or another Risk-Free Reference rate (RFR) and that facility agreement includes a credit adjustment spread, the facility agreement must contain drafting which provides that the zero floor applies to the aggregate of the compounded RFR and any applicable credit adjustment spread.
23. Interest Rates: Fallback Rates****	For all RFR based transactions, the facility agreement must contain the mandatory provision which provides what the fallback interest reference rate will be in the event that the primary interest reference rate in the facility agreement is not available or cannot be calculated. Any fallback interest reference rate must not include a reference to "cost of funds" (or a similar term).  Copies of our RFR documentation can be found on the <a href="#"><u>Transactional Support Website</u></a> .
24. Interest Rates: Switch Mechanisms****	For all <b>Sterling transactions</b> (including where Sterling is an available currency under a multi-currency loan) the facility agreement must contain Day 1 RFR provisions <del>and must not include LIBOR to RFR switch provisions or any 'agreement to agree' language.</del>  For all <u>new US dollar transactions or amendments to existing transactions where a change to any of quantum, tenor or pricing is taking place</u> (including where US dollars is an available currency under a multi-currency loan) <del>signed before 1<sup>st</sup> January 2022</del> the facility document must contain Day 1 RFR provisions <u>and must not include or</u> LIBOR to RFR switch provisions <u>or any 'agreement to agree' language.</u> <u>For minor amendments, not affecting any of quantum, tenor or pricing, the use of switch provisions is permitted.</u>  <del>is not permitted). From 1<sup>st</sup> January 2022, LIBOR to RFR switch provisions are no longer permitted and any US dollar transaction (including where USD dollars is an available currency under a multi-currency loan) must include Day 1 RFR provisions.</del>

**\*\*Does not apply to (i) uncommitted facilities repayable on demand; or (ii) where the Bank is able to call for cash cover on demand.**

**##Does not apply to committed overdrafts.**

\*\*\*\* Does not apply to Base Rate facilities, either Bank of England or internally produced.

