



# CONDITIONS FOR COMMERCIAL FACILITIES

**February 2024**

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## 1 Definitions and Interpretations

### 1.1 Definitions

In these Conditions for Commercial Facilities

"Acquisition Conditions"	means the documents and evidence listed in Part B (Conditions for Acquisition Loans and Investment Loans) of the Schedule (Drawdown Conditions) of these Conditions for Commercial Facilities, delivered in respect of any Acquisition Loan.
"Acquisition Loan"	means any Loan for the purpose of financing an acquisition of a Facility Property.
"Available Facility"	means the Facility Amount minus:  (a) any outstanding Drawdowns under that Facility; and  (b) in relation to any proposed Drawdown, the amount of any other Drawdowns under the Facility that are due to be made on or before the proposed Drawdown Date, except in the case of any Revolving Facility, and any Drawdowns that are due to be repaid or prepaid on or before the proposed Drawdown Date.
"Availability Period"	means the period specified in the Facility Letter as the period during which a Facility is available to be drawn.
"Borrower"	means the borrower(s) listed in the Facility Letter.
"Budgeted Costs"	means a cash flow and feasibility budget prepared by you and accepted by us which:  (a) shows the Total Development Costs;  (b) includes a monthly breakdown by category of Soft Costs (including Project Contingency) and Construction Costs;  (c) includes a monthly break down by category of cashflows for the Development; and  (d) shows the expected revenues and costs for the Development, as may be updated by agreement between you and us.
"Building Contract"	means a trade or building contract between the Borrower and a Contractor.
"Business Day"	means any day other than a Saturday, Sunday, or any public holiday, on which banks are open for general business in London and Edinburgh.
"Change of Control"	means any person or group of persons acting in concert gains direct or indirect control of the Borrower which is not an individual. For the purposes of this definition:  (a) "control" of the Borrower means:

(i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than 25% of the maximum number of votes that might be cast at a general meeting of the Borrower; or

(B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Borrower; or

(C) give directions with respect to the operating and financial policies of the Borrower with which the directors or other equivalent officers of the Borrower are obliged to comply; and/or

(ii) the holding beneficially of 25% or more of the issued share capital of, or partnership interests in (if applicable), the Borrower (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); and

(b) "acting in concert" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares or partnership interests in the Borrower by any of them, either directly or indirectly, to obtain or consolidate control of the Borrower.

"Collateral Warranty" means a collateral warranty given by a Contractor in favour of us in relation to the Development.

"Compliance Certificate" means a compliance certificate to our satisfaction substantially in the form attached to the Facility Letter or as otherwise advised and made available on our Website from time to time.

"Confidential Information" means all information relating to any Relevant Party, the Facility Documents, a Facility or a Property of which we become aware in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived from such information.

"Construction Costs" means the total costs payable by you (including, without limitation, in relation to professional fees) to carry out the Development as detailed in the Development Specifications.

"Contractor"	means any building contractor appointed by the Borrower in respect of the Development in accordance with the terms of the Facility Documents.
"Covenant Group Party"	means, as specified within the Facility Letter, all or any of the Relevant Parties connected to the financial covenants.
"Credit Delivery and Recoveries Fees"	means the credit delivery and recoveries fees charged in accordance with the terms published on our Website from time to time.
"Current Account"	means the account designated as such in the Facility Letter.
"Delegate"	means any delegate, agent, attorney or co-trustee appointed by us.
"Development"	means any of the demolition of the existing buildings on the Facility Property, the clearance of that Facility Property site, the construction on that Property site of such buildings as described in the Development Specifications and/or the conversion of or alteration to existing buildings on that Facility Property, which are detailed in the Development Specifications.
"Development Agreement"	means the Building Contract, a Collateral Warranty or any other document designated as such by us and the Borrower.
"Development Conditions"	means the documents and evidence listed in Part C (Conditions for Development Loans) of the Schedule (Drawdown Conditions) of these Conditions for Commercial Facilities, delivered in respect of any Development Loan.
"Development Loan"	means any Loan for the purpose of financing a Development.
"Development Specifications"	means the drawings, plans and specifications for the Development which have been supplied to, and approved by us and the Monitoring Agent as a Drawdown Condition under the Facility Letter.
"Drawdown"	means a drawdown of a Facility.
"Drawdown Conditions"	means the General Conditions, the Acquisition Conditions, the Investment Conditions or the Development Conditions, as applicable, to a Facility.
"Drawdown Date"	means the date on which a Loan is made.
"Drawdown Notice Date"	means the latest date for delivery of a Drawdown Request in accordance with the Facility Letter.
"Drawdown Request"	means a notice substantially in the form available on our Website from time to time.

"Environment"	means all, or any of, the following, namely the air (including, without limitation, the air within buildings and the air within other natural or man-made structures above or below ground), water (including, without limitation, ground and surface water) and land (including, without limitation, surface and sub-surface soil).
"Environmental Law"	means any applicable law or regulation which relates to: <ul style="list-style-type: none"> <li>(a) the pollution or protection of the Environment;</li> <li>(b) harm to or the protection of human health;</li> <li>(c) the conditions of the workplace; or</li> <li>(d) any emission or substance capable of causing harm to any living organism or the Environment.</li> </ul>
"Environmental Permit"	means any permit and other authorisation, consent, approval, reduction, license, exemption, filing or registration and the filing of any notification, report or assessment required under any Environmental Law for the operation of your business conducted on or from the Property owned or used by you.
"ERC"	has the meaning given to it in Condition 25 (Early Repayment Charge) of these Conditions for Commercial Facilities.
"Event of Default"	means any event or circumstance described in Condition 16.1 (Events of Default and termination).
"Facility"	means the Term Facility and/or the Revolving Facility.
"Facility Amount"	means the amount of the Facility made available under the Facility Letter.
"Facility Document"	means the Facility Letter, any Security Document, each Guarantee, any subordination deed referred to in a Facility Letter or any other document designated as such by us and you.
"Facility Letter"	means the letter we issue to you offering a particular Facility and setting out the conditions upon which that offer is made and these Conditions for Commercial Facilities form part of the Facility Letter. The term Facility Letter applies to the original letter or to that letter as subsequently amended, supplemented, renewed or replaced from time to time.
"Facility Property"	means any property listed as "Facility Property" in a Facility Letter, and any other property designated as a "Facility Property" for the purposes of that Facility Letter by us and you.

"Financial Indebtedness"	means any obligation (whether incurred as principal or as surety and howsoever raised) for the payment or repayment of money, whether present or future, actual or contingent or any liability in respect of any guarantee or indemnity for any such obligation.
"Financial Year"	has the meaning given to that term in a Facility Letter.
"General Conditions"	means the documents and evidence listed in Part A (General Conditions for Loans) of the Schedule (Drawdown Conditions) of these Conditions for Commercial Facilities, delivered in respect of any Loan.
"Guarantee"	means each guarantee, indemnity or other assurance or liability against loss given to us by any Guarantor in respect of any obligation of yours under the Facility Documents.
"Guarantor"	means the guarantor(s) listed in the Facility Letter and any person who gives us a Guarantee.
"Initial Valuation"	means the Valuation of the Facility Property supplied to us as a Drawdown Condition under the Facility Letter on or before the first Drawdown.
"Interest Payment Date"	means the last day of each Interest Period and the Termination Date.
"Interest Period"	means one month (or such other period agreed between us and you) provided that: (a) each Interest Period for a Loan shall start on the first Drawdown Date; and (b) the final Interest Period for each Loan shall end on the Termination Date.
"Interest Rate"	means the rate of interest charged on a Facility as set out in the Facility Letter.
"Investment Conditions"	means the documents and evidence listed in Part B (Conditions for Acquisition Loans and Investment Loans) of the Schedule (Drawdown Conditions) of these Conditions for Commercial Facilities, delivered in respect of any Investment Loan.
"Investment Loan"	means any Loan for the purpose of financing the acquisition of the entire issued share capital of a Target and/or refinancing the Borrower's existing financial indebtedness which is secured against Facility Property.
"Loan"	means a Term Loan or a Revolving Loan.
"Loan to Value"	means, at any time, the principal amount outstanding for the time being of the Loans as a percentage of the aggregate market value of the Property, and determined in accordance with the most recent Valuation.
"Monitoring Agent"	means any chartered surveyor or project monitor appointed by us in respect of a Development.

"Necessary Consent"	means any planning permission required for the Development and each Environmental Permit and any other statute, by-law or regulation of any competent authority and which is reasonably necessary to enable the Development to be lawfully commenced, carried out and completed.
"Potential Event of Default"	means any event or circumstance which, with the giving of notice, the lapse of time, or the making of any determination would constitute an Event of Default.
"Pre-sale Agreement"	means any agreement relating to the disposal of all or part of a Facility Property.
"Project Contingency"	means the amounts allocated in the Budgeted Costs as a contingency allowance for use to meet costs that may be incurred by the Borrower in connection with the Development and that do not form part of the Construction Costs or the Soft Costs as set out in the Budgeted Costs.
"Property"	<p>means:</p> <p>(a) any Facility Property;</p> <p>(b) any other freehold and/or leasehold real property in England and Wales over which we hold Security or over which we take Security in the future for any of your liabilities (whether actual or contingent) owed to us including without limitation any Security for a guarantee of your liabilities from a Relevant Party, in each case, together with:</p> <p>(c) any other heritable and/or leasehold property in Scotland or interest in land in Scotland over which we hold Security or over which we take Security in the future for any of your liabilities (whether actual or contingent) owed to us including without limitation any Security for a guarantee of your liabilities from a Relevant Party</p> <p>in each case, together with:</p> <p>(i) all buildings and fixtures (including trade fixtures) and fixed plant and machinery at any time thereon;</p> <p>(ii) all easements, servitudes, title conditions, rights, agreements, powers, benefits, warranties, remedies, Security, guarantees and indemnities in respect thereof;</p> <p>(iii) all rights under any licence, agreement for sale, missives of sale, or agreement for lease in respect of any of that property;</p>



(iv) all proceeds of sale of any of that property or interest in land; and

(v) the benefit of all covenants and undertakings given in respect thereof,

and "Property" shall mean any of them.

"Purpose"	means the purpose for which amounts are borrowed under and in accordance with the Facility Letter.
"Quantity Surveyor"	means any quantity surveyor appointed by you or the Contractor in respect of the Development in accordance with the Facility Documents.
"Receiver"	means a receiver or receiver and manager or administrative receiver of the whole or any part of any asset or assets over which Security has been granted in our favour.
"Reference Rate"	means the reference rate for the Facility described in the Facility Letter.
"Relevant Party"	means the Borrower, any Guarantor or any other person who grants Security in relation to a Facility.
"Revolving Facility"	means the revolving credit facility made available to you under the Facility Letter.
"Revolving Loan"	means any Loan made or to be made under the Revolving Facility or the principal amount outstanding for the time being of that Loan.
"Sanctions"	means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority.
"Sanctions Authority"	means: <ul style="list-style-type: none"><li>(a) the United Nations;</li><li>(b) the United States of America;</li><li>(c) the European Union;</li><li>(d) the United Kingdom of Great Britain and Northern Ireland; and</li><li>(e) the governments and official institutions or agencies of any of paragraphs (a) to (d) above, including OFAC, the US Department of State, and His Majesty's Treasury.</li></ul>
"Sanctions List"	means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by His Majesty's Treasury, or any

similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time.

"Security"	means a mortgage, charge, pledge, lien, assignment in security, standard security, assignation in security or other security interest or right in security entered into by any Relevant Party securing any of their assets, business undertaking, rights or revenues.
"Security Document"	means any document entered into by any Relevant Party granting or purporting to grant us Security for any Facility we grant you.
"Soft Costs"	means all present and future costs, charges, expenses, fees and other amounts payable by the Borrower in connection with the Development other than the Construction Costs.
"Specific Conditions"	means the conditions for the Facility set out in the "Conditions" or "Specific Conditions" section in the Facility Letter and the Drawdown Conditions.
"Target"	means the target entity whose shares are, or are proposed to be, purchased using the proceeds of a Loan in accordance with the Facility.
"Tax Deduction"	means a deduction or withholding for or an account of tax from a payment under a Facility Document.
"Term"	means the term of the Facility specified in the Facility Letter.
"Term Facility"	means the term loan facility made available to you under the Facility Letter.
"Term Loan"	means any Loan made or to be made under the Term Facility or the principal amount outstanding for the time being of that Loan.
"Termination Date"	means the date on which the Term expires.
"Third Party Security Provider"	has the meaning given to that term in the Facility Letter.
"Total Development Costs"	means the total budgeted cost of completing the Development (including the Project Contingency) as identified in the Budgeted Costs and as determined by the Monitoring Agent following consultation with the Quantity Surveyor and us.
"Valuation"	means a valuation of the applicable Relevant Party's interest in the Property by a valuer approved by us, supplied at our request, and addressed to us.

"VAT"	means:  (a) any value added tax imposed by the Value Added Tax Act 1994;  (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and  (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.
"Website"	means <a href="https://www.cynergybank.co.uk">https://www.cynergybank.co.uk</a> or any replacement thereof.
"we/our/us"	means Cynergy Bank Limited, incorporated in England and Wales, company number 04728421 and whose principal office is at 4th Floor, One New Change, London EC4M 9AF.
"Works"	has the meaning given to it in the Building Contract or the design and construction works or other building works necessary to achieve practical completion.
"you/your/yours"	means the person or persons to whom the Facility Letter is addressed.

## 1.2 Interpretation

Unless a contrary indication appears, a reference in these Conditions for Commercial Facilities to:

- a) us, you or any other person shall be construed so as to include, where relevant, our/your/its successors in title, permitted assigns and permitted transferees;
- b) a Condition or Schedule, is to a condition of, or a schedule to, these Conditions for Commercial Facilities;
- c) a Facility Document or any other agreement or instrument is a reference to that Facility Document or other agreement or instrument as amended, novated, supplemented or restated (however fundamentally) or replaced;
- d) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- e) a provision of law is a reference to a provision of any statute, treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced whether before or after the date of these Conditions for Commercial Facilities and all subordinate legislation made from time to time under that statute or other provision of law;

- f) a regulation includes any regulation, rule, official derivative, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
  - g) "assignment" in relation to any right governed by Scots law means assignation and "re-assignment" shall be interpreted accordingly;
  - h) "set-off" includes any right of retention, claim for compensation or right to balance accounts on insolvency;
  - i) one gender shall include a reference to the other genders; and
  - j) a time of day is a reference to London time.
- 1.3 Any headings in these Conditions for Commercial Facilities are given for convenience or reference only and do not affect how these conditions are to be interpreted.
- 1.4 A Potential Event of Default is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.
- 1.5 "£", "GBP" and "Sterling" denote the lawful currency of the United Kingdom.
- 1.6 Notwithstanding any other provision in any Facility Document, it is agreed that there is no requirement for us to carry out any action or make any communication where to do so would cause us to breach any law or regulation and we shall have no liability whatsoever where we act or refrain from acting pursuant to this Condition.

**1.7 Third party rights**

A person who is not a party to the Facility Letter has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of the Facility Letter. Notwithstanding any term of any Facility Document the consent of any person who is not a party to the Facility Letter is not required to rescind or vary this Agreement at any time. Any Receiver or Delegate may, subject to this Condition 1.7 (Third party rights) and the Contracts (Rights of Third Parties) Act 1999, rely on any Condition which expressly confers rights on it.

**2 Purpose of Facility**

If a purpose is stated in the Facility Letter you agree that a Facility will be used only for that purpose.

**3 Drawdown Conditions**

A Facility may be drawn down by you provided that before Drawdown, the applicable Specific Conditions are satisfied, and, on the date of a Drawdown Request and each Drawdown Date, no Potential Event of Default exists or Event of Default is continuing or would result from the proposed Loan and all the representations and warranties given by you in the Facility Letter (including these Conditions for Commercial Facilities) are true.

**4 Amount of Loans**

- 4.1 The amount of any proposed Loan must be an amount which is not more than the relevant Available Facility.

- 4.2 If two or more Interest Periods relating to Loans made under a Facility end on the same date, we may consolidate those Loans such that those Loans will be consolidated into, and treated as, a single Loan under that Facility on the last day of the Interest Period.

## **5 Conflict of terms**

If there is any inconsistency between the terms and conditions in the Facility Letter and these Conditions for Commercial Facilities, the terms and conditions of the Facility Letter shall prevail.

## **6 Interest**

- 6.1 Interest will accrue from day to day (before and after any judgement) at the rate set out in the Facility Letter. Interest will be calculated on the basis of a 365 day year in respect of drawings in Sterling and on the basis of a 360 day year in respect of drawings denominated in other currencies. You must pay accrued interest in arrears on each Loan on each Interest Payment Date.
- 6.2 If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).
- 6.3 If agreed with us, interest may be compounded in accordance with our usual practice. Our current practice is to compound interest monthly for Loans. This means that we add interest to your account once a month. Subject to Condition 29 (Right to vary) we reserve the right to change the intervals at which we compound interest, but we will give you at least 30 Business Days' notice before we do so.
- 6.4 Where the interest rate on a Facility is set by reference to the Cynergy Bank base lending rate (the "Cynergy Bank Base Rate") we can vary the Cynergy Bank Base Rate at any time. The Cynergy Bank Base Rate is independent from the Bank of England or any other central bank base rate. The Cynergy Bank Base Rate will be published on our Website, but we shall not be required to notify you of any changes to the Cynergy Bank Base Rate.
- 6.5 Where the interest rate on a Facility is set by reference to any rate other than the Cynergy Bank Base Rate we may set a minimum (a floor) below which your Reference Rate will not be reduced irrespective of movements in that other rate. We may amend that floor from time to time in accordance with Condition 29 (Right to vary).
- 6.6 A Revolving Loan has one Interest Period only.

## **7 Revolving Loans**

- 7.1 You shall ensure that the aggregate amount of all Revolving Loans (as confirmed in writing to us within five (5) Business Days after the end of each financial year) shall not exceed zero for a period of not less than seven (7) successive days in each financial year. Not less than three months shall elapse between two such periods.
- 7.2 If one or more Revolving Loans are to be made available to you on the same day that a maturing Revolving Loan under the same Facility is due to be repaid by you in whole or in part for the purpose of refinancing the maturing Revolving Loan, the aggregate amount of the new Revolving Loans shall (unless we agree otherwise) be treated as if applied in or towards repayment of the maturing Revolving Loan.

## **8 Default Interest**

- 8.1 If you fail to pay any amount payable by you under a Facility Document on its due date, interest will accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is one per cent. higher than the Interest Rate (unless otherwise specified in the Facility Letter).
- 8.2 Any interest accruing under this Condition 8 (Default Interest) must be paid immediately on demand by us and may (at our option) be compounded with the overdue amount at the end of each Interest Period but will remain immediately due and payable.

## **9 Early repayment and cancellation**

- 9.1 You may, if you give us not less than five (5) Business Days' prior written notice, repay in full or in part any amounts borrowed under any Facility, but this will not affect any terms in the Facility Letter relating to charges for early repayment.
- 9.2 If it becomes unlawful for us to perform any of our obligations under the Facility Letter, each Available Facility will be cancelled and you must immediately repay each Loan on our demand.
- 9.3 Without prejudice to Conditions 9.1 and 9.2 above, no Facility may be prepaid other than as permitted under the Facility Letter.
- 9.4 Unless a contrary indication appears in the Facility Letter, any part of a Revolving Facility which is prepaid or repaid may be reborrowed in accordance with the terms of these Conditions for Commercial Facilities. You cannot reborrow any amount of a Term Loan repaid or prepaid.
- 9.5 Condition 25 (Early Repayment Charge) sets out any ERC that applies in the event of an early repayment.
- 9.6 You may, if you give us not less than five (5) Business Days' prior written notice, cancel the whole or any part of an Available Facility.

## **10 Payments**

- 10.1 The Facility Letter sets out how all Loans must be repaid.
- 10.2 Unless confirmed otherwise by us in writing, you must open and maintain a Current Account with us and you must keep that Current Account open until each Facility has been repaid. We may, at our discretion, debit any sums due from you under any Facility to your Current Account or any other account you hold with us.
- 10.3 Unless confirmed otherwise by us in writing, all payments and repayments under any Facility must be paid by direct transfer from your Current Account. Unless we inform you otherwise, all charges relating to any Facility will be debited to your Current Account.
- 10.4 All payments made under the Facility Letter shall be made in full to us for value on the due date for payment, or if that date is not a Business Day, on the next Business Day, and in such funds as we may specify as being customary at the time for settlement of transactions in the relevant currency, without set-off or counterclaim and free and clear of any Tax Deduction unless a Tax Deduction is required by law.
- 10.5 If you are required by law to make a Tax Deduction from any payment under the Facility Letter, the sum due from you in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such Tax Deduction, we receive a net sum equal to the sum which we would have received had no such Tax Deduction been required.

- 10.6 You shall deliver to us evidence that is reasonably satisfactory to us that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 10.7 All fees and other payments in respect of a Facility are exclusive of value added and similar taxes unless otherwise stated and you will pay all such taxes on demand where applicable.
- 10.8 If we receive a payment for application against amounts due in respect of the Facility Letter that is insufficient to discharge all the amounts then due and payable by you under the Facility Letter, we shall apply that payment towards your obligations under the Facility Letter in the following order:
- (a) first, in or towards payment of any accrued interest, fee or commission due but unpaid under the Facility Letter in respect of:
    - i. any Term Loan, then;
    - ii. any Revolving Loan pro rata, then;
  - (b) secondly, in or towards payment of any principal due but unpaid under the Facility Letter in respect of:
    - i. any Term Loan, then;
    - ii. any Revolving Loan pro rata, then;
  - (c) thirdly, in or towards payment pro rata of any amount due but unpaid under Condition 18 (Indemnity); and
  - (d) fourthly, in or towards payment pro rata of any other sum due but unpaid under the Facility Letter.

## **11 Mandatory Prepayment**

- 11.1 If, at any time, we determine that it is or will become unlawful in any applicable jurisdiction for us to carry out any of our obligations contemplated under any Facility Document or to fund any Loan, upon us notifying you of such determination you will immediately prepay any Loan, together with all other amounts payable by you in respect of each Facility.
- 11.2 Unless we confirm otherwise in writing, you will promptly notify us of any of the following events occurring, and you will immediately prepay the Loans in full (in the case of paragraphs (a) or (b) below) or in part (to the extent of the cash proceeds received under paragraphs (c) or (d)):
- (a) in the case of a Change of Control;
  - (b) in the case that you materially change your core business;
  - (c) in the event an insurance claim(s) in excess of £50,000 is made; or
  - (d) in the event of disposal of any of the Property other than in the ordinary course of trading.
- 11.3 Any mandatory prepayment in accordance with Conditions 11.1 or 11.2 or a repayment in accordance with Condition 29.7 must be made together with the applicable ERC,

break costs (if applicable) and all accrued interest and fees on the amount prepaid (each of which we will deduct from the amount prepaid).

## **12 Representations and warranties**

You represent and warrant on the date of the Facility Letter, and each Drawdown Date and each Interest Payment Date:

- (a) if you are not an individual, you are duly constituted and existing under the laws of your jurisdiction of incorporation and empowered to borrow the Facility Amount on the terms set out in the Facility Letter and no limit on your powers will be exceeded as a result of the borrowing, grant of Security or giving of Guarantees or indemnities contemplated by the Facility Documents to which you are party;
- (b) if you are not an individual, you have taken all necessary actions to authorise the exercise of your rights under the Facility Documents and the performance of your obligations under the Facility Documents and your entry into all other documents required to be entered into by you in connection with the Facility Documents;
- (c) there is no legal or other restriction on your ability to perform your obligations in respect of a Facility and the obligations expressed to be assumed by you in each Facility Document to which you are a party are legal, valid, binding and enforceable obligations;
- (d) that any Loan will be entered into wholly for the purpose of business carried on by you;
- (e) no Potential Event of Default and no Event of Default is continuing or might reasonably be expected to result from the advance of any Loan or the entry into, the performance of, or any transaction contemplated by any Facility Document;
- (f) all information provided by you or on your behalf to us in connection with the Facility Documents was true, complete and accurate as at the date it was provided and is not misleading in any material respect;
- (g) no information has been given or withheld by you that results in the information supplied by you to us in connection with this Facility Letter being untrue or misleading in any respect;
- (h) no Security exists over all or any of your assets other than as otherwise permitted by the Facility Letter and you are, as applicable, the sole owner or legal and beneficial owner of the assets over which you purport to grant Security under any Facility Document; and
- (i) neither you, nor any Relevant Party, nor any of your or their subsidiaries or directors (as applicable), are either:
  - i. listed, or owned or controlled, directly or indirectly, by any person which is listed, on an Sanctions List; or
  - ii. located, organised or resident in a country which is the subject of sanctions by any Sanctions Authority.

## **13 General Undertakings**

13.1 For so long as there is any amount outstanding under the Facility Documents, you undertake that:



- (a) each Relevant Party will promptly obtain and comply with and do all that is necessary to maintain in full force and effect any authorisation required under any law or regulation of England and Wales or Scotland (as applicable) to enable each Relevant Party to perform its obligations under the Facility Documents and to ensure the legality, validity, enforceability or admissibility in evidence in England and Wales or Scotland (as applicable) of any Facility Document;
- (b) your obligations in respect of a Facility shall at all times rank at least pari passu with all of your other present and future obligations;
- (c) you will not create or agree to create or permit to subsist (other than in our favour) any Security over the whole or part of your business or any of your Property, income, rights, revenues or other assets or enter into any transaction which in our opinion (acting reasonably) has a similar effect, other than pursuant to the Security Documents granted in our favour or unless we have given our prior written consent to the creation or maintenance of such Security;
- (d) you will not (other than with our prior written consent) acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them), and you will not incorporate a company;
- (e) you will not (other than with our prior written consent) incur or allow to remain outstanding any Financial Indebtedness, other than Financial Indebtedness incurred pursuant to a Facility Document;
- (f) you will not:
  - i. declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of your share capital (or any class of your share capital);
  - ii. repay or distribute any dividend or share premium reserve;
  - iii. pay any management or advisory or other fee to the order of your shareholders; or
  - iv. redeem, repurchase, defease, retire or repay any of your share capital or resolve to do so,in each case, without our prior written consent;
- (g) you will not be a creditor in respect of any Financial Indebtedness without our prior written consent;
- (h) you will not incur or allow to remain outstanding any guarantee in respect of any obligation of any person, other than a Guarantee or any other guarantee granted pursuant to a Facility Document;
- (i) any of our unsecured and unsubordinated claims against any Relevant Party under the Facility Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors except those creditors whose claims are mandatorily preferred by laws of general application to companies;
- (j) you will not sell, transfer, or otherwise dispose of the whole or any substantial part of your undertaking, Property, assets or revenues, whether by a single transaction or a number of transactions other than with our prior written consent or in the ordinary course of trading;

- (k) you will not make any change to the general nature of your business from that carried on at the date of the Facility Letter (other than with our prior written consent);
- (l) you shall not (other than with our prior written consent or pursuant to a Facility Document) enter into any transaction with any person except on arm's length terms and for full market value;
- (m) each Relevant Party will maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business including that, if we require, we are noted, co-insured or composite insured on each relevant insurance policy as mortgagee and first loss payee;
- (n) all insurances must be with reputable independent insurance companies or underwriters;
- (o) you will provide details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any Relevant Party and which if adversely determined are reasonably likely to have a material adverse effect on the business, operations, Property, condition (financial or otherwise) or prospects of a Relevant Party promptly upon becoming aware of them;
- (p) if you are a partnership, you shall notify us in writing promptly of any change in the membership of the partnership;
- (q) you will not directly or knowingly indirectly use the proceeds of the Loans or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person to fund any activities or business of or with any person, or in any country or territory, that, at the time of such funding is, or whose government is, the target or subject of Sanctions; or in any other manner that would be reasonably likely to result in a violation of Sanctions by any person (including any person participating in the Loans whether as an underwriter, advisor, investor or otherwise);
- (r) to the extent that you are required to be registered in the Register of Overseas Entities (as established under section 3 of the Economic Crime (Transparency and Enforcement) Act 2022, you comply with the requirement to annually update the information held on the Register of Overseas Entities, and provide evidence of the same to us promptly on request; and
- (s) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, you must immediately (and in any event within ten (10) Business Days after such event taking place) appoint another agent on terms acceptable to us. Failing this, we may appoint another agent for this purpose.

13.2 You agree that the Specific Conditions shall apply to the Facility.

#### **14 Duty to provide information**

14.1 Until all amounts outstanding under the Facility Documents have been paid you shall provide us with the following documents and information we may from time to time reasonably request including, but not limited to, at the times specified below:

- (a) audited annual financial statements of the Borrower and any party specified in the Facility Letter as a Covenant Group Party (consolidated if appropriate and

including a balance sheet, profit and loss account, cashflow statement and cashflow forecast) as soon as they are available and in any event within 270 days of the end of each of your Financial Years;

- (b) quarterly management accounts of the Borrower and any party specified as a Covenant Group Party (consolidated if appropriate and including balance sheet, profit and loss account and industry key performance indicators, on an individual site and consolidated basis (in relation to the Properties), and to include cumulative management accounts for the Financial Year to date) within 45 days of the end of each Financial Quarter, or such other period specified by us;
- (c) your the annual budget for each financial year as soon as it is available, and in any event no later than 30 days after the beginning of the relevant Financial Year;
- (d) a Compliance Certificate on the dates specified in the Facility Letter, or if no such date is specified, annually on the date agreed between you and us or as otherwise requested by us (acting reasonably); and
- (e) promptly, such other information as we may reasonably request in relation to the you, your business, a Relevant Party or the Property from time to time.

14.2 You must ensure that the financial information provided to us in accordance with Conditions 14(a) to 14(c) above (inclusive) is prepared in accordance with generally accepted accounting principles in the United Kingdom.

## **15 Financial Covenants**

The financial covenants set out in the "Specific Conditions" or "Financial Covenant" section of the Facility Letter shall be tested by reference to each of the financial statements delivered pursuant to Condition 14 (Duty to provide information).

## **16 Events of Default and termination**

16.1 Each of the following events is an Event of Default:

- (a) you do not pay on the due date any amount payable under the Facility Documents;
- (b) any Relevant Party does not comply with any of its obligations under or in connection with a Facility or any Guarantee or Security held by us in respect of a Facility (other than those referred to in Condition 16.1(a) above);
- (c) any indebtedness of any Relevant Party becomes immediately due and payable, or capable of being declared due and payable (or any commitment in respect of any such indebtedness is withdrawn or cancelled), in each case, prior to its stated maturity by reason of an event of default (however described), or any Relevant Party fails to discharge any indebtedness on its due date (other than a liability which such Relevant Party is then contesting in good faith on the basis of favourable legal advice);
- (d) any representation, warranty or undertaking made, or any information provided, by any Relevant Party in connection with a Facility Document is or proves to have been incorrect or misleading in any material respect when made;
- (e) a Relevant Party is unable, or is likely to be unable, to pay its debts when due or suspends making payments on any of its debts;

- (f) any corporate action, legal proceedings or other procedure or step is taken in relation to: (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, sequestration or reorganisation of any Relevant Party; (ii) a composition, assignment or arrangement with any creditor of any Relevant Party; (iii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any Relevant Party or any of its assets; (iv) enforcement of any Security over any assets of any Relevant Party; or any analogous procedure or step is taken in any jurisdiction;
- (g) any expropriation, attachment, sequestration, distress, diligence or execution affects any asset or assets of a Relevant Party;
- (h) the presentation of a bankruptcy petition against, or the application for an interim order under Section 253 of the Insolvency Act 1986 of England and Wales in respect of, or the insolvency, death or mental disorder (within the meaning of the Mental Health Act 1983 of England and Wales or any other relevant legislation) of, any Relevant Party domiciled in England and Wales, or the presentation of a petition for sequestration of, or the entry into of a voluntary trust deed for the benefit of creditors by, or the bankruptcy, insolvency, sequestration, death or loss of mental capacity of any Relevant Party domiciled in Scotland from time to time;
- (i) any Guarantee or Security relating to a Facility ceases to be legal, valid and binding on a Relevant Party;
- (j) any Guarantor gives or purports to give notice to terminate its liabilities under any Guarantee relating to a Facility;
- (k) any Relevant Party is involved in litigation or in any other dispute which is likely in our opinion (acting reasonably) to have an adverse effect on the business of such Relevant Party;
- (l) if the Borrower is a company, control of the Borrower passing or having passed to any person or persons, acting either individually or in concert, who did not control the Borrower at the date of the Facility Letter, without our prior written consent ("control" having the meaning ascribed to it in the definition of "Change of Control" in Condition 1.1 (Definitions));
- (m) if a Relevant Party is a partnership, a change in the partnership which constitutes such Relevant Party (including, without limitation, any change in the membership of the partnership) for any reason, without our prior written consent;
- (n) there is an adverse change in the financial or trading position or prospects of any Relevant Party which, in our reasonable opinion, is material;
- (o) we become aware or have reason to suspect that any Relevant Party will use or has used the proceeds of any Loan for the purposes of financial crime (including, but not limited to, money laundering or terrorist financing);
- (p) you do not comply with or satisfy the terms of any condition subsequent contained in the Facility Letter;
- (q) any other event of default (howsoever described) referred to in the Facility Letter occurs; or
- (r) any event occurs in relation to the Relevant Party in any jurisdiction which has an effect substantially similar to any of the events specified above.

16.2 You must inform us immediately of the occurrence of any Event of Default.

16.3 If an Event of Default occurs we may by notice to you:

- (a) cancel all or any of the Facilities at which time they will immediately be cancelled;
- (b) declare all amounts accrued or outstanding under the Facility Documents immediately due and payable at which time they will become immediately due and payable;
- (c) declare all or any of the Loans to be payable on demand at which time they will become payable on demand; and
- (d) exercise any or all of our rights, remedies, powers and discretions under the Facility Documents.

## **17 Costs and expenses**

17.1 You must promptly on demand from us pay all costs (including but not limited to legal, Security and Valuation fees, stamp and similar taxes and charges and registration costs and expenses) incurred by us in connection with the negotiation, preparation, drafting, investigation, administration, supervision, enforcement, or preservation of our rights under the Facility Documents.

17.2 We reserve the right at any time to commission a Valuation of any Property and you agree to allow or arrange for access to the Property to facilitate this.

17.3 You will be required to pay for the following Valuations requested by us:

- (a) the Initial Valuation;
- (b) any Valuation obtained by us: (i) every three years; or (ii) following the occurrence of an Event of Default, on an annual basis (regardless of whether such Event of Default has subsequently been remedied or waived);
- (c) any Valuation obtained by us in connection with the compulsory purchase of all or part of a Property; and
- (d) any Valuation obtained at any time when an Event of Default is continuing or where we reasonably believe a Potential Event of Default will occur as a result of obtaining that Valuation.

Any other Valuation requested by us will be at our own cost.

17.4 If an Event of Default or a Potential Event of Default does not occur as a result of obtaining any Valuation in accordance with Condition 17.3(d) above, we will promptly reimburse you for the costs of such Valuation to the extent that you have paid them.

17.5 You agree that we may debit your Current Account for the costs of any of the Valuations at Condition 17.3 above unless you have paid our nominated panel valuer directly, or as otherwise agreed by us, and provided us with a copy of your proof of payment.

17.6 In the event of any change in applicable law or regulation or the existing requirements of, or new requirements being imposed by, the Bank of England, the Financial Conduct Authority, the Prudential Regulatory Authority or any other regulatory authority (whether or not having the force of law), which results in an increase to us in our cost of funding, maintaining or making available a Facility or reduces the effective return to

us from providing a Facility, then you shall promptly on demand pay us such sum as may be certified by us as being necessary to compensate us for such increased cost or reduction.

17.7 Any costs, plus interest if applicable, incurred under this Condition 17 (Costs and expenses) may be debited to your Current Account.

## **18 Indemnity**

You must, within two Business Days of demand, indemnify us against any loss, liability, cost or expense (including legal fees) which we determine will be or has been suffered (directly or indirectly) by us:

- (a) in connection with taking, holding, protection, preservation or enforcement of any Facility Document and with any proceedings instituted by or against us as a consequence of us entering into a Facility Document, taking or holding the Security or enforcing those rights;
- (b) in connection with the amendment of any Facility Document;
- (c) in connection with advice from professional advisers in respect of a Facility;
- (d) as a result of the occurrence of any Event of Default, or as a result of investigating a Potential Event of Default; and
- (e) as a result of acting or relying on any notice, request or instruction which we reasonably believe to be genuine, correct and appropriately authorised.

## **19 Our liability to you for exercising our rights**

Neither we (nor any of our employees) will have any liability for any loss sustained by you as a result of the exercise by us of any of our rights under the Facility Documents except in the case of our gross negligence or wilful misconduct.

## **20 Increasing our charges**

20.1 We can increase any of the charges we make in connection with a Facility, including but not limited to any Credit Delivery and Recoveries Fees charged in accordance with the terms published on our Website from time to time to reflect or in anticipation of:

- (a) any new laws, regulations or requirements or any changes in or in the interpretation of existing ones;
- (b) any changes to banking practices, industry recommendations, including but not limited to the adoption of any voluntary code of practice, and any subsequent changes thereto, and any decisions or guidelines given by relevant regulatory, trade or professional bodies;
- (c) increases in the cost to us of agreeing to make or of making a Facility available including the costs we pay to others;
- (d) increased charges made by other banks or financial institutions in the United Kingdom for similar facilities;
- (e) increased costs associated with changes in relevant market conditions or relevant technology;

- (f) any changes or anticipated changes in money market interest rates or the cost of money we lend;
- (g) any reorganisation of our business as a result of it being acquired by, or our acquiring another organisation (so that customers with similar facilities can be treated in the same way);
- (h) any events beyond our reasonable control.

## **21 Currency change and availability**

- 21.1 If as a result of a change in law or by agreement with you, the currency in which a Loan is denominated is due to be or has been converted to any other currency, we will notify you in writing of the currency in which amounts payable under a Facility will be paid.
- 21.2 If a Facility is held in any currency other than GBP then we may convert such Facility into GBP if we are, for whatever reason, unable to obtain the foreign currency needed to lend or continue to lend to you in that currency. This right is in addition to any provisions contained in the Facility Letter setting out when we have the right to convert a Facility to GBP.

## **22 Set-off**

You authorise us to set-off any obligation owed by us to you against any obligation owed by you to us in each case whether actual or contingent and whether or not due and regardless of the currency in which the obligation is owed.

## **23 Assignment**

- 23.1 You may not assign or transfer any of your rights or obligations under the Facility Documents without our prior written consent.
- 23.2 We may at any time assign, transfer or offer participations to any person, in whole or in part, or in any manner dispose of all or any of our rights and obligations arising or accruing under any of the Facility Documents or any documents executed pursuant to the Facility Documents.

## **24 Drawdown**

- 24.1 Subject to completion of the Specific Conditions set out in the Facility Letter, unless otherwise agreed by us in writing, a Facility may be drawn in full during the Availability Period. You, or a person duly authorised to act on your behalf, must deliver a Drawdown Request to us on or prior to the Drawdown Notice Date, or by such other time as agreed with us in writing ahead of the proposed Drawdown Date.
- 24.2 Whilst all reasonable endeavours will be made to allow you to Drawdown if you deliver a Drawdown Request by the Drawdown Notice Date, we cannot guarantee your Drawdown Request will be accepted. No Drawdown will be made if, at the Drawdown Date, an Event of Default has occurred that is continuing or Potential Event of Default has occurred.
- 24.3 The provisions of Conditions 24.1 and 24.2 above concerning Drawdown may be waived at our absolute discretion.

## **25 Early Repayment Charge**

- 25.1 The provisions of Condition 25.2 below apply if, and only if, the Facility Letter states that an early repayment charge ("**ERC**") applies to the Facility.

25.2 If a Facility, or part of a Facility, is repaid ahead of schedule, but within the period set out in the Facility Letter you must pay an ERC. This applies even if you are re-financing because an Event of Default or Potential Event of Default has occurred. The ERC will be calculated on the amount of the early repayment as set out in the Facility Letter.

## **26 Fees**

The Facilities are subject to our charges applicable from time to time including but not limited to in accordance with the terms published on our Website from time to time. This includes charges (if any) we make for operating your Current Account, for dealing with arrears or default or for other services. The charges are displayed in the Document Library on our Website. Any of our charges, can, subject to Condition 20 (Increasing our charges), be altered at any time, but we will give you at least 30 days' notice before any increase.

## **27 Notices**

27.1 Any notice, request, demand for payment or other demand we make under a Facility may be made by any manager, officer, solicitor or other legal representative of ours and delivered by the following methods:

- (a) by hand;
- (b) by fax;
- (c) by post; or
- (d) by electronic communication, such as e-mail.

27.2 The notice, request or demand must be in writing and addressed to you at:

- (a) the last contact address we held for you; or if you are a company at the company's registered office; or
- (b) a fax number or e-mail address you gave us.

27.3 You agree to tell us of any changes to your postal and email address and your phone and fax numbers. If you gave us more than one such address or number we can send or deliver the demand, request or notice to any one of the addresses or numbers you gave us.

27.4 Any notice, request or demand will be considered to have been delivered to you as follows:

- (a) if delivered by hand, on the day of actual delivery;
- (b) if sent by post, on the Business Day following the day on which it was dispatched by pre-paid post;
- (c) if given or made by fax or other electronic communication and sent before 5:00pm, at the time of transmission; or
- (d) if given or made by fax or other electronic communication and sent after 5:00pm, on the following Business Day.

27.5 All notices that you make or serve on us with regard to any Facility must be in writing, delivered personally or by first class post to the address set out in the Facility Letter, or if



different the most recent address we have notified you of since the Facility Letter was issued.

## **28 General**

- 28.1 Rights and remedies under the Facility Letter are cumulative and not exclusive of any rights or remedies provided by law or otherwise and may be exercised from time to time and as often as we deem expedient.
- 28.2 If more than one Borrower is a party to the Facility Letter, you will all be jointly and severally liable to us in respect of all amounts payable and other obligations from time to time owing to us in respect of the Facility Letter. Notice to one of you will constitute notice to all of you.
- 28.3 In any litigation or arbitration proceedings arising out of or in connection with a Facility Document, the entries made in the accounts maintained by us are prima facie evidence of the matters to which they relate.
- 28.4 Any certification or determination by us of a rate or amount under Facility Letter is, in the absence of manifest error, conclusive evidence of the matters to which it relates.
- 28.5 If, at any time, a provision of the Facility Letter is or becomes illegal, invalid or unenforceable in any respect under any law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **29 Right to vary**

- 29.1 We may vary, amend or replace the Facility Letter and/or these Conditions for Commercial Facilities from time to time. However, we will only do so for the reasons set out in Conditions 29.2, 29.3 and 29.4 below.
- 29.2 We may make changes to these Conditions for Commercial Facilities:
- (a) to meet legal, financial or regulatory requirements. This includes any court decisions or any changes to banking practices, industry recommendations, including but not limited to the adoption of any voluntary codes of practice, and any subsequent changes thereto, and any decisions or any guidelines given by relevant regulatory, trade or professional bodies;
  - (b) to reflect a change in market conditions or the overall cost of providing Facilities to you;
  - (c) to reflect a change in technology or to cover a development or change in our products or services;
  - (d) to correct errors in documents or make the Conditions easier to understand.
- 29.3 If the interest rate under the Facility Letter is set by reference to the Cynergy Bank Base Rate, we may vary your interest rate by substituting another reference rate (for example the Bank of England Base Rate) for the Cynergy Bank Base Rate.
- 29.4 If the interest rate under the Facility Letter is set by reference to the Bank of England Base Rate, in the event of a material change to the basis or manner of its calculation or direction or any recommendation from the Bank of England and/or the Financial Conduct Authority that the Bank of England Base Rate is no longer an appropriate representative rate, or any recommendation from the Bank of England and/or the Financial Conduct

Authority to cease using the Bank of England Base Rate altogether, we may select such alternative rate as may be utilised by comparable lenders within the commercial banking market within England and Wales, and provide you with notice in writing specifying that such alternative rate shall apply to the Facility. You agree to promptly take all such action and execute all such documents as may reasonably be required (if any) for the purpose of implementing such alternative rate.

- 29.5 In the event that we vary, amend or replace the Facility Letter and/or these Conditions for Commercial Facilities, we shall, subject to Conditions 29.6 and 29.7 below, provide you with notice in writing (which may be by email) of the variation, amendment or replacement and, if applicable, provide you with a copy of the varied, amended or replacement Facility Letter and/or Conditions for Commercial Facilities.
- 29.6 If, in our opinion (acting reasonably), the change is not to your disadvantage, we may make it immediately, provided we shall notify you of the change, and provide all relevant details in respect thereof within thirty (30) Business Days of making such change.
- 29.7 If, in our opinion (acting reasonably), the change is to your disadvantage, we will give you at least thirty (30) Business Days' notice prior to such change becoming effective. For a period of sixty (60) Business Days after the date on which we have served such notice to you, you may repay a Facility without any penalty (other than any ERC payable in accordance with Condition 11.3), except you will be required to pay or reimburse any cost we incur in connection with such cancellation in accordance with Conditions 17 (Costs and expenses), and 18 (Indemnity) of these Conditions for Commercial Facilities.
- 29.8 All variations, waivers, consents and approvals by us will have effect only if made in writing.
- 29.9 The provisions of this Condition 29 are without prejudice to the provisions of Conditions 6 (Interest) and 20 (Increasing our charges) above.

### **30 Remedies, waivers and consents**

- 30.1 Any approval, consent or waiver of any right given by us under the Facility Documents is only effective if it is in writing and signed by us. It shall apply only in the circumstances for which it is given and shall not prevent us from subsequently relying on the provision waived.
- 30.2 No delay or failure to exercise any right under the Facility Documents will operate as a waiver of that right. No single or partial exercise of any right under these the Facility Documents Facilities will prevent any further exercise of the same or any other right under the Facility Documents.
- 30.3 Rights and remedies under the Facility Documents are cumulative and not exclusive of any rights or remedies provided by law or otherwise and may be exercised from time to time and as often as we deem expedient.

### **31 Confidential Information**

We may disclose to any of our associated companies, an actual or potential successor, assignee or transferee or any other person who enters into or proposes to enter into contractual relations with us in relation to any Facility Document, Confidential Information and any other information which may be given to us in relation to any Facility Document as well as any information obtained from credit reference agencies, provided that the person to whom such information is disclosed undertakes to us to maintain the confidentiality of such information.

### **32 Counterparts**

The Facility Letter 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 the Facility Letter.

### **33 Governing Law**

- 33.1 The Facility Letter and these Conditions for Commercial Facilities and any non-contractual obligations arising out of or in connection with them are governed by, and shall continue to be construed in accordance with, the laws of England and Wales.
- 33.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with the Facility Letter and these Conditions for Commercial Facilities (including a dispute relating to the existence, validity or termination of the Facility Letter or these Conditions for Commercial Facilities or any non-contractual obligation arising out of or in connection with the Facility Letter or these Conditions for Commercial Facilities) (a "Dispute"). The parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.
- 33.3 This Condition 33 is for our benefit only. As a result, we will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, we may take concurrent proceedings in any number of jurisdictions.

**All Loans made under or in connection with these Conditions for Commercial Facilities are unregulated agreements for the purposes of the Financial Services and Markets Act 2000 and related legislation and, as a result, you understand that you are not entitled to the regulatory protections that would otherwise apply if any Loan was regulated by such legislation.**

**SCHEDULE**  
**Drawdown Conditions**

**Part A**  
**General Conditions for Loans**

**1. RELEVANT PARTIES**

- (a) A copy of the constitutional documents of each Relevant Party.
- (b) A copy of a resolution of the board of directors of each Relevant Party approving the terms of, and the transactions contemplated by, the Facility Documents to which it is party and resolving that it execute, deliver and perform the Facility Documents to which it is a party, authorising a specified person or persons to execute the Facility Documents to which it is a party on its behalf and authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including any Drawdown Request) to be signed and/or despatched by it under or in connection with the Facility Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by each resolution referred to in paragraph (b) above.
- (d) A copy of a resolution signed by all the holders of the issued shares in each Relevant Party approving the terms of, and the transactions contemplated by, the Facility Documents to which the Relevant Party is party.
- (e) A certificate of one or more of each Relevant Party's directors confirming that borrowing or guaranteeing or securing, as appropriate, the Facility Amount would not cause any borrowing, guarantee, Security or similar limit binding on such Relevant Party to be exceeded.
- (f) A certificate of an authorised signatory of each Relevant Party certifying that no material adverse change has occurred in the business, assets or financial condition of any Relevant Party since the date of the Facility Letter
- (g) A certificate of an authorised signatory of each Relevant Party certifying that each copy document relating to it specified as a Drawdown Condition is correct, complete and in full force and effect as at a date no earlier than the date of the Facility Letter.

**2. FACILITY DOCUMENTS**

- (a) Each Facility Document executed by the parties to it other than us.
- (b) A copy of all notices required to be sent under the Security Documents executed by the Relevant Party required to send it and duly acknowledged by the addressee (if we so require).
- (c) All documents of title and/or transfer to be provided under the Security Documents.
- (d) Confirmation in writing (which may be by email) from the Borrower that they have received a copy of the Conditions.

**3. FINANCIAL INFORMATION**

- (a) A copy, certified by an authorised signatory to be a true copy, of your previous 3 years' financial statements.
- (b) Any other evidence reasonably required by us to assess your, or any other Relevant Party's, financial standing or condition.
- (c) Unless confirmed otherwise by us in writing, evidence that the Current Account has been set-up and is maintained with us.

#### 4. OTHER DOCUMENTS AND EVIDENCE

- (a) A duly completed Drawdown Request.
- (b) Completion of our usual company registry searches and credit checks showing no adverse results.
- (c) All documentation and evidence we require in order to complete our "Know your customer" identification procedures.
- (d) Evidence that any other fees, and the costs and expenses then due from you pursuant to this Facility Letter have been paid or will be paid by the initial Drawdown Date.
- (e) A winding-up check at the High Court and/or the Court of Session and a search at the relevant Companies Registry and, if applicable, a search of the Register of Insolvencies maintained by the Accountant in Bankruptcy, in respect of each Relevant Party dated no earlier than the first Drawdown Date revealing no adverse entries, to be provided by your solicitors.
- (f) Evidence of the extent and level of insurance cover in force, that the insurance cover accords with the terms of the Facility Letter and any Security Document and that, if we require, we are noted, or co-insured or composite insured on each relevant insurance policy as mortgagee and first loss payee.
- (g) Evidence that any Third Party Security Provider has received independent legal advice as to the nature and legal effect of entering into the documents to which it is party.
- (h) In respect of each Relevant Party incorporated in the United Kingdom whose shares are the subject of the Security granted in our favour ("**Charged Company**"), either:

1. a certificate of an authorised signatory of the Borrower certifying that:
  - i. each Relevant Party has complied within the relevant timeframe with any notice it has received pursuant to Part 21A of the Companies Act 2006 from that Charged Company; and
  - ii. no "warning notice" or "restrictions notice" (in each case as defined in Schedule 1B of the Companies Act 2006) has been issued in respect of those shares,

together with a copy of the "PSC register" (within the meaning of section 790C(10) of the Companies Act 2006) of that Charged Company, which, in the case of a Charged Company that is a Relevant Party, is certified by an authorised signatory of the Borrower to be correct, complete and not amended or superseded as at a date no earlier than the date of first Drawdown; or

2. a certificate of an authorised signatory of the Borrower certifying that such Charged Company is not required to comply with Part 21A of the Companies Act 2006.
- (i) If you or any Relevant Party is incorporated in a jurisdiction other than England and Wales, evidence satisfactory to us that an agent for service of process in relation to any proceedings before the English courts in connection with any Facility Document has been appointed by that Relevant Party, and evidence that such process agent has accepted its appointment.
  - (j) A copy, or other evidence to our satisfaction, of any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration required under any law or regulation of England and Wales or Scotland (or any other relevant jurisdiction) in connection with the carrying on by the Borrower of its business at the Property as it is presently being conducted and/or will be conducted on and from the date of the Facility Letter
  - (k) If a Relevant Party is incorporated or resident in a jurisdiction other than England and Wales, a legal opinion of our legal advisers in the relevant jurisdiction, substantially in the form distributed to us prior to signing the Facility Letter.
  - (l) A copy of any other authorisation or other document, opinion or assurance which we consider to be necessary or desirable in connection with the entry into and performance of the transactions contemplated by any Facility Document or for the validity and enforceability of any Facility Document.

**Part B**  
**Conditions for Acquisition Loans and Investment Loans**

In this Part B (Conditions for Acquisition Loans and Investment Loans), unless we otherwise require, a reference to a Facility Property excludes any Facility Property over which we already hold Security.

**1. PROPERTY**

- (a) All title documents relating to your intended interest in the Facility Property or an acceptable undertaking to hold the same to our order.
- (b) For properties in England and Wales, a clear Land Charges Registry search or the results of Land Registry searches in favour of us on the appropriate forms against all of the registered titles comprising your intended interest in the Facility Property and: (i) giving not less than twenty (20) Business Days' priority beyond the date of the Facility Letter; and (ii) showing no adverse entries, and/or, for properties in Scotland, a clear search in the Facility Property and Personal Registers for the relevant prescriptive periods or clear Land Register reports, as the case may be, together with clear searches in the Register of Inhibitions against the Relevant Parties showing (i) no adverse entries; (ii) an advance notice as defined in the Land Registration etc (Scotland) Act 2012 for each standard security to be granted in our favour on or around the date of the Facility Letter giving not less than twenty (20) protected Business Days beyond the date of the relevant standard security; and (iii) no other advance notices as defined in the Land Registration etc. (Scotland) Act 2012.
- (c) For properties in Scotland, a copy of each advance notice referred to above.
- (d) If required by us, a certificate of title, in a form approved by us, prepared by your solicitors in relation to the Facility Property, and addressed to us.
- (e) If required by us, a report on title in a form approved by us, prepared by our solicitors in relation to the Facility Property, and addressed to us.
- (f) Unless otherwise approved by us in writing, evidence that all Security (other than under the Facility Documents) affecting the Property or, if applicable, the Target has been, or will be, discharged by the Drawdown Date.
- (g) All necessary Land Registry and/or Land Register of Scotland application forms in relation to the charging of the Facility Property in favour of us duly completed, accompanied by payment of the applicable Land Registry and/or Land Register of Scotland fees or an acceptable undertaking in relation to the same.
- (h) Environmental or other survey or report in respect of the Facility Property in form and substance satisfactory to us.
- (i) A copy of the Initial Valuation of the Facility Property and confirmation from the valuer that the certificate of title has no material adverse effect on the Initial Valuation.
- (j) A valid Energy Performance Certificate for the Facility Property.
- (k) Any construction or planning documentation required by us and in a form and substance satisfactory to us.

## **2. ACQUISITION CONDITIONS**

The conditions in this section 2 apply only if the relevant Loan is for the purpose of acquiring the Facility Property or the shares in the Target.

- (a) All necessary Land Registry and/or Land Register of Scotland application forms in relation to the transfer of the Facility Property or the Target to you duly completed, accompanied by payment of the applicable Land Registry and/or Land Register of Scotland fees or an acceptable undertaking in relation to the same.
- (b) If applicable, a land transaction return and/or a land and buildings transaction tax return in relation to any stamp duty land tax and or land and buildings transaction tax payable in connection with the transfer of the Facility Property to you duly completed, accompanied by payment of that stamp duty land tax and/or that land and buildings transaction tax and an undertaking from your solicitors to deliver the land transaction return certificate and/or a land and buildings transaction tax return certificate to us or our solicitors within three (3) Business Days of receipt or an acceptable undertaking in relation to the same.
- (c) The relevant transfer, disposition and/or assignment of the Facility Property or the shares in the Target.
- (d) A confirmation from your solicitor that they have a copy of the acquisition agreement in respect of the Facility Property or the shares in the Target, and that the acquisition agreement does not contain provisions which are onerous to us or which adversely affect the proposed Security or which your solicitor reasonably considers ought to be brought to our attention.
- (e) A confirmation from your solicitor that they have a copy of the completion statement prepared by the vendor's solicitors in respect of the Facility Property or the acquisition of the shares in the Target, and that the completion statement does not contain provisions which are onerous to us or which your solicitor reasonably considers ought to be brought to our attention.



**Part C**  
**Conditions for Development Loans**

**1. ACQUISITION OF FACILITY PROPERTY AND SECURITY**

If you are acquiring a Facility Property and/or Security is granted over a Facility Property in connection with the Development, unless otherwise approved by us in writing, you will be required to comply with each Drawdown Condition included in Part B (Conditions for Acquisition Loans and Investment Loans).

**2. DEVELOPMENT OF FACILITY PROPERTY**

(a) Monitoring Agent report

- i. A report on the feasibility of the Development and the Budgeted Costs from our appointed Monitoring Agent (the "Monitoring Agent Report"), the costs of which will be borne by you, addressed to us with specific commentary on:
  - A. the identity, capability and financial standing of the Contractor and any sub-contractor with material design input;
  - B. the budget (including without limitation, costings, cash flow forecasts, budgeted costs and timetable) for the Development;
  - C. the agreed plans together with confirmation that the Development can be constructed on the Facility Property without recourse to other land;
  - D. the ability of the Development to be undertaken at the Facility Property in accordance and compliance with the planning permission, the consents, the construction documents and the agreed plans for the Development;
  - E. likely level of risk and cost associated with any environmental/soil remediation, asbestos removal and archaeological findings based on any report or other information available to the Monitoring Agent at the relevant time;
  - F. likely level of risk and cost associated with any rights of light report;
  - G. discharge or all pre-commencement planning conditions and obligations to include s.106 and/or s.75 planning obligations and s.278 and/or s.56 highways obligations;
  - H. terms of the Building Contract and the Collateral Warranty;
  - I. confirmation satisfactory to us and the Monitoring Agent (in our absolute discretion) that the remediation obligations (as defined in the planning permission/our Monitoring Agent Report) have been completed by you or will during the course of the Development be completed to our satisfaction;
  - J. evidence that each Necessary Consent (as advised by the Monitoring Agent) for the Development is in full force and effect and any applicable judicial review period has passed;

- K. confirmation that we are satisfied with all due diligence undertaken in respect of the Development and including such evidence we and our Monitoring Agent may require;
- L. confirmation that no Contractor or approved subcontractor has specified or used, or will use, anything in the Development, which, at the time of specification or use, is or are deleterious material;
- M. confirmation that there are no circumstances that may give rise to a breach of any Environmental Law or of any proceedings or notice or requirements against or on it in respect of, or that may result in, any claim or liability under any Environmental Law or alleged contravention of any Environmental Law that would have or be likely to have a material adverse effect;
- N. evidence that the Contractor holds contractor's all risks insurance (to include cover for (i) the maximum possible loss through migrating fire or any other conceivable cross site event and (ii) the Development for risks relating to unoccupancy and related fire damage and escalating building insurance cover as the construction works progress) approved by our Monitoring Agent and otherwise complying with our requirements, with our interest to be noted on the policy;
- O. evidence that professional indemnity insurance of the Contractor and sub-contractors with a material design input is in place to our satisfaction;
- P. evidence satisfactory to us and our Monitoring Agent of the application for and registration with a new build warranty provider. Our approved new build warranty providers can be found in the Council of Mortgage Lenders Handbook as published on the Council of Mortgage Lenders' website from time to time;
- Q. any environmental and/or soil contamination and any other reports recommended by the Monitoring Agent to include;
  - I. the presence and extent of any asbestos;
  - II. any archaeological assessment (if in an area of archaeological interest or otherwise identified in and due diligence reports or searches or planning conditions as a potential issue);
  - III. intrusive ground condition surveys, the presence and extent of any Japanese knot weed; and
- ii. A copy of any other report obtained by you in relation to the Development.

(b) Land Transactions and other Consents or Documents

We require your solicitor to confirm the following, if applicable to the Development:

- i. any consent under any lease of the Facility Property required for the granting of the Security and/or the Development must be in place and, if we so require, approved by our solicitors;
- ii. the terms of any agreement between you and any utility provider to relocate or locate service supplies, including but not limited to, any electricity sub-station; and
- iii. a copy of any authorisation, document, opinion or assurance which we consider or the Monitoring Agent considers (each acting reasonably) to be necessary in connection with the Development.

(c) Pre-Sales

If the Development includes a pre-sale we require your solicitor to report the following:

- i. the pre-sale of any affordable units has been contracted in accordance with the s106 Agreement and/or s75 Agreement and on terms satisfactory to us;
- ii. the pre-sale of any commercial unit(s) have been contracted on terms satisfactory to us; and
- iii. the pre-sale of any residential unit(s) have been contracted on terms satisfactory to us.

(d) Joint Ventures

If the Development is a joint venture we require your solicitor to report to our satisfaction on the terms of any joint venture agreement ("JVA"), the dispute resolution procedure under the JVA and the capacity and authority of each member to enter into the JVA.

(e) Report providers

- i. Evidence of satisfactory professional indemnity insurance cover from the providers of all reports, opinions, letters and certificates required by us from time to time.
- ii. Insofar as not already provided and to the extent recommended by the Monitoring Agent, reliance letters or addressee wording acceptable to us in respect of all certificates, opinions and reports to be provided to us or required by us from time to time.
- iii. If the planning drawings or other design drawings have not been prepared for you or our Monitoring Agent otherwise requires, a royalty free licence to use the planning drawings with the ability to grant at least two sub licences.
- iv. Other consultants' reports appointed by you or us, as required and including but not limited to, engineering, surveyor's and geotechnical reports may be sought and, in each case, are to be in a form and substance satisfactory to us.

(f) Insurance

- i. Evidence that the Contractor holds contractor's all risks insurance (to include cover for:
  - a. the maximum possible loss through migrating fire or other conceivable cross site event; and
  - b. the Development for risks relating to unoccupancy and related fire damage and escalating building insurance cover as the construction works progress to be approved by our Monitoring Agent and otherwise complying with our requirements.
- ii. Evidence that professional indemnity insurance of the Contractor and any sub-contractor with a material design input is in place to our satisfaction.

(g) Overage

Overage provisions affecting the Facility Property must be released or discharged or evidence satisfactory in all respects must be provided to our solicitors to evidence that our security will not be affected and that the implementation of the planning permission and sale of the units to be constructed will not trigger an overage liability.

(h) Development Agreements

Report from your solicitor addressed to us, and in a form which is satisfactory to us, covering:

- i. if there are any pre-existing agreements in relation to the Development (each a "Development Agreement"), under which we may require step in rights to prevent termination of any such Development Agreement. If sufficient mortgagee protection rights have not been incorporated into these documents we may require a separate step in deed; and
- ii. the terms of each Development Agreement, Pre-Sale Agreement and other documents affecting any Facility Property;

(i) VAT and other Taxes

- i. A copy of the VAT registration certificate for the Borrower.
- ii. Evidence that the Borrower has opted to tax in respect of the Development under the relevant and current VAT Act (as amended and as may be amended from time to time).
- iii. Evidence that you have duly elected to waive exemption in relation to the Facility Property and proper notification of the election was received by HM Revenue & Customs prior to the date of first Drawdown.
- iv. Evidence that the Borrower is not a member of a VAT group.
- v. Where golden brick provisions have been incorporated in any Pre-Sale Agreement or Development Agreements we require a report from an expert (approved by us) that the provisions comply with HMRC requirements to achieve the requisite VAT saving intended.

(j) Development Documents

All documents required by our Monitoring Agent in a form and substance satisfactory to us including, but not limited to, the following:

- i. the Budgeted Costs and construction programme;
- ii. a performance bond to be procured by the Contractor;
- iii. each Development Agreement;
- iv. the agreed plans, planning consents and any other requisite consents;  
and
- v. evidence of the source, availability and application of all sums required in addition to the Facility to complete the Development and meet all costs and tax associated with it.