

SUBORDINATED FACILITY AGREEMENT

EUR 5,000,000,000

Dated 13 December 2023

MORGAN STANLEY EUROPE SE

(as Company)

and

MORGAN STANLEY EUROPE HOLDING SE

(as Lender)

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THIS FACILITY AGREEMENT (the "**Agreement**") is made on 13 December 2023

BETWEEN

- (1) **Morgan Stanley Europe SE** (the "**Company**"); and
- (2) **Morgan Stanley Europe Holding SE** (the "**Lender**").

INTRODUCTION

The Lender has agreed to make an uncommitted multicurrency subordinated loan facility available to the Company upon the terms and conditions set out in this Agreement to provide funding to the Company and to satisfy the Company's loss absorption requirements in the European Economic Area.

IT IS AGREED as follows:

1 Certain Definitions

In this Agreement:

"Applicable Supervisory Regulations" means the laws and any regulations and other rules thereunder applicable from time to time (including, but not limited to, the BRRD, the CRD, the CRR, the SRM Regulation and the guidelines and recommendations of the European Banking Authority and/or the European Central Bank, the administrative practice of any competent authority, any applicable decision of a court and any applicable transitional provisions) relating to capital adequacy, solvency, other prudential requirements and/or resolution and applicable to the Company and/or the Regulatory Group;

"Availability Period" means the period from and including the date of this Agreement to and including the Termination Date;

"BRRD" means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, as amended or replaced from time to time; to the extent that any provisions of the BRRD are amended or replaced, the reference to provisions of the BRRD as used in this Agreement shall refer to such amended provisions or successor provisions from time to time;

"Business Day" means a day which is a day (other than a Saturday or a Sunday) on which commercial banks in Frankfurt am Main and London and New York are open for business and on which the real-time gross-settlement system operated by the Eurosystem (T2) or any successor system is open for the settlement of payments in Euro;

"Competent Authority" means the European Central Bank or national central bank in the jurisdiction of the Company or any other body or authority having primary supervisory authority with respect to the Company and/or the Regulatory Group as determined in accordance with the SSM Regulation and the SSM Framework Regulation.

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013, as amended or replaced from time to time; to the extent that any provisions of the CRD are amended or replaced, the reference to provisions of the CRD as used in this Agreement shall refer to such amended provisions or successor provisions from time to time;

"**CRR**" means Regulation (EU) No 575/2013 of the European Parliament and the Council of 26 June 2013, as amended or replaced from time to time; to the extent that any provisions of the CRR are amended or replaced, the reference to provisions of the CRR as used in this Agreement shall refer to such amended provisions or successor provisions from time to time;

"**Facility**" means the multicurrency subordinated loan facility up to the maximum amount of EUR 5,000,000,000 made available under this Agreement as described in Clause 2 to the extent not cancelled or reduced under this Agreement;

"**First Interest Payment Date**" in respect of each Loan, means the date specified as being the "First Interest Payment Date" in the Utilisation Request for that Loan or if such date falls on a day that is not a Business Day, the next Business Day unless such day would fall in the next calendar month, in which case the First Interest Payment Date shall be the immediately preceding Business Day;

"**Global Funding System**" means Morgan Stanley's global loan funding system (or any subsequent system as may replace the current system);

"**InsO**" means the German Insolvency Code (*Insolvenzordnung* – InsO, as amended, supplemented or replaced from time to time; to the extent that any provisions of the InsO are amended, supplemented or replaced, the reference to provisions of the InsO as used in this Agreement shall refer to such amended, supplemented or successor provisions from time to time;

"**Interest Payment Date**" means, in respect of each Loan, the last day of each calendar month, or if such day falls on a day that is not a Business Day, the immediately preceding Business Day; provided, however, that (i) the first interest payment date in respect of each Loan shall be the First Interest Payment Date; and (ii) the last interest payment date in respect of each Loan shall be the date on which that Loan is repaid in full;

"**Interest Rate**" means, in respect of a Loan and any day, the MS Proxy Rate applicable to such day as applicable to that Loan;

"**KWG**" means the German Banking Act (*Kreditwesengesetz* – KWG), as amended, supplemented or replaced from time to time; to the extent that any provisions of the KWG are amended, supplemented or replaced, the reference to provisions of the KWG as used in this Agreement shall refer to such amended, supplemented or successor provisions from time to time;

"**Loan**" means a loan made or to be made under the Facility;

"**Morgan Stanley Group**" means Morgan Stanley and its consolidated subsidiaries;

"**MS Proxy Rate**" means, in relation to any day, the interest rate at which Morgan Stanley is offering loans in the relevant currency (being Euro or U.S. Dollar, respectively) to members of the Morgan Stanley Group on such day, which the Parties have acknowledged and agreed to apply to any Loan, acting on an arm's length basis, provided that in the event that a Term-Out Notice has been sent from one party to another party in respect of such Loan the MS Proxy Rate for that Loan and for the period from and including the date on which the Term-Out Notice is served (the "**Term-Out Notice Date**") to but excluding the Repayment Date shall be calculated with reference to the proxy spread in effect as at the Term-Out Notice Date;

"Own Funds Instruments" means:

- (i) capital instruments that meet the requirements for "Common Equity Tier 1 instruments" under the Applicable Supervisory Regulations (including pursuant to any grandfathering or other transitional provisions thereof);
- (ii) capital instruments that meet the requirements for "Additional Tier 1 instruments" under the Applicable Supervisory Regulations (including pursuant to any grandfathering or other transitional provisions thereof); and
- (iii) capital instruments or subordinated loans that meet the requirements for "Tier 2 instruments" under the Applicable Supervisory Regulations (including pursuant to any grandfathering or other transitional provisions thereof);

"Party" means a party to this Agreement;

"Regulatory Group" means the Company, its subsidiary undertakings, participations, participating interests and any subsidiary undertakings, participations or participating interests held (directly or indirectly) by any of its subsidiary undertakings from time to time, and any other undertakings from time to time consolidated with the Company for regulatory purposes, in each case in accordance with the rules and guidance of the Competent Authority or Resolution Authority then in effect;

"Repayment Date" in respect of each Loan, means the date falling 395 days after the Utilisation Date; provided, however, that the Repayment Date shall be extended on each Business Day after the Utilisation Date such that the period from such Business Day to the Repayment Date shall be 395 days unless a Term-Out Notice has been sent from one Party to another Party in respect of such Loan (in which case the Repayment Date shall be the date falling 395 days after the day one Party receives such Term-Out Notice from the other Party) and provided further that in no circumstances shall the Repayment Date in respect of a Loan be extended to a date which falls after the date which is 10 years after the Utilisation Date of such Loan;

"Relevant Supervisory Consent" means, in relation to any prepayment of a Loan, any required permission of the Competent Authority and or the Resolution Authority for the prepayment in accordance with Articles 72b(2)(j) and 77 et seqq. CRR (or any successor provision) for such prepayment;

"Resolution Authority" means the European Single Resolution Board or any other body or authority competent to use resolution tools or power with respect to the Regulatory Group and/or the Company under the Resolution Legislation as applicable in the European Economic Area;

"Resolution Legislation" means any law or regulation relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings), including, without limitation, the BRRD, the SRM Regulation and the SAG;

"SAG" means German Act on the Recovery and Resolution of Credit Institutions (*Sanierungs- und Abwicklungsgesetz – SAG*), as amended, supplemented or replaced from time to time; to the extent that any provisions of the SAG are amended, supplemented or replaced, the reference to provisions of the SAG as used in this Agreement shall refer to such amended, supplemented or successor provisions from time to time;

"SRM Regulation" means Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation 2010/1093/EU;

"SSM Framework Regulation" means Regulation (EU) No. 468/2014, as amended, supplemented or replaced from time to time; to the extent that any provisions of the SSM Framework Regulation are amended, supplemented or replaced, the reference to provisions of the SSM Framework Regulation as used in this Agreement shall refer to such amended, supplemented or successor provisions from time to time;

"SSM Regulation" means Regulation (EU) No. 1024/2013, as amended, supplemented or replaced from time to time; to the extent that any provisions of the SSM Regulation are amended, supplemented or replaced, the reference to provisions of the SSM Regulation as used in this Agreement shall refer to such amended, supplemented or successor provisions from time to time.

"Term-Out Notice" means, with respect to a Loan or any portion of a Loan, written notice from one Party to the other Party providing that it wishes to terminate the rolling-nature of the Repayment Date for such Loan or (as the case may be) portion of a Loan;

"Termination Date" means 31 December 2046;

"Utilisation" means a utilisation of the Facility;

"Utilisation Date" means the date of a Utilisation, being the date on which the relevant Loan is to be made, as specified in the Utilisation Request for each Loan or if such date falls on a day that is not a Business Day, the next Business Day; and

"Utilisation Request" means a notice substantially in the form set out in **Schedule 1**.

2 The Facility

Subject to the terms of this Agreement, the Lender makes available to the Company an uncommitted multicurrency subordinated loan facility up to the maximum aggregate principal amount of EUR 5,000,000,000.

3 Utilisation

3.1 Utilisation Request

3.1.1 The Company and the Lender may from time to time agree on the terms of a Loan to be made under the Facility, including, in respect of such Loan, the Utilisation Date, the currency (being Euro or U.S. Dollar), the principal amount and the First Interest Payment Date.

3.1.2 If the Company and the Lender agree to the terms of a Loan pursuant to Clause 3.1.1, the Company may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request.

3.2 Completion of a Utilisation Request

3.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- (i) the proposed Utilisation Date is a Business Day within the Availability Period;
- (ii) the currency of the Utilisation is in Euro or U.S. Dollar, respectively; and
- (iii) it reflects the terms of the Loan as agreed between the Company and the Lender pursuant to Clause 3.1.1 and has been acknowledged and agreed by the Lender. Such acknowledgment and agreement to be evidenced by the Lender's counter-signature on the Utilisation Request (without the Company needing to be notified of such acceptance (waiver of receipt within the meaning of § 151 sentence 1 German Civil Code (Bürgerliches Gesetzbuch))).

3.2.2 Only one Loan may be requested in each Utilisation Request.

3.3 Making of a Loan

If the conditions set out in Clauses 3.1 and 3.2 have been met, the Lender shall make the requested Loan to the Company on the Utilisation Date.

3.4 Booking of a Loan in the Global Funding System

A Loan made by the Lender to the Company pursuant to this Clause 3 shall be booked in the Global Funding System in accordance with applicable policies and procedures and shall be recorded on the relevant TAPS (Morgan Stanley sub-ledger) account as agreed between the Lender and the Company.

3.5 Evidence of Debt

The books and records of the Parties (including, without limitation, the Global Funding System and all relevant TAPS accounts) shall be *prima facie* evidence of the amount of each Loan outstanding under this Agreement and all amounts owing in respect thereof.

4 Interest

4.1 Unless otherwise agreed by the Company and the Lender, interest shall accrue from day to day on a simple, non-compounding basis on the amount of a Loan outstanding at the Interest Rate applicable on each day to such Loan and shall be determined by the Lender using a day count fraction and a method of calculation consistent with prevailing market practice applicable to the currency of the Loan (being Euro or U.S. Dollar, respectively).

4.2 Unless otherwise agreed by the Company and the Lender, interest on a Loan shall be payable in arrear on each Interest Payment Date for such Loan.

4.3 Such Loan shall cease to bear interest from the beginning of the day on which it is due for repayment. If the Company shall fail to repay the Loan when due, interest shall continue to accrue on the outstanding principal amount of the Loan from and including the due date to but excluding the date of the actual repayment of the Loan at the default rate of interest established by law.¹

5 Repayment

5.1 Repayment at Maturity

¹ Pursuant to §§ 288(1), 247 of the German Civil Code (*Bürgerliches Gesetzbuch*), the default rate of interest per year established by law is five percentage points above the basic rate of interest published by Deutsche Bundesbank from time to time.

Each Loan (together with all interest accrued thereon and other amounts due or owing to the Lender in connection with such Loan) shall be repaid in full by the Company on the Repayment Date.

5.2 No right to prepay

For the avoidance of doubt, the Parties acknowledge and agree that the Company does not have any right or obligation to make any repayment of a Loan other than on its Repayment Date. Any prepayment will be subject to the Company having first obtained the prior Relevant Supervisory Consent. For the avoidance of doubt, any refusal to grant such Relevant Supervisory Consent shall not constitute a default for any purpose. No prepayment of all or a portion of a Loan with the prior Relevant Supervisory Consent, if any, shall give the Company any right or obligation to make any future prepayment of such or any other Loan.

Notwithstanding the above conditions, if, at the time of any prepayment, the Applicable Supervisory Regulations permit the prepayment only after compliance with one or more alternative or additional pre-conditions to those set out above, the Company shall comply with such other and/or, as appropriate, additional pre-conditions, if any.

5.3 Recording of Repayments in the Global Funding System

Any repayment of a Loan, in whole or part, shall be booked in the Global Funding System in accordance with applicable policies and procedures and shall be recorded on the relevant TAPS (Morgan Stanley sub-ledger) account as agreed between the Lender and the Company. In addition, and without prejudice to the provisions of Clause 3.5, the Lender shall endorse a record of any repayment of a Loan on the Utilisation Request relating thereto, specifying the date and amount of such repayment.

5.4 Exclusion of statutory termination rights

§§ 313, 314, 489, 490 of the German Civil Code (*Bürgerliches Gesetzbuch*) shall be excluded.

6 Status

6.1 The payment obligations of the Company under any Loan constitute direct, unsecured and subordinated obligations of the Company. In the event of resolution measures under the Resolution Legislation imposed on the Company and in the event of the normal insolvency proceedings under the InsO of, or against, the Company,

6.1.1 the obligations under any Loan borrowed under the Facility rank *pari passu* with the obligations under any other Loan borrowed under the Facility and rank *pari passu* with all other present or future contractually subordinated obligations of the Company under instruments which, pursuant to their terms or mandatory provisions of law, rank *pari passu* with the obligations of the Company under the Loan;

6.1.2 the obligations under any Loan rank senior to all present or future subordinated obligations of the Company that pursuant to their terms or mandatory provisions of law rank subordinated to the Loan, including the obligations of the Company under any Own Funds Instruments of the Company; and

6.1.3 the obligations under any Loan will be fully subordinated to the present or future Company's Senior Ranking Obligations (as defined below), so that in any such event the claims of the Lender in respect of the Loan (in particular the claims for payment

of principal and interest, if any) will only be satisfied if all of the Company's Senior Ranking Obligations have first been satisfied in full.

"Company's Senior Ranking Obligations" means all obligations of the Borrower which rank senior to its obligations under the Loan, including:

- (i) all claims of unsubordinated creditors of the Company (including, but not limited to, claims against the Company under its non-preferred unsubordinated debt instruments within the meaning of § 46f(6) sentence 1 KWG, if any);
- (ii) all statutorily subordinated claims against the Company within the meaning of § 39(1) Nos. 1-5 InsO (including but not limited to any shareholder loans that do not result from an own funds item of the Company);
- (iii) all other claims against the Company which, pursuant to their terms or mandatory provisions of law, rank senior to the Loan, if any.

6.2 Prior to any insolvency or liquidation of the Company, under the Resolution Legislation applicable to the Company from time to time, the Resolution Authority may write down (including to zero) the obligations of the Company under any Loan, convert them into shares or other instruments of ownership of the Company or apply any other resolution measure, including (but not limited to) any transfer of the obligations to another entity, an amendment, modification or variation of this Agreement or a cancellation of any Loan. The Lender shall not have any claim against the Company for any negative consequences in connection with or arising out of any such measures.

6.3 If the Loan is prepaid otherwise than (i) in the circumstances described in Clauses 6.1 and 8.1 or (ii) as a result of a prepayment made in a situation in which the conditions to prepayment set out in Clause 5.2 are satisfied, then the amounts paid must be returned to the Company irrespective of any agreement to the contrary.

6.4 Subject to compliance with this provision on subordination, the Company may pay amounts due under each Loan from its other distributable assets (*sonstiges freies Vermögen*).

7 Payments

Unless required by law and unless the Company and the Lender agree otherwise, all payments made by the Company hereunder shall be made free and clear of and without any deduction for or on account of any tax or counterclaim.

8 No Set-Off/Netting, Security or Guarantee

8.1 The Loans are not subject to any set-off arrangements or netting rights that would undermine their capacity to absorb losses in resolution, insolvency or liquidation of the Company. The Company may not set-off any claims that the Company may have against the Lender against claims of the Lender arising under any Loan. The Lender may not set off his claims arising under any Loan against any claims that the Company may have against it.

8.2 No security or guarantee of whatever kind is, or shall at any time be, provided by the Company or any other person securing rights of the Lender under any Loan. No Loan is secured or subject to any guarantee or any other arrangement that enhances the seniority of the claims under the Loan.

9 Notices

9.1 All communications under this Agreement will be made in writing or text form (by letter or fax or email).

9.2 Unless a change of address, email address or fax number has been notified in writing, any communication under this Agreement will be made to the following addresses:

9.2.1 If made to the Company to it at:

Morgan Stanley Europe SE

Große Gallusstraße 18
60312 Frankfurt am Main
Germany

Tel.: +49 69 2166-0

Fax: +49 69 2166 2099

Email: tsy_msehse@morganstanley.com

9.2.2 If made to the Lender, to it at:

Morgan Stanley Europe Holding SE

Große Gallusstraße 18
60312 Frankfurt am Main
Germany

Tel.: +49 69 2166-0

Fax: +49 69 2166 2099

Email: tsy_msehse@morganstanley.com

10 Partial Invalidity

Should any provision of this Agreement be or become wholly or partly invalid or ineffective or should this Agreement contain an unintentional omission, this shall not affect the validity or effectiveness of the remaining provisions hereof. In lieu of the invalid or ineffective provision or to fill the unintentional gap a legally valid provision shall apply which corresponds to the extent possible to the economic intention of the parties, respectively to what the parties would have intended in terms of the aim and purpose of this Agreement, had they recognised the gap.

11 Amendment

Any provision of this Agreement, including this Clause 11, may be amended or supplemented only if all parties thereto agree in writing, subject to any required prior notification of and/or non-objection by the Resolution Authority and/or the Competent Authority.

12 Changes in Parties

12.1 No Party may transfer or assign all or any of its rights under this Agreement unless:

12.1.1 the entity to which it is assigning or transferring rights to is an entity that is a member of the Morgan Stanley Group;

- 12.1.2 the written consent of the other Party has been obtained in advance (such consent not to be unreasonably withheld); and
 - 12.1.3 the prior written permission of the Competent Authority or Resolution Authority has been obtained, provided that at the relevant time any such permission is required, and subject to the Applicable Supervisory Regulations, including Articles 77 et seqq. CRR.
- 12.2 Any purported transfer or assignment that does not comply with the terms of Clause 12.1 shall be void.

13 Recognition of the U.S. Special Resolution Regime

- 13.1 In the event that any Lender that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Lender of this Agreement and any Loan, and any interest and obligation in or under this Agreement and any Loan, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement and any Loan, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.
- 13.2 In the event that any Lender that is a Covered Entity or a Covered Affiliate of any such Lender becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement and any Loan that may be exercised against such Lender are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement and any Loan was governed by the laws of the United States or a state of the United States.
- 13.3 In this Clause 13:

"**Covered Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.Code § 1841(k).

"**Covered Entity**" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 Code of Federal Regulation § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 Code of Federal Regulation § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 Code of Federal Regulation § 382.2(b).

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 Code of Federal Regulation §§ 252.81, 47.2 or 382.1, as applicable.

"**U.S. Special Resolution Regime**" means each of (i) the U.S. Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the U.S. Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

14 Counterparts

This Agreement 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 this Agreement.

15 Governing Law, Place of Performance and Jurisdiction

- 15.1** The form and content of this Agreement and all rights and obligations arising hereunder will be governed exclusively by, and construed in accordance with the laws of Germany.
- 15.2** Place of performance will be Frankfurt am Main, Germany.
- 15.3** Any action or other legal proceedings arising out of or in connection with the Agreement will be brought in the District Court (Landgericht) in Frankfurt am Main, Germany.

**SCHEDULE 1 –
UTILISATION REQUEST²**

From: Morgan Stanley Europe SE

To: Morgan Stanley Europe Holding SE

Dated: [•]

Dear Sir or Madam,

Morgan Stanley Europe SE – EUR 5bn Multicurrency Subordinated Facility Agreement dated 13 December 2023 (the "Agreement")

1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow a Loan on the following terms:

Utilisation Date:	[•] (or, if that is not a Business Day, the next Business Day)
Currency of Loan:	Euro
Principal Amount:	[•]
First Interest Payment Date:	[•]

3 This Utilisation Request is irrevocable.

Yours faithfully

Morgan Stanley Europe SE

By:

By:

Acknowledged and agreed

Morgan Stanley Europe Holding SE

By:

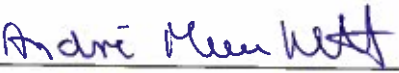
By:

² Lender to endorse a record of any repayment of a Loan on the Utilisation Request relating thereto, specifying the date and amount of such repayment.

**Signature Page
to the Facility Agreement**

This Master Agreement has been entered into on the date first stated above.

Morgan Stanley Europe SE (as Company)

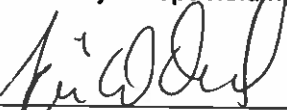


By: ANDRE MUNKE CT



By: David Willam

Morgan Stanley Europe Holding SE (as Lender)



By: JANA WEHRISCH



By: ARNE LØWALL