**ENVIRONMENTAL, SOCIAL AND GOVERNANCE[[1]](#footnote-2) INFORMATION COVENANT PACKAGE**

1. Introduction

This ESG Covenant Package has been produced in response to demand from participants in the syndicated lending market to provide suggested drafting for ESG information covenant provisions for use alongside LMA recommended form facility documents, regardless of whether a transaction is aligned to the Green Loan Principles or the Social Loan Principles.

This initiative has two main aims:-

1. to greater unify ESG data collection by providing a consistent set of requirements as “best practice” for borrowers when reporting to lenders in respect of ESG matters; and
2. facilitating lenders’ compliance with their increasing ESG disclosure obligations under applicable European Union and/or United Kingdom law and regulations and, where relevant, lenders’ compliance with their own net zero targets and investor demand.

The ESG Covenant Package is intended to be provided and considered as part of the term sheet negotiation stage between the relevant parties, in order to facilitate discussion on ESG reporting obligations under the finance documents.

For the avoidance of doubt, this document is in a non-binding form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves as to the regulatory implications of its use.

1. KEY WORKING ASSUMPTIONS:
   1. Assumptions with respect to Origination Stage Due Diligence

It is assumed that ESG due diligence and assessment will be carried out prior to financial close, with any Environmental and Social Action Plan (if any will be applicable as at financial close) to be provided at this time. Parties should also agree the form of Environmental and Social Monitoring Report.

* 1. Assumptions with respect to the provisions in the ESG Covenant Package

1. Terms defined in the definitions section of the ESG Covenant Package below have the same meaning when used in this note. Defined terms in square brackets have not been defined in this note or the ESG Covenant Package and need to be aligned with the drafting of the relevant facilities agreement (“**FA**”) for the relevant transaction.
2. The ESG Covenant Package primarily focuses on ESG reporting obligations. The reporting obligations of the [Borrower] in relation to ESG will consist of:
3. the Environmental and Social Monitoring Report; and
4. ad hoc reporting in respect to certain issues.
5. To ensure consistency across all EU and UK projects, the ESG Covenant Package is primarily based on the requirements of Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability‐related disclosures in the financial services sector (the "**SFDR**"). There are two versions of the Environmental and Social Monitoring Report:
6. Version 1 of the Environmental and Social Monitoring Report is based on (A) the indicators used for making principal adverse sustainability impacts ("**PASI"**) statements as set out in Table 1 of the Final Report on draft Regulatory Technical Standards dated 2 February 2021 (the "**RTS**") and (B) the Task Force on Climate-Related Financial Disclosures ("**TCFD**") along with (C) certain other key ESG Policies, Health & Safety and ESG Incident Monitoring information required by lenders. The intention is that this would apply to all financial market participants (defined under the SFDR).
7. Version 2 of the Environmental and Social Monitoring Report is broader and contains not only the elements in Version 1 described above, but also (A) the additional indicators in Tables 2 and 3 of the RTS, which are optional indicators. The intention is a lender would decide which optional indicator(s) from Tables 2 and 3 of the RTS that it wishes to report against, which would apply to the relevant [Project[[2]](#footnote-3)] /[Borrower], and amend Version 2 accordingly.
8. The Environmental and Social Action Plan is comprised of (A) policies referred to in the Environmental and Social Monitoring Report that are delivered together with the Environmental and Social Monitoring Report and (B) policies required to satisfy the requirements of applicable planning approval.
9. Other controls that complement ESG reporting obligations in the ESG Covenant Package, to be considered for incorporation into the relevant framework include the following:
10. Conditions precedent to financial close to include any ESG due diligence and assessments carried out prior to financial close, and policies and procedures in place at close which would form part of the Environmental and Social Action Plan and the EU Taxonomy Confirmation or other whole lifecycle carbon analysis as required by the [Lenders].
11. The following representations relating to the various ESG issues and concepts and the possibility of expanding existing connected representations in the FA framework to include the same:
12. The accuracy, etc. of ESG due diligence and assessments carried out prior to financial close. Potentially covered by "No Misleading Information"-type representations.
13. The [Borrower]’s compliance with Environmental and Social Standards and the Environmental and Social Action Plan. Potentially covered by no breach of law-type representations.
14. The [Borrower]’s business, operations, assets and other facilities are in compliance with Environmental and Social Matters. Potentially covered by no breach of law-type representations.
15. All required consents/authorisations relating to ESG have been obtained. Potentially covered by representations relation to obtaining project authorisations.
16. No Environmental and Social Claim has been commenced or threatened. Potentially covered by no litigation-type representations.
17. An undertaking ensuring that the [Project] is constructed and operated in accordance with, among other things, Environmental and Social Standards and the Environmental and Social Action Plan. Typical undertakings to providing for the [Project] to be constructed and operated in accordance with good industry practice, applicable laws, transaction documents, etc. can be expanded to include this.
18. An undertaking providing for the finance parties and any ESG advisor[[3]](#footnote-4) to attend meetings on the project, raise queries on the same and have access to the [Project] for the purposes of monitoring compliance with Environmental and Social Standards and the Environmental and Social Action Plan, among other things. Typical undertakings providing for access to the [Project] can be expanded to include this.
19. The requirements to disclose information in relation to Regulation (EU) 2020/852 (Taxonomy) on the establishment of a framework to facilitate sustainable investment (EU Taxonomy) is included in the Environmental and Social Report in brief form only.
20. The lenders’ technical advisor[[4]](#footnote-5) will also perform any ESG advisory function on behalf of the lenders. Should the ESG advisory function be performed by a separate entity from the lenders’ technical advisor, lenders should consider including obligations on the Borrower to procure periodic reporting by such separate entity.
21. Treatment of any failure to comply with the ESG reporting obligations in the ESG Covenant Package is not intended (on its own) to be a specific event of default but to be treated the same as any other reporting requirement such as Financial Statements.
22. Any disputes in relation to ESG will be resolved using the existing dispute resolution procedures in the relevant framework.
23. Qualifying ESG-related obligations and controls (e.g. with materiality, reasonableness, thresholds, etc.) is customarily a commercial discussion, with parties taking into account the specific requirements of the [Project] and applicable law and regulation.
24. ESG COVENANT PACKAGE

***IMPORTANT NOTICE:***

*For the avoidance of doubt, this document is in a non-binding, recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.*

**1. [[Borrower]’s reporting]**

1. As soon as available but, in any event, within [60] days after the end of each of its financial years, the [Borrower] must deliver to the [Agent] an Environmental and Social Monitoring Report for such financial year, together with all supporting documentation referred to in such Environmental and Social Monitoring Report[[5]](#footnote-6).
2. The first year the [Borrower] is required to deliver the Environmental and Social Monitoring Report is the financial year ending [March 2023], for all data except Scope 3 Carbon Emissions, with Scope 3 Carbon Emissions data to be included from [March 2025].

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| Note that [60] days is in square brackets and longer time periods may be agreed between the Borrower and the lender / lender group. Given it is likely that data collection will become more efficient over time, there could be acknowledgement that the Borrower and Agent may later agree shorter time periods for certain data (e.g. monthly collection of carbon emissions data) enabling lenders to report accurately in the correct period under their own disclosure regulations. |

**[Periodical audit right]**

1. Every [three] years from the [Practical Completion], the [Agent] shall have the right (if so instructed by the [Majority Lenders]) to require the [Borrower] to, at its own expense, procure that:
2. an environmental and social audit of the data provided in the Environmental and Social Report(s) (excluding Scope 3 Carbon Emissions data) and the associated Environmental and Social Action Plan(s) for the [Project] be carried out by the [Lenders’ Technical Advisor]; and
3. the results of such audit be submitted to the [Agent].

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| The above clause to be used where there is no external verification of data provided by the Borrower, by way of audit by accounting firms, lender’s technical advisor or a second party opinion provider.  TBD if there should be an obligation following an audit to amend the Environmental and Social Monitoring Report as necessary. |

**[Ad hoc reporting]**

1. The [Borrower] must, promptly upon becoming aware, notify the [Agent] of:
2. details of any breach or potential breach of any of the Environmental and Social Standards;
3. within [ ] Business Days after becoming aware of a material breach of an Environmental and Social Standard, details of the Environmental and Social Remedial Plan;
4. any Environmental and Social Claim which is current, or to its knowledge, pending or threatened against it or any [Major Project Party] or in relation to the [Project];
5. any circumstances reasonably likely to result in an Environmental and Social Claim;
6. any suspension, revocation or modification of any Environmental and Social Approval; or
7. any Environmental and Social Claims, major incidents or force majeure events affecting the [Project] generally,

and where an event or circumstance notified pursuant to paragraphs ‎(c)‎(i) to ‎(c)‎(vi) above is a required disclosure item under the Environmental and Social Monitoring Report, the [Borrower] must ensure that such event or circumstance is included in the Environmental and Social Monitoring Report for the relevant period.

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| The above clause to be used in circumstances where there are strict legal standards that apply for certain assets such as conditions to planning approvals, discharges or emissions (e.g. wastewater treatment plant water quality standards and / or for construction assets adjacent to biodiversity-sensitive areas). |

**[Catch-All]**

1. The [Borrower] shall furnish promptly to the [Agent] such information as the [Finance Parties] may from time to time reasonably require with respect to Environmental and Social Matters.

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| This may only be needed to the extent the Ad hoc reporting is not required by the lenders and the lenders do not have the ability to request for more information by another mechanism in the Finance Documents. It is anticipated that lenders will have rights to request information required by the [Agent] to verify the contents of the Environmental and Social Monitoring Report. |

**[Environmental and Social Action Plan]**

1. The [Borrower] shall diligently implement and adhere to the Environmental and Social Action Plan and monitor the implementation of the Environmental and Social Action Plan.

**[Environmental and Social Monitoring Report]**

1. The [Borrower] shall not amend or replace any of the Restricted Policies in any materially adverse manner or the form of the Environmental and Social Monitoring Report without the consent of the [Agent]. The details of any amendments to the Restricted Policies shall be shared with the Agent upon delivery of the completed Environmental and Social Monitoring Report, outlining the reasons for the amendments and the latest version of the relevant Restricted Policies.

**Definitions**

"**Environment**" means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
3. land (including, without limitation, land under water).

"**Environmental and Social Action Plan**" means:

1. Restricted Policies;
2. [*insert any policies that are determined to be conditions precedent following due diligence, including any policies that have been implemented in order to satisfy planning approvals.*]; and
3. any other then applicable policies provided by the [Borrower] to the [Agent] as supporting documentation referred to in any Environmental and Social Monitoring Report delivered pursuant to paragraph ‎(a) of Clause [ ].

"**Environmental and Social Approval**" means any [Authorisations] required under any relevant Environmental and Social Law for the construction, development and operation of the [Project] by the [Borrower].

"**Environmental and Social Claim**" means any claim, proceeding, formal notice or investigation by a person in respect of an Environmental and Social Law or an environmental and social agreement between the [Borrower] and another person.

"**Environmental and Social Law**" means any applicable law or regulation which relates to:

(a) pollution or protection of the Environment, including related laws or regulations relating to participation in decision-making;

(b) labour and employment conditions;

(c) occupational health and safety; and

(d) public health, safety and security; and

(e) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste.

"**Environmental and Social Matter**" means any matter that is the subject of any Environmental and Social Laws, any Environmental and Social Standards, the Environmental and Social Claims or the Environmental and Social Action Plan.

"**Environmental and Social Monitoring Report**" means an environmental and social monitoring report satisfactory to each [Lender] and prepared on behalf of the [Borrower], and at the cost of the [Borrower] in the form set out in ‎Schedule [ ] (*Form of Environmental and Social Monitoring Report*).

"**Environmental and Social Remedial Plan**" means, where required to remedy a breach of any of the Environmental and Social Standards, a remedial plan prepared by the [Borrower], acceptable to the [Lenders’ Technical Advisor] and (where relevant) agreed with the relevant [Material Project Party] to remedy such breach.

"**Environmental and Social Standard**" means:

(a) any Environmental and Social Approval;

(b) any Environmental and Social Law; and

(c) any other standard or guideline as the [Agent] and the [Borrower] may from time to time agree,

in each case as relevant to the [Borrower] or the [Project].

"**Restricted Policies**" means:

(a) [*insert specific policies (whether or not as a result of a fund objective) that the lenders have identified as requiring their consent for any amendments*]; and

(b) [*insert relevant carbon reduction policies*] and any other carbon reduction policies applying to the [Borrower] or the [Project] from time to time.

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| This definition identifies the relevant policies that require consent by the lenders for any amendment or replacement. These policies will include those that enable debt to be placed into Article 8 or Article 9 funds and, given their importance, all carbon reduction policies applying to the [Borrower] or the [Project]. |

schedule [ ]  
Form of Environmental and Social Monitoring Report

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| **Appropriate form of report (i.e. either version 1 or version 2 with relevant amendments) to be appended.** |

1. ESG. [↑](#footnote-ref-2)
2. Project which could also be a Green Project or Social Project as defined in the Green Loan Principles and Social Loan Principles respectively. The principles set out herein are not intended to capture drafting required to categorise projects as either of a Green Project or Social Project but are limited to data reporting as required under EU and UK disclosure obligations. [↑](#footnote-ref-3)
3. This is the Borrower's representative, who looks after ESG matters. [↑](#footnote-ref-4)
4. This could also be the social loan co-ordinator (as agent for the lender on these matters). [↑](#footnote-ref-5)
5. Lenders may want two Directors of the Borrower sign the Environmental and Social Monitoring Report (or a form of Compliance Certificate related to the report) stating its accuracy in all material respects and in relation to the calculation of the indicators. [↑](#footnote-ref-6)