

Loan Market Association Facility Agreement

LOAN MARKET ASSOCIATION

PROF G A WALKER

FACILITY AGREEMENT INVESTMENT GRADE		<i>A (multicurrency term loan)</i>	2.1(a)
		<i>B (revolving loan facility)</i>	2.1(b)
1. DEFINITIONS AND INTERPRETATION			<i>Availability Period (Fees 12.1)</i>
1.1	<i>Borrower (Original Obligor)</i>	<i>Lender Loan</i>	<i>Available Commitment (Obl. Svrl 2.2 a)</i>
(a) Agent	<i>Finance Party</i>	<i>Information Memorandum</i>	<i>Available Facility (Time of commitment)</i>
(b) Arranger	<i>Finance Party (the Agent, the Arranger or a Lender)</i>		<i>Base Currency (E.g. USD, Euro, etc)</i>
(c) Lender	<i>Reference Banks</i>	<i>Security</i>	<i>Subsidiary</i>
1.2	Construction (Used for interpretation)		<i>Break Costs [8.7(b), & 11.4]</i>
1.3	Third Party Rights Contracts (Rights of Third Parties) Act Disapplied		<i>Interest Period (9.3, & 10)</i>
2. THE FACILITIES	2.1	The Facilities	<i>A (Term) (No reborrow) / B (Revolving) (Can reborrow)</i>
	2.2	Finance Parties' Rights and Obligations	(a) <i>Obligations Several [2.2(b)]</i> (b) <i>Rights Separate and Independent</i>
3. PURPOSE	3.1	Purpose [to complete if appropriate]	(c) <i>Separate Enforcement</i>
	3.2	Monitoring 'No Finance Party bound to monitor/ verify application of any amt borrowed'	
4. CONDITIONS OF UTILISATION (Draw down)			[Schedule 2 Part I]
4.1	Initial Conditions Precedent	<i>'Utilisation Request' Sch 3</i>	(i) <i>Constitutional Documents</i>
4.2	Further Conditions Precedent (Schedule 2)	[LMA 5.4]	(ii) <i>Board Resolutions</i>
4.3	Conditions Relating to Optional Currencies		(iii) <i>Specimen Signatures</i>
4.4	Maximum Number of Loans (consolidate debts 10.4)		(iv) <i>Guarantor Resolutions</i>
5. UTILISATION-	5.1	Delivery of a Utilisation Request (Template Sch 3)	(v) <i>No Excess Certificate</i>
	5.2	Completion of a Utilisation Request (19.9- no default)	(vi) <i>Documentation Correctness</i>
		(Delivery to be complete only when all CPs are fulfilled (4.1, 4.2))	(vii) <i>Legal Opinion Arrange</i>
	5.3	Currency and Amount (Base/ optional currency)	(viii) <i>Obligor Opinion</i>
	5.4	Lenders' Participation (6.5 Used for calculation)	(ix) <i>Process Agent Acceptance</i>
	[5.5 Cancellation of Commitment]	(Additional)	(x) <i>Other Authorisations</i>
			(xi) <i>Original Financial Statements</i>
			(xii) <i>Fees, Costs and Expenses</i>
6. OPTIONAL CURRENCIES	6.1	Selection of Currency	<i>Utilisation Request</i> [Schedule 2 Part I] Additional Obligor
	6.2	Unavailability of a Currency	<i>Optional Currency</i>
	6.3	Change of Currency (Subject to 4.2- CPs, loan in new currency in acc. w/ 6.5- agents' calculations) (29.9)	
	6.4	Same Optional Currency During Successive Interest Periods	
	6.5	Agent's Calculations [Calculation made pursuant to 6, & determined in accordance with 5.4(b)]	
7. REPAYMENT	7.1	Repayment of Facility A Loans	[8.7(c) Borrower cannot reborrow]
	7.2	Repayment of Facility B Loans	(To be repaid on last day of Interest period)
	7.3	Reduction of the seven (Facility B loan)	
8. PREPAYMENT AND CANCELLATION			(a) <i>Lender promptly notify Agent</i>
8.1	Illegality (23.10)		(b) <i>Commitment of Lender immediately cancelled [1.1, & 11.4]</i>
8.2	Change of Control		(c) <i>Borrower repay Lender's participation</i>
8.3	Voluntary Cancellation (Co may cancel- which will reduce commitment of lenders)		
8.4	Voluntary Prepayment of Facility A Loans (Can only be prepaid after last day of Availability period)		
8.5	Voluntary Prepayment of Facility B Loans (Notice must be given to Agent bank in both cases)		
8.6	Right repayment and cancellation in relation to a single lender		
8.7	Restrictions [7.1 Borrower not to reborrow under Facility A]		
9. INTEREST	9.1	Calculation of Interest	(a) <i>Margin</i>
	9.2	Payment of Interest	(b) <i>SONIA (LIBOR) [EURIBOR/SOFR]</i>
	9.3	Default Interest (Interest Period – 10, Definition 1.1,)	(c) <i>Mandatory Cost (Bank of England – 0.04%)</i>
	9.4	Notification of Rates of Interest (Agent bank notify lenders & borrowers of the ROI)	
10. INTEREST PERIODS	10.1	Selection of Interest Periods	<i>(Borrower Co may select in Utilisation Request/ Selection Notice)</i>
	10.2	Changes to Interest Periods	<i>Agent may shorten</i>
	10.3	Non-Business Days	<i>Business Day definition – 1.1</i>
	10.4	Consolidation and Division of Facility A Loans (cannot exceed limit – 4.4)	
11. CHANGES TO CALCUALTION OF INTEREST	11.1	Absence of Quotations (Subject to 11.2)	<i>Reference Banks 'Quotation Day'</i>
	11.2	Market Disruption (Provides for ROI for Interest period in case of Market Disruption Event)	
	11.3	Alternative Basis of Interest or Funding (In case of MDE- Agent and Co to enter into negotiations)	
	11.4	Break Costs – to be paid within 3 business days	<i>Margin 9.1(a) [1.1, & 8.7(b)]</i>

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12. FEES
 - 12.1 **Commitment Fee** (Available Commitment - 1.1)
 - 12.2 **Arrangement Fee** (Co must pay to Arranging Bank as agreed in the Fee letter)
 - 12.3 **Agency Fee** (Co must pay to Agent bank as agreed in the Fee letter)
13. TAX GROSS UP AND INDEMNITIES
 - 13.1 Definitions [*'Treaty Lender' 'UK Non-bank Lender'*
'Protected Party' 'Qualifying Lender' 'Tax Confirmation' 'Tax Credit' 'Tax Deduction']
 - 13.2 **Tax Gross-up** (Imp terms- Obligor, Company, Payment, Tax deduction, Lender, Agent)
 - 13.3 **Tax Indemnity** (Co to indemnify tax within 3 business days of demand by Agent)
 - 13.4 **Tax Credit** (If attributable, then Finance Party shall pay to the Obligor)
 - 13.5 **Stamp taxes** (Co shall indemnify each finance party any cost in relation to stamp duty/ tax)
 - 13.6 **Value Added Tax** (All amounts u/ finance doc. -deemed to be exclusive of VAT)
 - 13.7 **PTR Scheme** (Provisional Treaty Reserve scheme- provisions for lender and obligor)
 - (a) *'a reduction in rate of return'*
 - (b) *'an additional or increased cost'*
14. INCREASED COSTS
 - 14.1 **Increased Costs** (c) *'a reduction of any amount due and payable under Finance Document'*
 - 14.2 **Increased Cost Claims** (Finance party making claim must notify Agent and provide certificate)
 - 14.3 **Exceptions**
 - (a) *Tax deduction (Required by law to be made by an Obligor)*
 - (b) *Tax Indemnity (13.3 Tax indemnity)*
 - (c) *Mandatory Cost (compensated)*
 - (d) *Wilful Breach by Finance Party*
15. OTHER INDEMNITIES
 - 15.1 **Currency Indemnity** (Obligor to indemnify cost/ loss arising out of conversion to each Fin. Party)
 - 15.2 **Other Indemnities** (Event of default, failure to pay any amt (28-sharing among fin. Parties), funding)
 - 15.3 **Indemnity to the Agent** (Co indemnify against any Default event, foreign exch. 6.3- change of currency)
16. MITIGATION BY LENDERS
 - 16.1 **Mitigation** *'in consultation with Co, take all reasonable steps to mitigate'*
 - 16.2 **Limitation of Liability** *Co indemnify all costs and expenses*
17. COSTS AND EXPENSES
 - 17.1 **Transaction Expenses** (Costs incl. legal fees, negotiation, preparation, printing, execution of doc)
 - 17.2 **Amendment Costs** (In case, amendment upon request of Obligor, Co to reimburse costs to Agent)
 - 17.3 **Enforcement Costs** (Co pays each Finance party-costs- enforcement, preservation of rights u/doc.)
18. GUARANTEE AND INDEMNITY
 - 18.1 **Guarantee and Indemnity** (Guarantee- punctual performance, indemnify – cost, loss, liability)
 - 18.2 **Continuing Guarantee** (Will extend to ultimate balance of sums payable by any Obligor)
 - 18.3 **Reinstatement** (Liability continue if any payment by Obligor is avoided/ reduced due to insolvency)
 - 18.4 **Waiver of Defences** (Obligations of each Guarantor u/ 18 will not be affected – No Waiver)
 - 18.5 **Immediate Recourse** (Guarantor waives any right requiring any party to enforce rights/ payment)
 - 18.6 **Appropriations** (Fin Party to refrain from applying/ enforcing any security/ rights w.r.t those amts)
 - 18.7 **Deferral of Guarantors' Rights** (Guarantor – to not exercise rights until full payment is made)
 - 18.8 **Release of Guarantors' Right of Contribution** (Retiring guarantor – released from liability, R./ O. waived)
 - 18.9 **Additional Security** (Guarantee is in addition to and not prejudiced by any other guarantee held)
19. REPRESENTATIONS [**REPRESENTATIONS & WARRANTIES**] [**LEGAL**]
 - 19.1 **Status** (Corporation duly incorporated, and Subsidiaries' power to own assets and carry business)
 - 19.2 **Binding Obligations** (4 conditions of utilisation, 25- Changes to the obligors)
 - 19.3 **Non-conflict with Other Obligations** (No conflict with- law, subsidiaries' other agreements, assets etc)
 - 19.4 **Power and Authority** (Power / authority to perform and deliver Fin. Docs. & transactions u/ it)
 - 19.5 **Validity and Admissibility of Evidence** (Authorisations to make Fin Docs admissible as evidence)
 - 19.6 **Governing Law and Enforcement** (Governing Law 37)
 - 19.7 **Deduction of Tax** (No deduction of tax - from any payment made under any Fin. Document)
 - 19.8 **No Filing or Stamp Taxes** (Not necessary Fin Docs be filed/ recorded/ enrolled with any court/ authority)
 - 19.9 **No Default** (Utilisation 5)
 - 19.10 **No Misleading Information** (Misrepresentation/ 23.4 (Default Clauses)
 - 19.11 **Financial Statements** (Must be up to date / Accurate)
 - 19.12 **Pari Passu Ranking** (Obligations. Pari Passu with claims of other creditors except obligations by law)
 - 19.13 **No Proceedings Pending or Threatened** (If adversely determined – expected to have MAE)
 - 19.14 **Repetition** (of CPs and REPs for each Utilisation Request under 5.1)
20. INFORMATION UNDERTAKINGS [**REPRESENTATIONS & WARRANTIES**] [**FINANCIAL**]
 - 20.1 **Financial Statements** (Co to supply to Agent – consolidated financial statements for that F.Y.)
 - 20.2 **Compliance Certificate** (22.2) LMA 20.1 and 21
 - 20.3 **Requirements as the Financial Statements** GAAP (21)

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- 20.4 Information Miscellaneous (Co to provide agent details of shareholders, pending proceedings etc)
- 20.5 Notification of Default (Obligor to notify agent of any default)
- 20.6 Use of Websites (Imp terms- Website lenders, Designated Website, Paper form lender)
- 20.7 Know Your Customer Checks (KYC checks 25- Changes to Obligators, change in law/ regulation etc)

[FINANCIAL COVENANTS]

- 21. FINANCIAL COVENANTS[to complete] (i) *Minimum Net Worth (Solvency)* [MNW]
[EBITDA] (ii) *Earnings before Tax, Depreciation and Amortisation*
- 22. GENERAL UNDERTAKINGS- (Corp. COVs) (iii) *Consolidated Net Debt*
 - 22.1 Authorisation (Supply certified copies) (iv) *Dividend Payment Restrictions* (Liquidity)
 - 22.2 Compliance with Laws (20.2) (v) *Cash Retention* (Liquidity)
 - 22.3 **Negative Pledge (No security over assets)** (vi) *Leverage Ratio (Total Debt to Tangible Net Worth)*
 - 22.4 **Disposals** (23.9) (a) *No Obligor shall create or permit to subsist any security over any assets*
 - 22.5 **Merger (No Merger/Demerger)** (b) *Sell, transfer or dispose of assets or receivables*
 - 22.6 **Change of Business** (c) *Exceptions (Existing Security, Netting, Liens, After Acquired Assets, Later Group Members, under FDs, [] and De Minimis)*
- 23. EVENTS OF DEFAULT REMEDIES
 - 23.1 Non-payment (Due date - cross default) (ii) **Cancellation** (Cancel further/ all drawdowns)
 - 23.2 Financial Covenants (Requirements u/ 21) (iii) **Acceleration** (Accelerate payment- cancel dd)
 - 23.3 Other Obligations (Other than 21.1, 23.2) (iv) **Rescission** (Rescind/ revoke/ cancel)
 - 23.4 Misrepresentation (No misleading info/ 19.10) (v) **Damages** (Sue for damages)
 - 23.5 **Cross Default (Automatic)** (a) *Any Financial Indebtedness not paid when due*
 - 23.6 **Insolvency (Moratorium declared)** (b) *Any Financial Indebtedness declared due and payable*
 - 23.7 **Insolvency Proceedings (Corp action, etc)** (c) *Any commitment cancelled or suspended*
 - 23.8 **Creditors' Process** (d) *Any creditor declare any indebtedness due and payable*
 - 23.9 **Ownership of the Obligators (22.4)** (e) *De Minimis exception (No default if amount too less)*
 - 23.10 **Unlawfulness (Illegality 8.1)**
 - 23.11 **Repudiation (Repudiation of Finance Document)**
- [MAC] 23.12 **Material Adverse Change** [to complete]
- 23.13 **Acceleration** (a) *cancel Total Commitments*
(b) *declare all of part of Loans to be immediately due and payable*
- 24. **CHANGES TO LENDERS** (c) *declare all of part of Loans to be payable on demand*
 - 24.1 **Assignments and Transfers by the Lenders** *Assign Rights or Novate Rights and Obligations (Sch 5)*
 - 24.2 **Conditions of Assignment or Transfer (Sch 6)** (a) *Company consent required*
 - 24.3 **Assignment or Transfer Fee (New lender to pay)** (b) *But not unreasonably withheld*
- [No reps] 24.4 **Limitation of Responsibility of Existing Lenders** (c) *Not solely on basis increased cost*
- 24.5 **Procedure for Transfer (24.2- Conditions)** (d) *Only effective receipt*
- 24.6 **Copy of Transfer Certificate to Company** (e) *Only effective 24.5 procedure complied with*
- 24.7 **Disclosure of Information** 24.5 *'Transfer Date'*
'Transfer Certificate'
- 25. **CHANGES TO OBLIGORS (Changing borrowers)**
 - 25.1 **Assignments and Transfer by Obligators (No Obligor to assign rights or transfer obligations)**
 - 25.2 **Additional Borrowers (Schedule 2- CPs) (Compliance of 20.7 (c) & (d)- KYC checks)**
 - 25.3 **Resignation of a Borrower (Rights/ obligations to cease)- 'Resignation Letter' (Schedule 8)**
 - 25.4 **Additional Guarantors (Similar to 25.2) 'Accession Letter' (Schedule 7)**
 - 25.6 ***Repetition of Representations (Delivery of accession letter constitutes confirmation by subsidiary)**
 - 25.7 **Resignation of a Guarantor (Requirements- consent of all lenders & no default would arise)**
- 26. **ROLE OF AGENT AND ARRANGER (Specifies duties of arranging bank and agent bank)**
 - 26.1 **Appointment of the Agent (Fin party to appoint/ authorise agent to exercise rights/ powers/ discretions)**
 - 26.2 **Duties of the Agent (Forward docs, check adequacy/ accuracy of doc, notify parties of defaults)**
 - 26.3 **Role of the Arranger 'No Obligations of any kind' 26.9**
 - 26.4 **No Fiduciary Duties (No liability) Agent nor Arranger no Trustee or Fiduciary**
 - 26.5 **Business with the Group (Agent/ Arranger may engage in any banking business with any member)**
 - 26.6 **Rights and Discretions of the Agent (discretionary powers – e.g. Default 23.1- non- payment, etc)**
 - 26.7 **Majority Lenders' Instructions (Qualified Majority) – (2/3 – 66.66...%) or (3/4- 75%)**
 - 26.8 **Responsibility for Documentation (Not resp. for accuracy/ adequacy of Info, but resp. for legality, etc)**
 - 26.9 **Exclusion of Liability (With approval of 29.1 disruption) (b) 'gross negligence or wilful misconduct'**
 - 26.10 **Lenders Indemnity to the Agent (In proportion to share of total commitment)**
 - 26.11 **Resignation of the Agent (Resignation to take effect upon appointment of a successor)**
 - 26.12 **Confidentiality (Agent to be treated as separate entity) - Schedule 11**
 - 26.13 **Relationship with the Lenders (Lender to supply Info. for calculating Mandatory Cost – Schedule 4)**
 - 26.14 **Credit Appraisal by the Lenders (Lenders'- sole responsibility for making independent appraisals)**
 - 26.15 **Reference Banks (If a Reference Bank- ceases to be a lender, Agent shall appoint another lender)**
 - 26.16 **[Agent's Management Time] (15.3 & 26.10 – Indemnity, 17- Costs and Exp., 12- Fees)**
 - 26.17 **Deduction from Amounts Payable by the Agent (Agent to deduct amt towards satisfaction- amt owed)**

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- 27. CONDUCT OF BUSINESS BY THE FINANCE PARTIES (Right- tax & other affairs, no obligation to disclose tax info.)**
- 28. SHARING AMONG THE FINANCE PARTIES**
- 28.1 Payments to Finance Parties (**Pari Passu (29- Payment mechanics, 29.5- Partial payments)**)
 - 28.3 Redistribution of Payments (**Agent to distribute between Fin. Parties – 29.5- Partial payments**)
 - 28.3 Recovering Finance Parties' Rights (**On distribution u/ 28.3- Recovering Fin. Partys' rights subrogated**)
 - 28.4 Reversal of the Distribution (**Each Fin Party that rcvd share u/ 28.3 to repay to agent, RFP is reimbursed**)
 - 28.5 Exceptions (**28 will not apply if RFP has no valid/ enforceable claim against Obligor after making payment)- [2.2 (b), 2.2(c)]**)
- SECTION II**
- 29. PAYMENT MECHANICS**
- 29.1 Payments to the Agent (**Obligor/ lender to make payment available to agent on due date and time**)
 - 29.2 Distributions by the Agent (**Agent to make payment 'available' received for any fin. party) – 29.3 , 29.4**)
 - 29.3 Distributions to an Obligor (**W/ consent (30-set off), agent may make payment/ buy currency for obligor**)
 - 29.4 **Clawback (If agent pays an amt for Anr party and has not received it, such amt will be refunded w/ int.)**
 - 29.5 Partial Payments (**Agent to apply towards payment pro rata of; unpaid fees, accrued int., prin. due**)
 - 29.6 **No Set-off by Obligors (30) (All payments to be made by obligor – calculated w/o set off or counterclaim)**
 - 29.7 Business Days (**1.1) (Any payment due on a non-business day, to be made on next business day)**)
 - 29.8 Currency of Account (**Base currency- is the CoA and payment from any sum due from Obligor**)
 - 29.9 Change of Currency (**4.2, 6.3, 15.3) (To be amended to comply w/ conventions and market practice)**)
 - 29.10 [**Disruption to Payment Systems] (Disruption event- Changes to operation/ administration) (35- amend)**)
- 30. SET-OFF **Finance Party Full Set-off** (29.6)**
- 31. NOTICES**
- 31.1 **COMMUNICATIONS in Writing (All communications to be made in writing unless otherwise stated)**
 - 31.2 **Addresses [address, fax num, (dept./ officer to whom comm. Is to be made) – to be provided]**
 - 31.3 **Delivery (fax- legible form, letter – 31.2) (All notices from or to an Obligor to be sent through Agent)**
 - 31.4 **Notification of Address and Fax Number (Agent to notify other parties – change in address/ fax – 31.2)**
 - 31.5 **Electronic Communication (Email, to be agreed as accepted form of comm., should be legible)**
 - 31.6 **English Language (Any notice must be in English, if not so- English translation to be provided)**
- 32. CALCULATIONS AND CERTIFICATES**
- 32.1 **Accounts (In any proceedings related to Fin. Doc. – entries in account are prima facie evidence)**
 - 32.2 **Certificates and Determinations (Any cert./ deter. by Fin. Party- in absence of error- is conclusive evid.)**
 - 32.3 **Day Count Convention (Any interest/ commission/ fee- calculated on actual number of days) (Year 360)**
- 33. PARTIAL INVALIDITY (In case any provision is/ becomes invalid- shall not affect other provisions)**
- 34. REMEDIES AND WAIVERS (No failure/ delay to exercise any right/ remedy- shall operate as a waiver)**
- 35. AMENDMENTS AND WAIVERS (Majority lenders- 1.1)**
- 35.1 **Required Consents (Any term Fin Doc may be amended/ waived with consent of Majority lenders/ obligors)**
 - 35.2 **Exceptions Prior (Consent of lenders for- Changes to due date, margin, 24 lenders, 25 Obligors) (2.2- rights/ obl)**
- 36. COUNTERPARTS (Fin Doc to be executed in any num. of counterparts - to have same effect as if all signatures were on a single copy of Finance Document)**
- 37. GOVERNING LAW (19.6) [English Law] (Governing Law and Jurisdiction can be separate)**
- 38. ENFORCEMENT**
- 38.1 **Jurisdiction (a) Exclusive (b) Most Appropriate (c) Concurrent Actions**
 - 38.2 **Service of Process (a) Irrevocable Appointment (b) No Invalidity**
- SCHEDULE 1 ORIGINAL PARTIES ORIGINAL OBLIGORS (Borrowers and Guarantors)**
[Proportions A & B] ORIGINAL LENDERS - OTHER THAN UK NON-BANK LENDERS
ORIGINAL LENDERS – UK NON-BANK LENDERS (NBLs)
- SCHEDULE 2 CONDITIONS PRECEDENT INITIAL UTILISATION (6.1)**
ADDITIONAL OBLIGOR (1.1, 19.14, 20.7)
- SCHEDULE 3 REQUESTS UTILISATION REQUEST (5.1) [FACILITY A & B]**
SELECTION NOTICE [DIVISION & CURRENCY]
- SCHEDULE 4 MANDATORY COST FORMULA (1.1, 16.1, 26.13) [REGULATORY COST REMOVED]**
- SCHEDULE 5 FORM OF TRANSFER CERTIFICATE (NOVATION) (24.1)**
- SCHEDULE 6 FORM OF TRANSFER (ASSIGNMENT)**
- SCHEDULE 7 FORM OF ACCESSION LETTER (25.4) [BORROWER/GUARANTOR]**
- SCHEDULE 8 FORM OF RESIGNATION LETTER (25.3) [BORROWER/GUARANTOR]**
- SCHEDULE 9 FORM OF COMPLIANCE CERTIFICATE [CONDITIONS PRECEDENT]**
- SCHEDULE 10 EXISTING SECURITY (22.3(c)) [NEGATIVE PLEDGE]**
- SCHEDULE 11 LMA FORM OF CONFIDENTIALITY UNDERTAKING (1.1, 24.7, 26.12)**
- SCHEDULE 12 TIMETABLES (Specified time 1.1) PROF G A WALKER**