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**HM TREASURY
CREDIT GUARANTEE FACILITY PROGRAMME**

**COMMENTARY ON THE STANDARD PUBLIC SECTOR PFI/PPP LOAN
FACILITY TERM SHEET AND THE INDICATIVE GUARANTEE
FACILITIES TERM SHEET**

General Comments on the Standard Public Sector PFI/PPP Loan Facility Term Sheet

This term sheet (the “**PSLFA Term Sheet**”) sets out the principal terms for inclusion in the Public Sector Loan Facilities Agreement (the “**PSLFA**” - see comments to paragraph 1.1) to be entered into by the Public Sector Finance Provider. HMT intends to develop a full form PSLFA on the basis of the PSLFA Term Sheet. The PSLFA Term Sheet has been based on recent PFI/PPP precedents but is, in any event, intended to be a term sheet for a straightforward loan agreement. It is not intended that the PSLFA should contain a “usual” project finance covenant package save where indicated (e.g. for policy reasons, it is important that the purposes for which the Public Sector Loan Facilities will be applied are agreed by the Public Sector Finance Provider prior to financial close).

The PSLFA Term Sheet should be read in conjunction with the term sheet (the “**GFA Term Sheet**”) for the Guarantee Facilities Agreement (the “**GFA**”); the availability of the Public Sector Loan Facilities under the PSLFA is predicated on receipt of appropriate Finance Guarantee(s) from the Finance Guarantor(s) under the terms of the GFA. Accordingly, the GFA Term Sheet, in certain respects, will need to mirror the provisions in the PSLFA Term Sheet (e.g. utilisation and issue mechanics).

It is envisaged that separate GFA Term Sheets could be required where (i) banks and financial institutions and (ii) monoline insurance/assurance companies provide the Finance Guarantee(s).

However, whilst the PSLFA Term Sheet is intended to prescribe the terms of the PSLFA, the GFA Term Sheet is indicative only (other than in respect of the terms of the actual Finance Guarantee(s)) and HMT intends that the GFA Term Sheet (and the GFA itself) should be negotiated between the Obligor and the Senior Facilities Providers in such form as they consider most appropriate. HMT are currently considering approval rights in relation to the final form of the GFA. HMT does not intend to require the right to approve commercial terms agreed between the Obligor and the Senior Facilities Providers but is concerned to ensure that the final form of the GFA complies with prevailing HMT policy and that the interests of the Public Sector Finance Provider under the Public Sector Finance Documents is not prejudiced.

HMT’s principal aim in developing the PSLFA Term Sheet (and the indicative GFA Term Sheet) has been to provide the legal framework and mechanics to implement the CGF Programme in the most straightforward and time and cost efficient manner; it is not intended to alter the current risk allocation between PFI/PPP borrowers and their senior facilities providers nor is it intended to affect the negotiating position of the respective parties. The CGF Programme is intended to replace bank and/or bond funding sources with government funding but it is not intended that HMT (or any Public Sector Finance Provider) should assume any project risk as such government funding will be covered by an appropriate financial guarantee provided by a person or persons acceptable to HMT. It is intended that the guarantors will assume project risk in much the same way as banks, monolines and bond investors assume project risk in the current PFI/PPP market.

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HMT acknowledges that elements of current PFI/PPP bank funding and monoline-wrapped bond debt have parallels with the CGF Programme. Although HMT does not intend to alter or affect current PFI/PPP risk allocation through the CGF Programme (see above), it is not generally intended to prefer a single precedent (or combination of precedents) and the CGF Programme will be developed to suit the HMT's requirements. HMT does intend, for projects where a monoline insurance/assurance company provides the Finance Guarantee(s), that there should be compliance with the terms set out in the PSLFA Term Sheet; it is further anticipated that the Finance Guarantee(s) would reflect a degree of standardisation (particularly for "boilerplate" terms) that is consistent with the terms currently offered by monoline insurance/assurance companies in the PFI/PPP market.

Cross-references refer to paragraphs in the PSLFA Term Sheet unless otherwise indicated.

A. STANDARD PUBLIC SECTOR PFI/PPP LOAN FACILITY TERM SHEET		
Important Notice		No representation or warranty, whether express or implied, is given by the Public Sector Finance Provider (or any other Government body) in respect of the PSLFA Term Sheet or any documents accompanying the PSLFA Term Sheet.
1	Parties	
1.1	Parties to the Public Sector Loan Facilities Agreement	The PSLFA will be the principal agreement between the Borrower (see paragraph 1.2) and the Public Sector Finance Provider (see paragraph 1.5) which will set out the terms upon which the Public Sector Loan Facilities (see paragraph 4) will be made available to the Borrower. The other principal Finance Documents are listed in Part 2 of Schedule 2; the list is intended to be indicative (but not prescriptive) of the suite of PFI/PPP Finance Documents that the Public Sector Finance Provider would expect to see. The "Public Sector Finance Documents" (i.e. those documents to which the Public Sector Finance Provider will be a party) will comprise a sub-set of "Finance Documents"
1.2	Borrower	The company awarded the Concession Agreement by the Authority will usually be a special purpose company formed for the purpose by its shareholders; this does not preclude other structures from falling within the ambit of the CGF Programme.
1.3	Holding Company	A special purpose holding company usually formed for the purpose of enabling the ultimate shareholders to create security over the shares of the Borrower in favour of the senior facility providers. A holding company is not required for the CGF Programme (but may be required by the Shareholders and/or Senior Facilities Providers).
1.4	Shareholders	-
1.5	Public Sector Finance Provider	For the pilot programme, the Public Sector Loan Facilities will be provided by the relevant sponsoring department. The identity of the Public Sector Finance Provider will be further considered during the implementation of the pilot programme and if the CGF Programme is implemented, HMT may provide the Public Sector Loan Facilities itself.

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1.6	Public Sector Facility Agent	<p>It is intended that there will be a separate Public Sector Facility Agent to administer the Public Sector Loan Facilities on behalf of the Public Sector Finance Provider. A significant aspect of the typical project finance facility agency functions such as project monitoring and cash handling functions will reside with the Guarantee Facilities Agent and not the Public Sector Loan Facilities Agent.</p> <p>HMT are considering a number of options for this role, including a centralised agency or potentially sourcing this role from the private sector if the CGF programme is implemented.</p>
1.7	Finance Guarantor	<p>It is intended that a single Finance Guarantee will be issued in respect of advances provided under each of the Public Sector Loan Facilities made available by the Public Sector Finance Provider (e.g. a Finance Guarantee for the Public Sector Term Loan Facility and a Finance Guarantee for the Public Sector Standby Loan Facility).</p> <p>The Finance Guarantee would be issued by either a syndicate of banks and/or financial institutions or a monoline insurance/assurance company which will need to meet minimum criteria in order to be acceptable finance guarantors to HMT. HMT will prescribe the minimum business criteria requirements and counterparty limits.</p>
1.8	Account Bank	<p>The Public Sector Finance Provider will not have the capability or resource to act as Account Bank; accordingly, this role must be sourced by the private sector - to be determined by the Borrower and the Senior Facilities Providers.</p>
1.9	[Working Capital Bank[s]]	<p>The Public Sector Finance Provider will not have the capability or resource to act as Working Capital Bank (if there is a requirement for working capital facilities); accordingly, this role must be sourced by the private sector - if there is a requirement, this is to be determined by the Borrower and the Senior Facilities Providers.</p> <p>If there is no working capital requirement, then references to [Working Capital Bank] and [Working Capital Facility] shall be deleted from both the PSLFA Term Sheet and the GFA Term Sheet.</p>
1.10	Senior Facilities Providers	<p>The generic term for the providers of the facilities under the GFA and could include the Finance Guarantors, any indemnifying banks (if a fronting bank is used) and any Working Capital Bank (see comment to paragraph 1.9).</p>
1.11	Finance Parties	<p>This definition brings together those parties for whom the Security Trustee will hold the benefit of the security in accordance with the terms of the Intercreditor Agreement and Trust Deed. See paragraph 16 (Security Package).</p>
1.12	Security Trustee	<p>To be selected by the Borrower and the Senior Facilities Providers.</p>
1.13	Authority	<p>-</p>
2	Project	<p>Details to be inserted for the relevant PFI/PPP Project.</p>
3	Defined Terms	<p>-</p>

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4	Public Sector Loan Facilit[y/ies]	<p>The Public Sector Finance Provider may offer to make available, as required by the [Finance Plan/Financial Model] for the Project, a term loan facility and a standby loan facility.</p> <p>It is considered that any standby loan facility would principally cover any financing requirement agreed between the Borrower and the Authority under the Concession Agreement. HMT intends that such a requirement should be a matter for negotiation between the Authority and the Borrower; [the size of any standby loan facility will be determined by [the cash flow model] and [the finance plan]].</p> <p>The Public Sector Finance Provider will not make available any working capital facilities (see comment to paragraph 1.9).</p> <p>Other facility requirements to be considered by HMT on a project-by-project basis.</p>
5	Purpose[s]	<p>HMT will require that the Public Sector Finance Provider pre-agrees the purposes for which the Public Sector Loan Facilities may be applied as a condition to financial close. See also paragraph 8.1 and comment at paragraph 8.2(ii).</p> <p>Similar to a conventionally financed PFI project, the Public Sector Finance Provider will, [, on the basis of prior approval of [the Finance Plan/Financial Model] agree to fund project costs, including development costs, costs incurred under the relevant construction contract(s) and financing costs incurred during construction (including the funding of the Guarantee Fee under the GFA). The Public Sector Finance Provider will also fund the DSRA but HMT does not intend to prescribe when and how the DSRA should be funded - this is a matter for negotiation between the Borrower and the Senior Facilities Providers in achieving best value for money terms and pricing.</p>
6	Availability Period	-
7	Utilisation	HMT intends the utilisation mechanics to replicate a normal commercial loan facility.
8	Conditions Precedent	
8.1	Conditions Precedent to First Utilisation	<p>In due course HMT will develop criteria to determine whether a Project is suitable for the CGF Programme or not. However, in any event, HMT will rely on the GFA (and the issue of Financial Guarantees thereunder) in form and substance satisfactory to the Public Sector Finance Provider.</p> <p>See also comment to paragraph 5.</p>
8.2	Conditions Precedent to Each Utilisation	<p>(i) The intention is to replicate usual utilisation mechanics for a loan facility. Defaults and representations are restricted to those set out in the PSLFA - it is not intended to cross-refer to defaults and/or representations under the GFA as the Public Sector Finance Provider will rely on the issue of the Finance Guarantee (or Confirm).</p>

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		(ii) It is not intended that the Public Sector Facility Agent will monitor the application of proceeds; this should be monitored by the Guarantee Facilities Agent as a condition precedent to issue of the Finance Guarantee (or Confirm) under the GFA. HMT will not, however, prescribe the level of monitoring by the Guarantee Facilities Agent (that is a matter to be negotiated by the Borrower and the Senior Facilities Providers) but will rely on the satisfaction of conditions precedent to issue of the Finance Guarantee/Confirm under the GFA.
9	Repayment and Prepayment	
9.1	Repayment	As per current PFI financings, the repayment profile will be derived from the agreed financial model.
9.2	Voluntary Prepayment	There should be no entitlement to prepay prior to Completion unless Completion would not be prejudiced; thereafter, HMT has no specific conditions (though refinancings as contemplated in the SoPC will be restricted) but this does not preclude the Senior Facilities Providers under the GFA from requiring conditions on prepayment - see also paragraph 9.2 of the GFA Term Sheet.
9.3	Mandatory Prepayment	HMT would expect the Public Sector Loan Facilities to be prepaid if, for example, compensation was received by the Borrower from the Authority under the Concession Agreement in respect of termination or if, having satisfied any economic reinstatement test, the Borrower receives the proceeds of any physical damage insurance.
9.4	Final Maturity Date	The term of the Public Sector Loan Facilities will be market-related, subject to availability of the Guarantee Facilities.
10	Cancellation	HMT's principal concern is to ensure that the Borrower has sufficient available funds to complete the Project.
11	Interest, Margins and Fees	
11.1	Interest Periods	Expected to be in line with conventional PFI bank/bond financings.
11.2	Interest Rate	See paragraphs 7.4 and 7.5 of HMT's CGF Technical Note 1.
11.3	Margin	HMT has considered whether any State aid issues arise and is satisfied, on the basis that the offered interest rate will be on market-based terms (and any benefit of funding through the CGF Programme will be retained by HMT) that any State aid issues arising are capable of satisfactory resolution. See also paragraph 12 of HMT's CGF Technical Note 1.
11.4	Commitment Fee	To be determined.
11.5	Front End Fees	To be determined.

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12	Representations and Warranties	As the principal recourse is to the Finance Guarantee(s), the Public Sector Finance Provider's principal concern is to ensure that the underlying obligations guaranteed by the Finance Guarantee are enforceable; extensive "project-style" representations are not sought.
13	Undertakings	<p>As the principal resource is to the Finance Guarantee(s), the Public Sector Finance Provider's principal concern is to ensure that the underlying obligations guaranteed by the Finance Guarantee are preserved and that the security package (including, principally, the Finance Guarantee(s)) is not prejudiced. Accordingly, breach of negative undertakings 1 and 2 are identified as Events of Default (see paragraph 4 of Schedule 6). In addition, other undertakings that could trigger an Event of Default are breach of the purpose clause and breach of the mandatory prepayment provisions.</p> <p>Breach of other undertakings will trigger lock-up of distributions (see also paragraph 14.3) on the basis that the Borrower should be appropriately incentivised to comply with its undertakings but breach should not trigger an Event of Default (for so long as the Finance Guarantee(s) remain in place and there are no breaches thereunder).</p> <p>Certain undertakings are included as a matter of policy (e.g. filing of tax returns).</p>
14	Defaults and Remedies	
14.1	Events of Default	<p>The Events of Default have been limited on the basis that the principal recourse is to the Finance Guarantee(s); accordingly, the Public Sector Finance Provider's principal concerns are:</p> <ul style="list-style-type: none"> (i) matters affecting the Finance Guarantee(s) (Events of Default 1 and 2), (ii) matters affecting the Borrower (e.g. as to capacity, enforceability etc.) and/or the contract structure (Events of Default 3 and 4), and (iii) termination of the Project or the Borrower's participation in the Project (Events of Default 5 and 6). <p>No cross-default is sought (i.e. under the GFA) or any event related to the performance of the Borrower (other than termination and insolvency); the Public Sector Finance Provider will rely on the covenant of the Finance Guarantor under the Finance Guarantee(s).</p>
14.2	Remedies following an Event of Default	Remedies usual for a loan facility agreement are proposed.
14.3	Lock-Up Conditions	To ensure compliance by the Borrower with its undertakings - see also comments on paragraph 13.

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14.4	Replacement of Finance Guarantor	<p>HMT are considering the practical consequences of the issue of a replacement guarantor, depending on the wider public sector concerns, and will consult internally and externally with the private sector.</p> <p>However, HMT does require, in circumstances where a Guarantee Trigger Event has occurred, an appropriate remedy. HMT considers that forfeiture of the outstanding Guarantee Fee during the period that a Guarantee Trigger Event subsists and liability for the cost of procuring a replacement guarantor is a proportionate remedy.</p>
15	Cashflows and Accounts	
15.1	Project Accounts	<p>HMT does not intend to prescribe the Project Accounts required by the Borrower; this is a matter for negotiation between the Borrower and the Senior Facilities Providers though clearly there will need to be a “proceeds account” (howsoever described) to receive the proceeds of utilisations under the Public Sector Loan Facilities Agreement.</p>
15.2	Available Cash Flow Priorities:	<p>The financing costs and financing principal under the GFA should be subordinated to financing costs and financing principal under the PSLFA in circumstances where a default has occurred under the Finance Guarantee(s).</p>
16	Security Package	<p>It is intended that the Public Sector Finance Provider should share in the security with the Senior Facility Providers; however, for so long as the Finance Guarantee(s) remain in place (and there are no defaults thereunder) it is intended that the Senior Facility Providers should have the controlling interest in the security. The Public Sector Finance Provider does not intend to participate in matters, for example, relating to the enforcement of security unless there has been a breach under the Finance Guarantee(s).</p>
17	Increased Costs	<p>HMT does not seek change of law protection for the Public Sector Finance Provider. However, HMT is reviewing other scenarios which could result in increased costs under CGF, including, for example, increased costs arising out of legislation or directives emanating from the EU.</p>
18	Transferability	-
19	Expenses	-
20	Governing Law	<p>HMT stipulates English law for the Finance Documents. See also paragraph 1.1 of HMT’s CGF Technical Note 1.</p>
21	Due Diligence	<p>See comments to paragraph 8.1 above.</p>
Sch 1 “Project Costs” GFA defined terms		<p>See paragraphs 5 and 8 above.</p>

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Sch 2 Part 1		The list of Project Documents is indicative only.
Sch 2 Part 2		The list of Finance Documents is indicative only.
Co-financiers' Agreement		These provisions could be contained in the Intercreditor Agreement but essentially relate to matters amongst the Finance Parties which do not necessitate the involvement of the Borrower, the Holding Company or the Shareholders.
Letter of Awareness		See the form of Letter of Awareness separately provided and paragraph [] of HMT's CGF Technical Note 1.
Sch 3		See comments to paragraph 16 above.
B. INDICATIVE GUARANTEE FACILITIES TERM SHEET FOR PFI/PPP PROJECTS		
	General	The GFA Term Sheet is intended for use by either banks/financial institutions and/or monoline insurance/assurance companies.
1	Parties	
1.1	Parties to the Guarantee Facilities Agreement	There may be other parties (e.g. other bank roles where a banking syndicate provides the Finance Guarantee(s))
4	Facilit[y/ies]	In respect of the Guarantee Facilities, these should mirror the Public Sector Loan Facilities; a Working Capital Facility may also need to be provided (see comment to paragraph 1.9 of the PSLFA Term Sheet).
5	Purpose[s]	It is assumed that the Senior Facility Providers will also wish to sign off on the underlying purposes for which the Public Sector Loan Facilities may be drawn.
6	Availability Period	The availability of the Guarantee Facilities should mirror that for the Public Sector Loan Facilities. The availability of the Working Capital Facility (if required) is a matter for agreement between the Borrower/Obligor and the Senior Facility Providers/Working Capital Bank.
7	Issue[/Utilisation]	
7.1	Issue of Finance Guarantees and Confirms	It is intended that a single guarantee is issued in respect of each Public Sector Loan Facility. The forms of the financial guarantee to be provided by the banks/financial institutions and the monoline insurance/ assurance companies are separately provided. The purpose of issuing "Confirms" in conjunction with a utilisation under a Public Sector Loan Facility is (a) to facilitate project-style monitoring of utilisations under the Public Sector Loan Facilities by the Senior Facility Providers and (b) to facilitate calculation of the Guarantee Fee at any time.

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7.2	Utilisation of the Working Capital Facility	The utilisation of the Working Capital Facility (if required) is a matter for agreement between the Borrower/Obligor and the Senior Facility Providers/Working Capital Bank.
8	Conditions Precedent	
8.1	Conditions Precedent to First Issue[/First Utilisation]	Other than as set out in the PSLFA Term Sheet, the Public Sector Finance Provider is principally concerned, as a condition precedent to first utilisation under the PSLFA, to ensure that the GFA is unconditional; it is not intended that the Public Sector Finance Provider will have any approval or consent rights over conditions precedent under the GFA other than where conditions precedent are specifically replicated in the PSLFA.
8.2	Conditions Precedent to Each Issue of a Guarantee	<p>These conditions precedent are indicative of how the mechanics for utilisation under the PSLFA could work in conjunction with the issue of Finance Guarantee(s) and/or Confirms under the GFA. It is envisaged that, in practice, utilisation under the Public Sector Loan Facilities and issue of the corresponding Finance Guarantee/Confirm will be simultaneous; however, from a documentary perspective, the Finance Guarantee/Confirm will need to be issued prior to utilisation. The Public Sector Finance Provider will give an undertaking to the Finance Guarantor(s) to advance funds if a Finance Guarantee/Confirm has been issued on the basis of an Issue Request properly made and conditions precedent satisfied – see paragraph 5 of Part 2 of Schedule 2.</p> <p>It is assumed that the Senior Facility Providers will negotiate appropriate conditions precedent to each issue of a Finance Guarantee/Confirm; although the Public Sector Finance Provider will, principally, rely on issue of the relevant Finance Guarantee/Confirm, the Public Sector Finance Provider will wish to know that the purpose clause has been complied with (see paragraph 8.2 of the PSLFA Term Sheet).</p>
8.3	[Conditions Precedent to Each Utilisation under the Working Capital Facility	The conditions precedent for utilisation of the Working Capital Facility (if required) are a matter for agreement between the Borrower/Obligor and the Senior Facility Providers/Working Capital Bank.
9	Obligor's Payment Obligations	
9.1	Counter-Indemnity by the Obligor	The terms upon which the Obligor will indemnify the Finance Guarantor for any claims under the Finance Guarantee(s) are for negotiation between the Obligor and the Finance Guarantor.
9.2	[Repayment of the Working Capital Facility	The terms suggested are indicative only – this is for agreement between the Borrower/Obligor and the Senior Facility Providers/Working Capital Bank.

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9.3	Mandatory Cash Collateral	The terms suggested are indicative only in scenarios where compensation/insurance proceeds have been received by the Borrower/Obligor but the Borrower/Obligor has not repaid the Public Sector Loan Facilities.
9.4	Cash Collateral in Non-Default Circumstances	The terms suggested are indicative only.
9.5	Voluntary Prepayment under the Public Sector Loan Facilities Agreement	The Senior Facility Providers may impose conditions additional to those prescribed by the PSLFA.
9.6	[Final Maturity Date for the Working Capital Facility	For agreement between the Borrower/Obligor and the Senior Facility Providers/Working Capital Bank.
10	Cancellation	
10.1	Cancellation of the Guarantee Facility and the Standby Guarantee Facility	The terms suggested are indicative only.
10.2	Cancellation of the Working Capital Facility	The terms suggested are indicative only.
10.3	Cancellation under the Public Sector Loan Facilities Agreement	The terms suggested are indicative only.
11	Fees[, Margins] and Commissions	
11.1	Guarantee Fee	The Guarantee Fee is expected to be paid on a deferred basis. HM Treasury is further considering the implications of credit deterioration/downgrade and the payment of fees to the relevant Finance Guarantors. See also HM Treasury's CGF Technical Note 1.
11.2	[Working Capital Facility Margin	-
11.3	Commitment Fee	-
11.4	Arranging Fees	-
12	Shareholder Commitments	The terms suggested are indicative only.
13	Representations and Warranties	To be negotiated between the Obligor/Borrower and the Senior Facilities Providers but it is anticipated that these would include representations and warranties usual for a PFI Project.
14	Undertakings	To be negotiated between the Obligor/Borrower and the Senior

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		Facilities Providers but it is anticipated that these would include undertakings usual for a PFI Project.
15	Defaults and Remedies	
15.1	Events of Default	To be negotiated between the Obligor/Borrower and the Senior Facilities Providers but it is anticipated that these would include Events of Default usual for a PFI Project.
15.2	Remedies	
16	Cashflow and Accounts	
16.1	Project Accounts	-
16.2	Available Cash Flow Priorities:	-
17	Security Package	-
18	Increased Costs	The terms suggested are indicative only.
19	Qualifying Lender	The terms suggested are indicative only.
20	Expenses	The terms suggested are indicative only.
21	Governing Law	-
Sch 1	Completion Date	The definition suggested is indicative only.
	Financial Close	It is assumed that the Senior Facility Providers will require that the PSLFA is also unconditional.
	Funding Shortfall	The definition suggested is indicative only.
	Guaranteed Amount	See the forms of Finance Guarantee separately provided.
	Project Costs	The definition suggested is indicative only but will need to be consistent with the definition set out in the PSLFA Term Sheet.