

# PRIME ADVOCATES

## - IMPACT LAW-FIRM COLLABORATIONS

### DISCUSSION DRAFT

Committed loan (i.e. which the Lender will be obliged to lend if the conditions in the loan agreement are satisfied) with fixed repayment dates and no loan security to a UK social sector organisation: option to include guarantor

### SUMMARY OF KEY TERMS

£[AMOUNT] LOAN FACILITY

FOR

[INSERT NAME OF BORROWER]

[Please note that this term sheet is for discussion purposes only and is not an offer to arrange or finance the Facility. Whether or not the Facility will actually be provided depends on if there is a written agreement between the parties.]<sup>1</sup>

### PARTIES

- Borrower:** [NAME OF BORROWER].
- [Guarantor:** [●]]<sup>2</sup>
- Lender:** [NAME OF LENDER].
- [Obligors:** The Borrower and Guarantor.<sup>3</sup>
- Group Companies:** The Borrower and its subsidiaries.<sup>4</sup>
- Social Objects:** The main purpose of the Borrower is to [*for example, to make investments in local communities and businesses or development of cost effective commercial health practices in remote rural regions*].<sup>5</sup>

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<sup>1</sup> Change as applicable.

<sup>2</sup> Delete as applicable.

<sup>3</sup> Delete as applicable.

<sup>4</sup> Assumes Borrower is the parent entity.

<sup>5</sup> Assumes articles of association of the Borrower follow the [Standard Form Articles of Association].

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## DESCRIPTION OF THE FACILITY

- 1. Facility:** Loan facility with fixed repayment dates which can be borrowed in stages in [Sterling].
- 2. Amount:** £[AMOUNT].
- 3. Currency of Facility:** Sterling (£)
- 4. Purpose:** The Facility may only be used for the promotion and/or support of the Social Objects.

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## DRAWDOWN MECHANICS

5. **Drawdown Period:** The Borrower may use the Facility from the date of signing of the loan agreement up to and including [*the date falling one month after the date of the loan agreement*].<sup>6</sup>
6. **Requests to Borrow:** A request to borrow a loan must be received by the Lender by no later than [11.00 a.m. (London time) one business day] before the date on which the Borrower would like to borrow the loan.
7. **Maximum number of loans:** No more than [●]<sup>7</sup> loans may be borrowed under the loan agreement.

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<sup>6</sup> Change as applicable.

<sup>7</sup> Consider whether the facility can be borrowed all in one go or in parts. If in parts, should loans be linked to specific social performance milestones?

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## CONDITIONS TO MAKING OF LOAN

8. **Conditions to first request to borrow:** Certain conditions must be met before the Borrower may deliver the first request to borrow and the Lender must be satisfied that these conditions have been met. These will include delivery to the Lender of the following documents/evidence<sup>8</sup>:
- (a) copies of relevant certificate of incorporation and certificate(s) of incorporation on change of name (if any), memorandum and articles of association (or equivalent) which must contain articles that protect the [social mission, impact performance and distribution of financial value] of the Borrower in accordance with the Social Objects;
  - (b) copies of relevant resolutions of the board of directors and shareholders (or equivalent);
  - (c) example signatures of persons authorised to sign on behalf of the Obligors;
  - (d) certificate provided by a director of the Borrower confirming (i) no breach of any borrowing limits; and (ii) accuracy of any copy documents;
  - (e) [legal opinion from the [Lender's legal advisers]].<sup>9</sup>
  - (f) evidence of payment of fees, costs and expenses due and payable by the Borrower under the finance documents (these are the loan agreement and any related agreements);
  - (g) most recent financial statements relating to the Borrower [and the Guarantor];
  - (h) [a copy of the Borrower's most recent business plan];
  - (i) [shareholders' agreement in respect of the Borrower];
  - (j) [a copy of the Borrower's financial model];
  - (k) [Independent Social Impact report about the agreed

<sup>8</sup> List of required documents to be considered for each transaction on a case by case basis.  
<sup>9</sup> Include where appropriate.

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social outcomes]; and

- (l) a copy of any other document, authorisation, opinion or assurance asked for by the Lender (acting reasonably).

**9. Other conditions:**

Certain conditions must be met before the Borrower may deliver any further requests to borrow a subsequent loan after the first loan has been borrowed. These will include:

- (a) accuracy of repeating representations (specifically, the representations set out in paragraph 26 (Representations) below); and
- (b) no breach (or potential breach, eg with expiry of a grace period) of key terms of the agreement.

## REPAYMENT OF FACILITY

10. **Repayment Date:** [e.g. 5/20 years from the date of the loan agreement].<sup>10</sup>
11. **Repayment:** The loans must be repaid [on [the Repayment Date].][in [ ] approximately equal instalments every six months, with the first repayment on the date falling [ ] month[s] after the date of the loan agreement and the final repayment on the Repayment Date.]<sup>11</sup>
- All loans and other outstanding amounts under the Facility must be repaid by the Repayment Date.
12. **Repaying the loan early on a voluntary basis:** The Borrower may repay the loans or part of the loans early on a voluntary basis without penalty.
13. **Cancelling the loan:** The part of the Facility which the Lender has not lent to the Borrower may be cancelled by the Borrower at any time, without penalty, on 10 business days' written notice.
14. **Repaying the loan early on a compulsory basis:** The Borrower must repay the loans or a part of the loans (as applicable) early and cancel that part of the Facility which the Lender has not lent to the Borrower if any of the following happens:
- (a) **Illegality**
- If it becomes unlawful for the Lender to perform any of its obligations in any finance document or to fund or maintain its share in any loan.
- (b) **[Disposal proceeds**
- From the net proceeds of a disposal of any asset or business (whether by way of share or asset sale and subject to certain exceptions).]<sup>12</sup>
- (c) **[Equity or capital market issue**
- From the net proceeds (after tax etc.) of any public or private bond or other capital market issue or any issue, sale or public offering of any equity security (including any preference share).]<sup>13</sup>
- Early repayments made on a compulsory basis must be made

<sup>10</sup> Specify applicable repayment date.

<sup>11</sup> Change as applicable.

<sup>12</sup> Include if required.

<sup>13</sup> Include if required.

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together with any interest owing on the amount prepaid and, subject to breakage costs<sup>14</sup> to compensate the Lender for the early prepayment, without penalty.

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<sup>14</sup> “Breakage costs” may be agreed to be the difference between the amount which would have been payable had the early repayment not occurred, and the return available to the Lender from depositing the early repayment with a bank in the interbank market.

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## PRICING AND INTEREST

15. **Fee:** [£[●] and payable by the Borrower to the Lender on [the earlier of (i) the date of the first loan and (ii) the date falling [●] days after the date of the loan agreement]/[the date of the loan agreement].<sup>15</sup>
16. **Margin:** [●]% per year.
17. **Interest on loans:** The rate of interest payable by the Borrower on a loan which has been borrowed will be:
- (a) the applicable Margin; plus
  - (b) [LIBOR as quoted by the Lender/Base Rate as quoted by *[for example The Bank of England/Barclays Bank plc etc]*].<sup>16</sup>
18. **Interest Payment Dates:** [●], [●], [●] and [●] in each year.<sup>17</sup>
19. **Payment of interest on loans:** [The Borrower must pay the interest on/interest will be added to the main amount of the loan on]<sup>18</sup> each Interest Payment Date.
20. **Default interest:** If the Borrower fails to pay any amount when due, the interest rate on the overdue amount will be increased by [1]% per year.

<sup>15</sup> Delete if there is no fee for the Facility.

<sup>16</sup> Assumes that facility is a floating-rate . (i.e. the interest rate is allowed to move up and down with the rest of the market) LIBOR based loan with variable length of periods for the calculation of interest Change if the pricing for the loan is different (e.g. if the interest rate is fixed).

<sup>17</sup> Change as appropriate.

<sup>18</sup> Consider whether interest should be paid by the Borrower to the Lender on set interest payment dates or if it should be added to the main amount of the loan.

## BORROWER'S OBLIGATIONS

- 26. Representations:** The Borrower will give representations to the Lender, covering matters such as:
- (a) legal nature of Borrower (including its status as a social enterprise);
  - (b) legal validity of the finance documents;
  - (c) no conflict with laws, constitutional documents (i.e. memorandum and articles of association, certificate of incorporation and certificate(s) of incorporation on change of name (if any)) or other documents;
  - (d) power and authority to enter into loan agreement and perform obligations;
  - (e) authorisations required for validity and admissibility in evidence in full force and effect;
  - (f) no failure to comply with this agreement (or event which could potentially become a failure to comply with the agreement e.g. with the expiry of a grace period);
  - (g) no misleading information, basis of preparation of financial projections, basis and reasonableness of opinions and no misleading omissions [this representation will only be given on the date of the loan agreement and will not need to be repeated];
  - (h) accuracy of latest financial statements and no material adverse change since date of original financial statements provided to Lender;
  - (i) no undisclosed liabilities;
  - (j) no overdue tax liabilities;
  - (k) payment obligations under the finance documents rank *pari passu* (i.e. equally) with all other unsecured debt of the Borrower; and
  - (l) no material litigation, arbitration or administrative proceedings pending or threatened.

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Unless stated otherwise, representations must be repeated on the date of each request for a loan from the Borrower and on each Interest Payment Date.

- 27. Keeping the Lender informed – financial and general:** The Borrower shall be required to provide certain information and documents to the Lender, including:
- (a) providing to the Lender financial statements as follows:
    - (i) as soon as they become available but in any event within [180] days of the end of each of its financial years, the Borrower's audited consolidated financial statements [together with those of the Guarantor];
    - (ii) as soon as they become available but in any event within [120] days of the end of each of its financial half years, the Borrower's consolidated financial statements [together with those of the Guarantor];
  - (b) with each set of consolidated financial statements, providing a compliance certificate<sup>19</sup> signed by two directors of the Borrower;
  - (c) all financial reporting to be on the basis of agreed accounting principles consistently applied;
  - (d) providing all documents sent by the Borrower to its shareholders (or any class) or its creditors (or any class) generally;
  - (e) details of any material litigation, arbitration or administrative proceedings;
  - (f) such other information regarding the financial condition, business and operations of any member of the Group as the Lender may reasonably request;
  - (g) notification of default;
  - (h) information required to satisfy all customer due diligence checks; and

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<sup>19</sup> The compliance certificate shall contain details/calculations of the financial covenants contemplated on paragraph 7 below.

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- (i) [other?].<sup>20</sup>
28. **Keeping the Lender informed – social impact measurement:** The Borrower shall be required to provide certain information to the Lender in respect of its Social Objects, including:
- (a) providing to the Lender an updated [quarterly] progress report setting out key matters in the format reasonably required by the Lender [and provided by the independent social metric measurement auditors, and agreed to by the Borrower (such agreement not to be unreasonably withheld)];
  - (b) delivery of a budget [and updated financial model] every year<sup>21</sup>;
  - (c) such other information regarding the Social Objects of the Borrower as the Lender may reasonably request in writing;
  - (d) regular meetings [no more than on a monthly basis] between the Borrower's senior management and the Lender; and
  - (e) site visits by the Lender to be permitted upon reasonable notice.
29. **[Financial status requirements:** The financial status of the Borrower [and the Guarantor] must meet the following requirements:
- (a) **[Consolidated [tangible] net worth:** consolidated [tangible] net worth (i.e. total tangible assets minus total liabilities) must not be at any time less than £[ ]. (Tangible assets are assets which are capable of being given a monetary value.)]
  - (b) **[Gearing:** consolidated total [net] borrowings must not exceed [ ]% of consolidated [tangible] net worth at [any time]/[the end of each measurement period].]
  - (c) **[Leverage:** consolidated total [net] borrowings must not, at the end of each measurement period, exceed [ ] times adjusted consolidated EBITDA (i.e. profit or earnings before interest, tax,

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<sup>20</sup> Consider what additional information may be appropriate.

<sup>21</sup> Consider whether Lender should have rights to approve the annual budget.

depreciation and amortisation) for that measurement period.]

- (d) [**Interest cover:** the ratio of consolidated [EBIT] (i.e. profit or earnings before interest and taxation)/[EBITDA] to consolidated [net] finance costs must not be less than [ ] to 1 at the end of each measurement period.]]<sup>22</sup>

### 30. General requirements:

The Borrower[, the Guarantor] and, where appropriate, all Group members shall be required to comply with certain requirements, including:

- (a) authorisations needed to allow it to perform its obligations and to ensure legal validity of finance documents obtained and maintained in full force and effect (i.e. board resolutions, shareholder resolutions if any and director's certificates);
- (b) compliance with laws and regulations;
- (c) equal ranking of obligations under the finance documents with all other unsecured, unsubordinated obligations;
- (d) restrictions on creation of security and/or quasi-security (subject to agreed exceptions);
- (e) restriction on disposals of assets (subject to agreed exceptions);
- (f) restriction on taking on financial indebtedness of Group members (subject to agreed exceptions);
- (g) restrictions on making loans, guarantees or other advances of credit to third parties;
- (h) prohibition on mergers (subject to agreed exceptions);
- (i) no change of business;
- (j) restrictions on acquisitions of assets and businesses (subject to agreed exceptions);
- (k) compliance with applicable environmental laws and licences;

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To be considered on a case by case basis; these are included for illustration purposes.

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- (l) maintenance of appropriate insurance;
- (m) conduct of Borrower's business to be on arm's length terms;
- (n) restriction on changes to constitutional documents that would change or alter the Social Objects or any provisions relating to the protection of the [social mission, impact performance and distribution of financial value] in accordance with the Social Objects;
- (o) use of loans under the Facility not to be applied for any illegal purpose (including breach of any applicable sanctions/ legislation by the Office of Foreign Asset Control of the US Department of Treasury) and/or improper purpose;
- (p) restriction on distributions and/or other payments to shareholders so as to reflect the Social Objects;
- (q) controls on payments to its officers and employees;
- (r) [specific key management to remain involved in full time management of the Borrower;]<sup>23</sup>
- (s) maintenance of adequate and proper records; and
- (t) maintenance of effective governance arrangements.

**31. [Lender's right to nominate a director/board observer:]<sup>24</sup>** The Lender may nominate one person to be a director of the Borrower or otherwise the Borrower must allow a nominee of the Lender to act as an observer at board meetings of the Borrower.

**32. Failing to comply with the agreement:** If certain events happen, the Lender may end the Facility immediately and demand that the Borrower must immediately repay the full amount owing under the Facility together with all interest and any other amounts owing.

These will include:

- (a) failing to pay: if the Borrower or the Guarantor fails to pay any amount due under this Facility on the due date (or, if the non-payment is because of a

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<sup>23</sup> Include where appropriate.

<sup>24</sup> Include where appropriate.

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- technical or administrative mistake, within [three] business days of the due date);
- (b) failing to comply with the financial status requirements;
  - (c) failing to comply with other terms of the finance documents (with, where appropriate, a [14] day grace period for failures which can be fixed);
  - (d) if any representation made or acknowledged is incorrect or false in any way or turns out to be incorrect or false (with, where appropriate, a [14] day grace period if circumstances leading to the misrepresentation can be fixed);
  - (e) if the Borrower or the Guarantor fails to pay any of its other debts when due (subject to an agreed minimum level);
  - (f) insolvency events, insolvency proceedings, creditors' process and related matters (e.g. if (i) anyone takes action to wind up or (ii) a receiver is appointed in respect of the Borrower, the Guarantor or any related company etc.);
  - (g) any Obligor ceasing business operations or trading;
  - (h) [the Guarantor no longer being a [wholly-owned] subsidiary of the Borrower;]
  - (i) change of control of the Borrower;
  - (j) [removal without good cause of any person nominated as director or board observer by the Lender],<sup>25</sup>
  - (k) any term or condition of a finance document is or becomes unlawful or cannot be enforced or is ineffective;
  - (l) if the Borrower or the Guarantor refuses to accept or rejects any term or condition of the finance documents;
  - (m) material adverse change in: the business, prospects or financial condition of any member of the Group

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<sup>25</sup> Include if paragraph 31 is included.

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or the Group as a whole; the ability of any Obligor to perform its obligations under the finance documents; the validity or enforceability of any finance document; or any right or remedy of the Lender in respect of a finance document;

- (n) the Borrower no longer carrying on social impact business in accordance with the Social Objects; and
- (o) the Borrower acting in breach of the Social Objects as specified in its [articles of association].

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## MISCELLANEOUS

- 33. Documentation:** The loan agreement:
- (a) will set out terms usual for this type of financing including (but not limited to) any referred to in this summary of key terms; and
  - (b) must be satisfactory to all parties.
- 34. Assignment of rights and transfer of rights and obligations to a third party by the Lender:** The Lender may assign any of its rights or transfer by novation any of its rights and obligations to any third party person or business.
- The prior written consent of the Borrower will be needed (which must not be unreasonably withheld or delayed and will be considered to be given if not expressly refused within five business days) unless:
- (a) the assignment or transfer is to a person or business connected with the Lender; or
  - (b) is made at a time when the Borrower has failed to comply with the agreement and has not fixed this failure.
- The Lender may disclose information to potential transferees if appropriate confidentiality agreements are entered into.
- 35. Transferring rights to a third party by the Borrower:** The Borrower may only assign any of its rights or transfer any of its rights and obligations to a third party if the Lender has given its prior written consent.
- 36. Taxes:** All payments by the Borrower must be made without deduction or withholding for any tax. The Borrower will be required to make additional payments to compensate the Lender for withholding taxes or similar deductions that reduce the amounts actually received by the Lender such that the Lender receives the full amount that it would have received but for such deduction. Standard indemnity and tax credit provisions will apply.
- Stamp taxes and VAT payable in connection with the finance documents are for the account of the Borrower.
- 37. Costs and expenses:** [The Borrower will cover all reasonable legal and other expenses the Lender has to pay in connection with:

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negotiating, preparing, printing, entering into and making any changes to any finance document, whether or not the loan agreement is signed<sup>26</sup>; and

enforcing or preserving its rights under any finance document.]<sup>27</sup>

- 38. Changes and deciding not to take action:** The finance documents may be amended or waived with the agreement of the Borrower and the Lender.
- 39. Governing law:** The loan agreement and any matters relating to it are governed by English law.
- 40. Jurisdiction:** Any dispute including a dispute on matters relating to any finance document will be dealt with by the English courts.

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<sup>26</sup> These costs and fees (if applicable – see below footnote) are usually applied on the Borrower’s loan account.  
<sup>27</sup> Assumption is that pro-bono or reduced fee arrangements will be sought where appropriate.

