

DATED [_____]
as amended and restated on [_____]
as further amended and restated with effect from 1 April 2014

(1) THE SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS

(2) [_____]

AGREEMENT
RELATING TO THE
ENTERPRISE FINANCE GUARANTEE

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THIS AGREEMENT is made on [] as amended and restated on []
and as further amended and restated on []

BETWEEN

- (1) **THE SECRETARY OF STATE for BUSINESS, INNOVATION AND SKILLS** (the "Secretary of State"); and
- (2) [] [a company incorporated in [] with registered number [] and having its registered office at [] [a [] having its principal place of business at []] (the "**Lender**").

WHEREAS:-

- (A) The Secretary of State under Section 8 of the Industrial Development Act 1982 and certain lending institutions have established a Scheme, known as the Enterprise Finance Guarantee for the purpose of the provision of finance to certain borrowers.
- (B) The Lender desires to become one of those lending institutions.

IT IS AGREED as follows

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:-

"Agency" means an agency, authority, central bank, department, minister, ministry or official of any public or statutory person;

"Annual Base Lending Limit" means:-

(a) subject to Clause 11.7, in respect of the first Annual Scheme Period, the Initial Annual Base Lending Limit; and

(b) subject to Clause 11.7, in respect of each other Annual Scheme Period, the amount determined by the Secretary of State and notified to the Lender under Clause 11.2,

or such other amount (if any) agreed by the Secretary of State and the Lender to be the Annual Base Lending Limit, in respect of a particular Annual Scheme Period, as a Remedial Step;

(provided that, as regards Clause 11.2 (for the purposes of the determination to be made by the Secretary of State of the Annual Base Lending Limit for the then current Annual Scheme Period) and Clause 11.3, if the actual or projected lending by the Lender does not exceed 105% of the amount of the Annual Base Lending Limit and is no lower than 95% of the amount of the Annual Base Lending Limit, the extent of any such excess above, or shortfall below, the Annual Base Lending Limit shall be

disregarded such that, for the purposes of the aforementioned Clauses, the Lender will, in respect of the relevant Annual Scheme Period, be deemed to have met, or can consider itself to be projected to meet, its Annual Base Lending Limit (as the case may be));

"Annual Claim Limit"

means, in relation to those Scheme Facilities which are offered by the Lender to Applicants in accordance with the terms of this Agreement in respect of a particular Annual Scheme Period :-

- (a) on any day during that Annual Scheme Period, the Annual Lending Total multiplied by the applicable Claim Percentage; and
- (b) at all times following the end of that Annual Scheme Period, the Annual Lending Total multiplied by the applicable Claim Percentage,

provided that :-

- (i) there shall be excluded for the purposes of such calculations, in respect of any Scheme Facilities which have been offered by the Lender in an Annual Scheme Period within the scope of a temporary increase to the Annual Base Lending Limit for that Annual Scheme Period as approved by the Secretary of State under Clause 11.4.2, any Restricted Principal Amount (as such term is defined in Clause 11.4.2); and
- (ii) any Scheme Facilities which are offered by a Lender in an Annual Scheme Period, under the provisions of Clause 11.4.1 and which accordingly are treated as a utilisation of the Annual Base Lending Limit which is notified to the Lender in respect of the next following Annual Scheme Period pursuant to Clause 11.2, shall, for the purposes of such calculations, be deemed to have been offered in that following Annual Scheme Period;

"Annual Lending Limit"

means, in relation to an Annual Scheme Period, the aggregate of the Annual Base Lending Limit and any Specific Lending Limit;

"Annual Lending Total"

means, in relation to an Annual Scheme Period or on any day during an Annual Scheme Period (as the context requires):-

- (a) the total of (I) the aggregate principal

amount of Term Loan Scheme Facilities, (II) the aggregate of the applicable Type E Revolving Facility Limits in respect of Type E Eligible Facilities, (III) the product of the IAUR and the aggregate of the applicable Type F Increased Maximum Facility Amounts in respect of Type F Eligible Facilities, (IV) the aggregate of the applicable Type G Revolving Facility Limits in respect of Type G Eligible Facilities and (V) the product of the IAUR and the aggregate of the applicable Type H Maximum Facility Amounts in respect of Type H Eligible Facilities, offered by the Lender during, as the context requires, (i) that Annual Scheme Period or (ii) the period from and including the first day of that Annual Scheme Period to and including that day;

less

- (b) the total of (I) the aggregate principal amount of Term Loan Scheme Facilities, (II) the aggregate of the applicable Type E Revolving Facility Limits in respect of Type E Eligible Facilities, (III) the product of the IAUR and the aggregate of the applicable Type F Increased Maximum Facility Amounts in respect of Type F Eligible Facilities, (IV) the aggregate of the applicable Type G Revolving Facility Limits in respect of Type G Eligible Facilities and (V) the product of the IAUR and the aggregate of the applicable Type H Maximum Facility Amounts in respect of Type H Eligible Facilities, offered by the Lender during, as the context requires, (i) that Annual Scheme Period or (ii) the period from and including the first day of that Annual Scheme Period to and including that day, in respect of which (A) in the case of a Term Loan Scheme Facility, the initial drawdown has not been made by the relevant Borrower within 6 months of the date of the relevant Scheme Facility Letter and (B) in the case of a Type E Eligible Facility, a Type F Eligible Facility, a Type G Eligible Facility or a Type H Eligible Facility, the offer of such Scheme Facility has not been accepted by the relevant Borrower within the period specified for such acceptance in the relevant Scheme Facility Letter (such that the relevant Scheme Facility has

ceased to be available for drawing);

less

- (c) the total of (I) the aggregate principal amount of Term Loan Scheme Facilities, (II) the aggregate of the applicable Type E Revolving Facility Limits in respect of Type E Eligible Facilities, (III) the product of the IAUR and the aggregate of the applicable Type F Increased Maximum Facility Amounts in respect of Type F Eligible Facilities, (IV) the aggregate of the applicable Type G Revolving Facility Limits in respect of Type G Eligible Facilities and (V) the product of the IAUR and the aggregate of the applicable Type H Maximum Facility Amounts in respect of Type H Eligible Facilities, offered by the Lender during, as the context requires, (i) that Annual Scheme Period or (ii) the period from and including the first day of that Annual Scheme Period to and including that day, in respect of which a Borrower has, following the making of an offer of a Scheme Facility to it, subsequently notified the Lender that it wishes to decline/not take up such offer for whatever reason (provided that in each such case the Lender has, in compliance with its obligations under Clause 17.3, made the necessary changes to the information held on the Scheme Website in respect of the relevant Scheme Facility to record the fact that that Scheme Facility has been declined/not taken up);

"Annual Projected Claim Limit"

means, in relation to those Scheme Facilities which are offered by the Lender to Applicants, in accordance with the terms of this Agreement in respect of a particular Annual Scheme Period, the Annual Base Lending Limit for that Annual Scheme Period multiplied by the applicable Claim Percentage;

"Annual Report"

means the annual report to be provided by the Lender under the provisions of Clause 13.1 and containing the information required pursuant to Clause 13.3;

"Annual Scheme Date"

means the last day of each Annual Scheme Period;

"Annual Scheme Period"

means:-

- (a) in respect of the first Annual Scheme Period, the period from and including the Effective Date (or, if, prior to the

Effective Date the Lender was a party to an agreement with The Secretary of State for Trade and Industry relating to the SFLG Scheme, the date on which, if such date is prior to the Effective Date, the Lender first commenced the Scheme Website Application Process in relation to a Proposed Scheme Facility) to and including 31 March in the next following year; and

(b) thereafter, each period from and including 1 April in any year to and including 31 March in the next following year;

"Applicant"	means a Business to which the Lender proposes, or is considering proposing, to make available a Scheme Facility and which such Business has undertaken, or is undertaking, the Lender's Application Process;
"Applicant Without Collateral"	has the meaning given to such term in Clause 2.2.1(a);
"Arrangement Fee"	means, in respect of a Borrower, a fee charged by the Lender in accordance with Normal Commercial Lending Practice;
"Audit"	means any audit carried out or to be carried out by the Secretary of State pursuant to Clause 14.1;
"Available Collateral"	has the meaning given to such term in Clause 2.2.1(b);
"Borrower"	means, in relation to a Scheme Facility, the person who is the borrower under such Scheme Facility (which, for the avoidance of doubt, in relation to a Scheme Facility which is a Type F Eligible Facility or a Type H Eligible Facility, means the person who is the recipient of financing under such Scheme Facility);
"Business"	means a sole trader, body corporate, partnership, limited partnership, limited liability partnership or other person carrying on a business in the United Kingdom;
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are generally open in London for dealings in Sterling;
"Business Facilities"	means, in respect of a Borrower, any Scheme Facility, any SFLG Scheme Facility and any other type of credit, financing, loan or mortgage facility made available by the Lender to that Borrower, or made available by another lending institution but whose rights in respect of which

have been assigned, novated or otherwise transferred to the Lender, in connection with or for the benefit of the Borrower's business and in respect of which, at the relevant time, principal, interest or other sums remain outstanding from the Borrower to the Lender;

"Business Facilities Collateral"

means, in respect of a Borrower, any Collateral in favour of the Lender which, according to its terms, is capable of being used as a means of repaying the Business Facilities including, where the Lender has made available to the Borrower a Scheme Facility which is a Type F Eligible Facility or a Type H Eligible Facility, the relevant Purchased Debts save for:-

- (a) any Scheme Guarantee; and
- (b) any Excluded Residential Security

"Business in Difficulty"

means a Business which is unable, whether through its own resources or with the funds it is able to obtain from its shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term;

"Business Turnover"

means the Applicant's turnover (if any) in relation to the relevant Business in the twelve month period immediately preceding the Date of Application, as assessed and determined by the Lender in accordance with Normal Commercial Lending Practice (provided that if the Applicant is a Group Company, then the Business Turnover shall be the aggregate amount of the Applicant's turnover (calculated as provided in this definition) and the turnover of each other Group Company (the calculation of the turnover of each other Group Company to be calculated in the same manner and for the same period as the Applicant));

"CA"

means the Companies Act 2006;

"Capital Repayment Rescheduling"

means any deferral or other rescheduling of the repayment of principal made in accordance with the provisions of Clause 10.1;

"Claim Percentage"

means 9.75% or such other percentage as the Secretary of State may notify, for the purposes of this definition, to the Lender in respect of any Annual Scheme Period as being the relevant capped claim percentage under any applicable law (provided that any such notification shall not have retrospective effect and if such a notification is made part way through an Annual Scheme Period and relates to that Annual Scheme Period then the revised percentage shall only have effect in relation to those

	Scheme Facilities which are offered by the Lender on or following the date specified in such notice (which such date cannot precede the date of the notice));
"Collateral"	means together any Security or Quasi-Security;
"Collection Agent"	means such person as may be appointed from time to time by the Secretary of State, and notified in writing to the Lender, to administer the collection of each Scheme Guarantee Premium on his behalf;
"Commercial Activity"	means any activity carried on with the intention of making a profit;
"Commercial Lending Activities"	means the lending business of the Lender relating to Non-Scheme Facilities;
"Data Protection and Disclosure Declaration"	means, in respect of a Proposed Scheme Facility, a declaration from the relevant Applicant, obtained by the Lender in accordance with the requirements of the Scheme Website Application Process, containing the declarations specified in and accessible through the Scheme Website (as such declarations may be amended, varied, supplemented or replaced from time to time) as to the disclosure of information to, inter alia, the Lender and the Secretary of State in relation to the Applicant and the Proposed Scheme Facility;
"Date of Application"	means the date of completion of the Scheme Website Application Process in respect of the relevant Applicant;
"Demand"	means a demand in respect of a claim under a Scheme Guarantee to be made by the Lender to the Secretary of State in the form accessible through the Scheme Website and containing the information specified therein, as such form may be amended, varied, supplemented or replaced from time to time;
"Demand Invoice"	has the meaning given to such term in Clause 22.2;
"Demand Invoice Period"	means:- <ul style="list-style-type: none"> (a) in respect of the first such period, the period commencing on the Effective Date and ending on the next following 31 March, 30 June, 30 September or 31 December; and (b) thereafter, each successive quarter;

"Direct Debit Mandate"	means the direct debit mandate instruction, to be completed by an Applicant in respect of the payment by that Applicant of the Scheme Guarantee Premium, in the form required to be obtained by the Lender from the Scheme Website (as such form may be amended, varied, supplemented or replaced from time to time);
"Due Enquiry"	means those enquiries, investigations and due diligence processes adopted by the Lender from time to time, in accordance with Normal Commercial Lending Practice, in assessing an Applicant and completing the Lender's Application Process;
"Effective Date"	means the date of this Agreement;
"Eligible Business Activity"	means that:- <ul style="list-style-type: none"> (a) the Applicant is engaged in or proposes to engage in a Commercial Activity in the United Kingdom; (b) where the Lender, having made Due Enquiry, is aware that the Applicant receives or will receive income from sources other than its Commercial Activity, in the Lender's Opinion, as at the Date of Application, more than 50% of the income of that Applicant is or will be derived from Commercial Activity; and (c) the Commercial Activity which the Applicant is engaged in or proposes to engage in, as determined by the Lender, acting in accordance with Normal Commercial Lending Practice, and as evidenced by such information as is required from time to time by the Secretary of State as part of the Scheme Website Application Process, is accepted as being an Eligible Purpose;
"Eligible Debts"	means debts of the type which the Lender, acting in accordance with Normal Commercial Lending Practice, would finance by making prepayments or advances under a Non-Scheme Invoice Finance Facility;
"Eligible Facility"	means, in respect of an Applicant:- <ul style="list-style-type: none"> (a) a Type A Eligible Facility; (b) a Type B Eligible Facility; (c) a Type C Eligible Facility;

- (d) a Type D Eligible Facility;
- (e) a Type E Eligible Facility;
- (f) a Type F Eligible Facility;
- (g) a Type G Eligible Facility;
- (h) a Type H Eligible Facility; or
- (i) any other type of credit, financing or loan facility which the Secretary of State may agree (in his absolute discretion) to be an Eligible Facility for the purposes of this Agreement (for the avoidance of doubt, the Lender shall not be entitled under this paragraph (i) to seek the agreement of the Secretary of State, in the case of any particular Applicant, to a specific type of credit, financing or loan facility which the Lender is proposing to make available to that Applicant, and which is not otherwise an Eligible Facility, to be an Eligible Facility in respect of that Applicant, the intention being that any agreement of the Secretary of State (in his absolute discretion) under this paragraph (i) will apply generally to all Applicants);

"Eligible Purpose"

means a purpose which is accepted as eligible on completion of the Scheme Website Application Process;

"Excluded Residential Security"

means any Security over the principal private residence of:-

- (a) the Borrower (irrespective of whether or not the Borrower is the sole owner of that residential property or jointly owns such residential property with one or more other persons);
- (b) any individual who has provided or is proposing to provide a guarantee and/or indemnity in favour of the Lender which such guarantee and/or indemnity, according to its terms, is capable of being used as a means of repaying any Business Facility (irrespective of whether or not that individual is the sole owner of that residential property or jointly owns such residential property with one or more other persons); or
- (c) any individual, not falling within paragraph (b) above, who has provided or is proposing to provide such Security in favour of the Lender and which such Security, according to its terms, is capable of being used as means of repaying any

Business Facility (irrespective of whether or not that individual is the sole owner of that residential property or jointly owns such residential property with one or more other persons);

“Excluded Sector”

means each of:

- (a) export related activities;
- (b) the preferential use of domestic over imported goods;
- (c) granting of finance to clients;
- (d) activities of business, employer and professional, religious and political membership organisations and trade unions;
- (e) the formal education sector;
- (f) providing insurance to clients;
- (g) a business directly owned by the Post Office Limited;
- (h) state owned businesses; and
- (i) any other business as may be advised to the Lender in accordance with Clause 21 from time to time by the Secretary of State;

"Existing Invoice Finance Facility"

means, in respect of an Applicant, an existing Invoice Finance Facility made available by the Lender to that Applicant which such facility has not been cancelled, withdrawn or otherwise terminated by the Lender;

"Existing Revolving Facility"

means, in respect of an Applicant, an existing Revolving Facility made available by the Lender to that Applicant which such facility has not been cancelled, withdrawn or otherwise terminated by the Lender;

"Existing Revolving Facility Limit"

means, in respect of an Existing Revolving Facility, the then subsisting authorised facility limit made available by the Lender to the Applicant as specified in the documentation governing the terms of such Existing Revolving Facility;

“Great Britain”

England, Scotland and Wales;

“Group”

means, if the Applicant is a company or corporation, together the Applicant, a subsidiary or holding company for the time being of the Applicant or a subsidiary for the time being of a

	holding company of the Applicant;
"Group Company"	means any company or corporation which is a member of a Group;
"Guaranteed Percentage"	means 75% or such other percentage as may be advised to the Lender in accordance with Clause 21 from time to time by the Secretary of State;
"IAUR"	means an industry average utilisation rate calculated by the Secretary of State and advised to the Lender from time to time in accordance with Clause 21. The calculation of IAUR shall initially be based on the ratio of total advances to total facilities agreed as calculated on the basis of the latest quarterly statistics published by the Asset Based Finance Association (or any successor or replacement trade association body as approved by the Secretary of State);
"IDA"	means the Industrial Development Act 1982;
"Indicative Annual Base Lending Limit"	<p>means, in any Annual Scheme Period (other than the first such period), the indicative annual lending limit of the Lender in respect of that Annual Scheme Period, being equal to:-</p> <p>(a) in respect of the second and subsequent Annual Scheme Periods, the amount notified by the Secretary of State to the Lender prior to the expiry of the then current Annual Scheme Period; and</p> <p>(b) in the absence of any such notification as is referred to in paragraph (a) above prior to the expiry of an Annual Scheme Period:-</p> <p>(i) in respect of the second Annual Scheme Period, the Initial Annual Base Lending Limit (multiplied by the number of days in the first Annual Scheme Period divided by 365 (rounded to the nearest whole £1); and</p> <p>(ii) in respect of each subsequent Annual Scheme Period, the Annual Base Lending Limit in the immediately preceding Annual Scheme Period;</p>
"Indicative Projected Annual Claim Limit"	means, in any Annual Scheme Period (other than the first such period), the indicative projected annual claim limit of the Lender in respect of that Annual Scheme Period, being equal to the Indicative Annual Base Lending Limit for that Annual Scheme Period multiplied

by the applicable Claim Percentage;

"Information Declaration"

means, in respect of a Scheme Facility, a declaration from the relevant Applicant, obtained by the Lender prior to the making of the initial drawdown under the Scheme Facility, containing the declarations specified in and accessible through the Scheme Website (as such declarations may be amended, varied, supplemented or replaced from time to time) regarding, inter alia, the accuracy and completeness of the information submitted through the Scheme Website in respect of that Scheme Facility and including, but not limited to, declarations regarding:-

- (a) any Scheme Facility previously made available to that Applicant irrespective of any repayment of borrowing which has taken place since the credit was advanced; and
- (b) any other state aid available or previously made available to that Applicant;

"Initial Annual Base Lending Limit"

means, subject to Clause 11.7, such amount as is notified in writing by the Secretary of State, for the purposes of this definition, to the Lender;

"Initial Drawdown Notification"

means:-

- (a) in respect of any Scheme Facility which is a Term Loan Scheme Facility, the form of notification relating to the making of the initial drawdown under the Term Loan Scheme Facility;
- (b) in respect of any Scheme Facility which is a Type E Eligible Facility, the form of notification relating to the Lender having marked on the Relevant Revolving Account the availability of the Type E Revolving Facility Limit;
- (c) in respect of any Scheme Facility which is a Type F Eligible Facility, the form of notification relating to the Lender having marked on the Relevant Invoice Finance Account the availability of the Type F Increased Maximum Facility Amount;
- (d) in respect of any Scheme Facility which is a Type G Eligible Facility, the form of notification relating to the Lender having marked on the Relevant Revolving Account the availability of the Type G Revolving

Facility Limit; and

- (e) in respect of any Scheme Facility which is a Type H Eligible Facility, the form of notification relating to the Lender having marked on the Relevant Invoice Finance Account the availability of the Type H Maximum Facility Amount for such Type H Eligible Facility; and

in each case accessible through the Scheme Website and containing such information regarding the completion of the relevant Scheme Facility and initial drawdown or availability thereunder as may from time to time be specified therein;

"Invoice Finance Facility" means an invoice finance or factoring facility made available by the Lender to a Borrower;

"Lender's Application Process" means the process of application for the Proposed Scheme Facility to be undertaken by an Applicant in accordance with Normal Commercial Lending Practice;

"Lender Approved Maximum Facility Amount" means:-

- (a) where the Proposed Scheme Facility is a Type F Eligible Facility of the type referred to at sub-paragraph (A) of the definition of such term in this Clause 1.1, that maximum aggregate amount of financing in respect of Eligible Debts which applies to the relevant Existing Invoice Finance Facility; or
- (b) where the Proposed Scheme Facility is a Type F Eligible Facility of the type referred to at sub-paragraph (B) of the definition of such term in this Clause 1.1, that maximum aggregate amount of financing in respect of Eligible Debts which the Lender has approved in connection with the Non-Scheme Invoice Finance Facility which the Lender is prepared to offer to the Applicant;

"Lender Approved Prepayment Percentage" means:-

- (a) where the Proposed Scheme Facility is a Type F Eligible Facility of the type referred to at sub-paragraph (A) of the definition of such term in this Clause 1.1, that prepayment percentage in respect of the financing of Eligible Debts which applies to the relevant Existing Invoice Finance Facility; or

- (b) where the Proposed Scheme Facility is a Type F Eligible Facility of the type referred to at sub-paragraph (B) of the definition of such term in this Clause 1.1, that prepayment percentage in respect of the financing of Eligible Debts which the Lender has approved in connection with the Non-Scheme Invoice Finance Facility which the Lender is prepared to offer to the Applicant;
- (c) where the Proposed Scheme Facility is a Type H Eligible Facility to refinance all of the liabilities due under an Existing Invoice Finance Facility, the prepayment percentage in respect of the financing of Eligible Debts which the Lender had approved in connection with the Non-Scheme Invoice Finance Facility being refinanced by the Proposed Scheme Facility; or
- (d) where the Proposed Scheme Facility is a Type H Eligible Facility to refinance only part of the liabilities due under an Existing Invoice Finance Facility, the prepayment percentage in respect of the financing of Eligible Debts which the Lender has approved in connection with the Relevant Non-Scheme Invoice Finance Facility;

"Lender's Opinion"

means the opinion of the Lender acting in accordance with Normal Commercial Lending Practice;

"Linked Collateral"

means, in respect of an Applicant and a Scheme Facility:-

- (a) any Relevant Available Collateral which is provided to the Lender in connection with that Scheme Facility in accordance with the provisions of Clause 4.1; and
- (b) where the Scheme Facility is a Type F Eligible Facility, the relevant Purchased Debts;

"Loan Transfer Process"

means the process undertaken through the Scheme Website to record the assignment, novation or transfer of a Scheme Facility from one lending institution (whether or not such lending institution is, at the time of such assignment, novation or transfer, then participating in the Scheme) to a lending institution which is, at the time of such assignment, novation or transfer, participating in

	the Scheme;
"Maximum Amount"	shall, taking into account the Business of the Applicant and the proposed Maximum Guarantee Term, be calculated in accordance with the table at Schedule 4 or such other table as may be advised to the Lender in accordance with Clause 21 from time to time by the Secretary of State;
"Maximum Guarantee Term"	shall, for any Term Loan Scheme Facility and taking into account the Business of the Applicant and the proposed Maximum Amount, be calculated in accordance with the table at Schedule 4 or such other table as may be advised to the Lender in accordance with Clause 21 from time to time by the Secretary of State;
"Minimum Amount"	means £1,000;
"Non-Scheme Invoice Finance Facility"	means a Non-Scheme Facility which is an Invoice Finance Facility;
"Non-Scheme Facility"	means any term loan, revolving, invoice finance or factoring facility or other type of credit, financing, loan or mortgage facility available or made available to persons from time to time by the Lender other than a Scheme Facility;
"Normal Commercial Lending Practice"	means those practices, procedures, rules, requirements, guidelines and other processes which are adopted by the Lender from time to time in relation to its Commercial Lending Activities;
"Offer Notification"	means the form of notification relating to the making of an offer of a Scheme Facility accessible through the Scheme Website and containing such information regarding the Scheme Facility as may from time to time be specified therein;
"Outstanding Scheme Facility Principal"	means, at any time, in respect of a Term Loan Scheme Facility, the principal amount outstanding from the Borrower to the Lender under the relevant Scheme Facility Letter;
"Outstanding Type E Balance"	means, at any time, in respect of a Scheme Facility which is a Type E Eligible Facility, the lower of:- <ul style="list-style-type: none"> (a) the amount outstanding from the Borrower to the Lender in respect of that Type E Eligible Facility; and (b) the Type E Revolving Facility Limit, provided that in calculating such amount:-

- (i) where the Type E Eligible Facility comprises an increase to an Existing Revolving Facility, the provisions of Clause 4.1.4(g) must be applied;
- (ii) any amounts of interest or other costs, fees, expenses or charges which accrue, in respect of the Type E Eligible Facility and the amounts outstanding thereunder, after the earlier of (I) the date on which the Lender makes demand for repayment of the whole of the sums then outstanding under such a Scheme Facility and (II) the Type E Eligible Facility Expiry Date, shall not form part of the Outstanding Type E Balance (even if at the time such interest, costs, fees, expenses or charges are to be debited to the Relevant Revolving Account, the Type E Revolving Facility Limit has not been fully utilised); and
- (iii) any amounts which have been debited to the Relevant Revolving Account where such amounts have been used in whole or in part towards the repayment of any other Business Facilities shall not form part of the Outstanding Type E Balance;

"Outstanding Type F Balance"

means, at any time, in respect of a Scheme Facility which is a Type F Eligible Facility, the lower of:-

- (a) the amount outstanding to the Lender in respect of that Type F Eligible Facility; and
- (b) the Type F Increased Maximum Facility Amount,

provided that in calculating such amount:-

- (i) the provisions of Clause 4.1.5(g) must be applied; and
- (ii) any amounts of interest or other costs, fees, expenses or charges which accrue, in respect of the Type F Eligible Facility and the amounts outstanding thereunder, after the earlier of (I) the date on which the Lender makes demand for repayment of the whole of the sums then outstanding under such a Scheme Facility and (II) the Type F Eligible Facility Expiry Date, shall not form part of the Outstanding Type F Balance (even if at the time such interest, costs,

fees, expenses or charges are to be debited to the Relevant Invoice Finance Account, the Type F Increased Maximum Facility Amount has not been fully utilised);

“Outstanding Type G Balance”

means, at any time, in respect of a Scheme Facility which is a Type G Eligible Facility, the lower of:-

- (a) the amount outstanding from the Borrower to the Lender in respect of that Type G Eligible Facility; and
- (b) the Type G Revolving Facility Limit,

provided that in calculating such amount:-

- (i) any amounts of interest or other costs, fees, expenses or charges which accrue, in respect of the Type G Eligible Facility and the amounts outstanding thereunder, after the earlier of (I) the date on which the Lender makes demand for repayment of the whole of the sums then outstanding under such a Scheme Facility and (II) the Type G Eligible Facility Expiry Date, shall not form part of the Outstanding Type G Balance (even if at the time such interest, costs, fees, expenses or charges are to be debited to the Relevant Revolving Account, the Type G Revolving Facility Limit has not been fully utilised); and
- (ii) any amounts which have been debited to the Relevant Revolving Account where such amounts have been used in whole or in part towards the repayment of any other Business Facilities shall not form part of the Outstanding Type G Balance;

“Outstanding Type H Balance”

means, at any time, in respect of a Scheme Facility which is a Type H Eligible Facility, the amount outstanding to the Lender in respect of that Type H Eligible Facility provided that in calculating such amount:-

- (i) the provisions of Clause 4.1.7(f) must be applied; and
- (ii) any amounts of interest or other costs, fees, expenses or charges which accrue, in respect of the Type H Eligible Facility and the amounts outstanding thereunder, after the earlier of (I) the date on which the Lender makes demand for repayment

of the whole of the sums then outstanding under such a Scheme Facility and (II) the Type H Eligible Facility Expiry Date, shall not form part of the Outstanding Type H Balance (even if at the time such interest, costs, fees, expenses or charges are to be debited to the Relevant Invoice Finance Account, the Type H Eligible Facility has not been fully utilised);

- "Party"** means a party to this Agreement and **"Parties"** shall be construed accordingly;
- "Permitted Eligible Facility"** means those Eligible Facilities of the type which the Lender is permitted to make available under the Scheme as such types may be notified in writing by the Secretary of State to the Lender from time to time (provided that any such notification shall not have retrospective effect and if such a notification is made part way through an Annual Scheme Period and relates to that Annual Scheme Period then the revised types of Eligible Facilities so notified and which the Lender is permitted to make available shall only have effect on or following the date specified in such notice (which such date cannot precede the date of the notice));
- "Premium Payment Schedule"** means the premium payment schedule which the Lender is required to obtain from the Scheme Website setting out the due dates and amounts of each payment of the Scheme Guarantee Premium in respect of a Scheme Facility, as amended, varied, supplemented or replaced from time to time (provided that any such notification shall not have retrospective effect and if such a notification is made part way through an Annual Scheme Period and relates to that Annual Scheme Period then the revised types of Eligible Facilities so notified and which the Lender is permitted to make available shall only have effect on or following the date specified in such notice (which such date cannot precede the date of the notice));
- "Probationary Lender"** means, if the Secretary of State so notifies in writing to the Lender on or prior to the Effective Date, the designation given to the Lender during the Probationary Period;
- "Probationary Lender Side Letter"** means, if the Lender is designated as a Probationary Lender, the side letter entered into on or before the Effective Date and made between the Lender (as a Probationary Lender) and the Secretary of State, as amended, varied, supplemented or replaced from time to time;
- "Probationary Period"** means, if the Lender is designated as a Probationary Lender, the period from and

including the Effective Date until the date with effect from which the Secretary of State notifies the Lender that its designation as a Probationary Lender is to cease (such determination to be in the absolute discretion of the Secretary of State);

"Probationary Terms"

means, if the Lender is designated as a Probationary Lender, those terms applicable to its participation in the Scheme as set out in the Probationary Lender Side Letter;

"Proposed Scheme Facility"

means the Scheme Facility which, in accordance with Normal Commercial Lending Practice, the Lender proposes, or is considering proposing, to make available to an Applicant, in the Proposed Scheme Facility Amount and upon such other terms as have been communicated to the Secretary of State by the Lender through the Scheme Website in fulfilment of its obligations under Clauses 2.2 and 3.1;

"Proposed Scheme Facility Amount"

means:-

- (a) where the Proposed Scheme Facility is a Term Loan Scheme Facility, the maximum principal amount of the Proposed Scheme Facility which the Lender, acting in accordance with Normal Commercial Lending Practice, proposes or is considering proposing, to make available to an Applicant;
- (b) where the Proposed Scheme Facility is a Type E Eligible Facility, the applicable Type E Revolving Facility Limit;
- (c) where the Proposed Scheme Facility is a Type F Eligible Facility, the Type F Increased Maximum Facility Amount;
- (d) where the Proposed Scheme Facility is a New Type G Eligible Facility, the applicable Type G Revolving Facility Limit; and
- (e) where the Proposed Scheme Facility is a Type H Eligible Facility, the Type H Maximum Facility Amount for such Type H Eligible Facility;

"Purchased Debts"

means, in respect of any Scheme Facility which is a Type F Eligible Facility or a Type H Eligible Facility, those debts which have been financed by the Lender under a Relevant Non-Scheme Invoice Facility (as applicable) and such Scheme Facility and which such debts have

been purchased by or assigned to the Lender;

"Quasi-Security"

means all guarantees, indemnities, undertakings, assurances, commitments, letters of comfort and any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by the advance of money, the purchase of assets or services, or otherwise) for the payment of, indemnity against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person;

"Relevant Available Collateral"

means, in respect of an Applicant, any Available Collateral which is not Excluded Residential Security;

"Relevant Invoice Finance Account"

means, in respect of a Type F Eligible Facility or a Type H Eligible Facility, such account(s) as is/are maintained and operated by the Lender to determine cleared funds in use and availability to the Borrower under the Relevant Non-Scheme Invoice Finance Facility, the Type F Eligible Facility or the Type H Eligible Facility from time to time;

"Relevant Non-Scheme Invoice Finance Facility"

means:-

- (a) where the Type F Eligible Facility is of the type referred to at sub-paragraph (A) of the definition of such term in this Clause 1.1, the relevant Existing Invoice Finance Facility;
- (b) where the Type F Eligible Facility is of the type referred to at sub-paragraph (B) of the definition of such term in this Clause 1.1, the relevant Non-Scheme Invoice Finance Facility which is to be made available to the Applicant by the Lender; or
- (c) in relation to a Type H Eligible Facility, where the Proposed Scheme Facility is to be used to refinance part only of an Existing Invoice Finance Facility, that part of the Existing Invoice Finance Facility which is to continue as a Non-Scheme Invoice Finance Facility;

"Relevant Revolving Account"

means, in respect of a Type E Eligible Facility, or a Type G Eligible Facility, the account of the Borrower in respect of which the Revolving Facility under such Type E Eligible Facility or Type G Eligible Facility (as appropriate) is, subject to Clause 4.1.4(c), made available by the Lender;

“Remedial Steps”	means any remedial steps agreed between the Lender and the Secretary of State under Clause 11.4;
“Revolving Facility”	means any revolving credit facility made available by a Lender to a Borrower for working capital purposes that are overdraft facilities, fixed term revolving credit facilities, business credit (or charge) card facilities, bond and guarantees facilities, BACS facilities, stocking finance, import finance (such as letters of credit and import loans) and merchant services and shall include multi-option facilities (whereby a limit is set upon a combination of Revolving Facilities) and such other facilities as may be advised to the Lender in accordance with Clause 21;
"Scheme"	means the scheme established in 2009 known as the Enterprise Finance Guarantee;
"Scheme Documents"	means this Agreement, each Scheme Guarantee, any Probationary Lender Side Letter and any other agreement or document designated as such and notified to the Lender in writing by the Secretary of State (each a "Scheme Document");
"Scheme Facility"	means a Permitted Eligible Facility provided or to be provided by the Lender to an Applicant under the Scheme in accordance with the terms of this Agreement;
"Scheme Facility Letter"	means a facility letter or agreement for use in relation to Scheme Facilities, which letter or agreement shall, subject to the requirements of Clauses 2.4, 4.1 and 6.2, be in the form adopted from time to time by the Lender in accordance with Normal Commercial Lending Practice;
"Scheme Facility Offer Documents"	means, in respect of any offer of a Scheme Facility to an Applicant, together:- <ul style="list-style-type: none"> (a) the Scheme Facility Letter; (b) the Premium Payment Schedule; (c) the State Aid Letter (if applicable); (d) the Direct Debit Mandate; (e) the Information Declaration; (f) any other documents to be issued by the Lender in connection with such offer in accordance with Normal Commercial Lending Practice; (g) any other documents required to be

issued in connection with such offer in accordance with any applicable law or regulation as may from time to time be notified in writing by the Secretary of State to the Lender; and

- (h) any other documents which the Secretary of State and the Lender agree are to be issued in connection with such offer;

"Scheme Facility Rescheduling Process"

means the process undertaken through the Scheme Website to record a Capital Repayment Rescheduling;

"Scheme Guarantee"

means, in relation to a Scheme Facility, the guarantee of the Secretary of State given in respect of such Scheme Facility pursuant to Clause 5 being in the form of that appearing in Schedule 1;

"Scheme Guarantee Premium"

means, in respect of each Scheme Facility, the premium payable by the Borrower to the Secretary of State for the provision of the relevant Scheme Guarantee based on:-

- (a) where the Scheme Facility is a Term Loan Scheme Facility, the product of the Scheme Guarantee Premium Rate and the Outstanding Scheme Facility Principal;
- (b) where the Scheme Facility is a Type E Eligible Facility, the product of the Scheme Guarantee Premium Rate and the relevant Type E Revolving Facility Limit (irrespective as to whether or not the Borrower has made any utilisations of the Type E Eligible Facility);
- (c) where the Scheme Facility is a Type F Eligible Facility, the product of the Scheme Guarantee Premium Rate, the IAUR and the relevant Type F Increased Maximum Facility Amount (irrespective as to whether or not the Borrower has made any utilisations of the Type F Eligible Facility);
- (d) where the Scheme Facility is a Type G Eligible Facility, the product of the Scheme Guarantee Premium Rate and the relevant Type G Revolving Facility Limit (irrespective as to whether or not the Borrower has made any utilisations of the Type G Eligible Facility); or
- (e) where the Scheme Facility is a Type H Eligible Facility, the product of the

Scheme Guarantee Premium Rate, the IAUR and the Type H Maximum Facility Amount for such Type H Eligible Facility (irrespective as to whether or not the Borrower has made any utilisations of the Type H Eligible Facility);

"Scheme Guarantee Premium Rate"	means an annual rate of 2% or such other rate as may be notified by the Secretary of State to the Lender from time to time;
"Scheme Website"	means the website maintained by the Secretary of State at the Scheme Website Address as amended, varied, supplemented or replaced from time to time;
"Scheme Website Application Process"	means, in respect of a Proposed Scheme Facility, the application, eligibility and validation process comprising the submission by the Lender to the Secretary of State of the information specified from time to time in the application, eligibility and validation section(s) of the Scheme Website, as such section(s) may be amended, varied, supplemented or replaced from time to time;
"Scheme Website Address"	means www.sflg.gov.uk or such other world wide web internet address as the Secretary of State may notify from time to time to the Lender as being the Scheme Website Address for the purposes of this Agreement;
"Security"	means any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lien, right of set-off, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby such asset is or may be leased to or re-acquired or acquired by the person selling or disposing of it;
"Service Level Agreement"	has the meaning given to such term in Clause 23;
"SFLG Scheme"	means the scheme established in 1981 known as the Small Firms Loan Guarantee;
"SFLG Scheme Facility"	means any credit, financing or loan facility made available to any person at any time under the SFLG Scheme;

“Small Lender”	means a Lender which, for an Annual Scheme Period: (a) has an Annual Base Lending Limit of no more than £2 million; and (b) has indicated to the Secretary of State that it expects to make less than 50 Scheme Facilities available during that Annual Scheme Period;
“Specific Lending Limit”	means, in respect of an Annual Scheme Period, any additional lending limit for Scheme Facilities agreed by the Secretary of State for that Annual Scheme Period in accordance with the provisions of Clause 12;
“Specific Lending Limit Proposal”	means any proposal submitted by the Lender under Clause 12.1 or 12.4;
"State Aid Letter"	means, in respect of an offer of a Scheme Facility to an Applicant, to the extent that such a letter is required to be issued in accordance with any applicable law or regulation (as prompted during the completion of the Scheme Website Application Process), the letter to be issued to that Applicant stating the amount of state aid which that Applicant will have received in respect of the issue by the Secretary of State of the relevant Scheme Guarantee;
"Sterling"	and "£" mean the lawful currency for the time being of the United Kingdom;
"Surviving Clauses"	means Clauses 6.3, 6.4, 6.5, 7, 8, 10.1, 14, 17, 18, 19, 21, 22, 24, 25, 26, 27, 28, 33 and 34 and Schedule 1 and Schedule 2;
"Term Loan Scheme Facility"	means a Scheme Facility which is a Type A Eligible Facility, Type B Eligible Facility, Type C Eligible Facility or Type D Eligible Facility;
"Term Loan Scheme Facility Expiry Date"	means, in respect of a Term Loan Scheme Facility, the date specified by the Lender in the relevant Scheme Facility Letter and notified to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) as being the date on or before which the Borrower is required to have repaid all amounts outstanding under the Term Loan Scheme Facility (provided that if the date specified by the Lender in the relevant Scheme Facility Letter is later than the date notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the date so notified to the Secretary of State shall be the Term Loan Scheme Facility Expiry Date);

"Termination Date"	<p>means the date of termination of this Agreement being whichever is the earlier of:-</p> <p>(a) 31 March 2015, unless such date is extended by the Secretary of State (in his absolute discretion) whereupon such extension shall be notified to the Lender in accordance with Clause 21; and</p> <p>(b) the date notified as being the date of termination under Clause 20.1 or 20.2 (as the case may be);</p>
"Turnover Limit"	<p>means £41,000,000 or such other limit as may be advised to the Lender in accordance with Clause 21 from time to time by the Secretary of State;</p>
"Type A Eligible Facility"	<p>means, in respect of an Applicant Without Collateral, a term loan facility where the amount(s) to be advanced to that Applicant comprise new lending;</p>
"Type B Eligible Facility"	<p>means, in respect of an Applicant with Available Collateral, a term loan facility where the amount(s) to be advanced to that Applicant comprise new lending;</p>
"Type C Eligible Facility"	<p>means a term loan facility where the amount(s) to be advanced to the Applicant comprise lending which is to be used to refinance all or part of the then utilised portion of any Existing Revolving Facility;</p>
"Type D Eligible Facility"	<p>means a term loan facility where the amount(s) to be advanced to the Applicant:-</p> <p>(A) are to be used to refinance the whole or part of:-</p> <p>(a) any one or more existing term loan facilities; or</p> <p>(b) any one or more existing term loan facilities together with any Revolving Facility,</p> <p>(other than a Scheme Facility and an SFLG Scheme Facility) which has or have been made available by the Lender to that Applicant under the terms of which principal, interest or other amounts remain outstanding from the Applicant to the Lender (each such existing term loan facility being a "Relevant Existing Term Loan Facility" and each such Relevant Existing Term Loan Facility which is to be refinanced being a "Type D Refinanced Existing Term Loan Facility") in circumstances where :-</p> <p>(aa) the aggregate of (i) the total value of</p>

any existing Collateral held by the Lender and which is capable of being used as a means of repaying any one or more Business Facilities (other than any Scheme Facility and any SFLG Scheme Facility) and (ii) the total value of any Available Collateral (as defined in Clause 2.2.1(b)), is insufficient to satisfy the Lender's security requirements at the time of the proposed refinancing (the value of such Collateral and any Available Collateral to be determined by the Lender in accordance with Normal Commercial Lending Practice and the Lender's security requirements to be assessed in accordance with Normal Commercial Lending Practice); and

(bb) that Applicant's ability to meet the scheduled capital and/or interest repayments and/or any other outstanding amounts in respect of each Type D Refinanced Existing Term Loan Facility (in accordance with the provisions of the documentation governing the terms of each Type D Refinanced Existing Term Loan Facility) has deteriorated or is forecasted by the Lender to be likely to deteriorate (the ability of that Applicant to service such capital and interest repayments and any other outstanding amounts to be determined by the Lender in accordance with Normal Commercial Lending Practice), to such an extent that the Lender has taken the decision, acting in accordance with Normal Commercial Lending Practice and the provisions of the documentation governing the terms of each Type D Refinanced Existing Term Loan Facility, that, without a restructuring of each Type D Refinanced Existing Term Loan Facility, it would no longer be viable for that Applicant to meet such capital and/or interest repayments and/or such other outstanding amounts (such restructuring to be by way of either a rescheduling of the period over which such capital and interest repayments or such other outstanding amounts are to be made over a longer repayment period (not exceeding 10 years) or to provide for the repayment terms to be on an interest only basis with a bullet repayment at the end of the repayment term); or

(B) are to be used to refinance any

amounts outstanding under any Existing Invoice Finance Facility which are in excess of the maximum aggregate amount of financing which applies to the relevant Existing Invoice Finance Facility where such excess has arisen due to the occurrence of events or circumstances which are beyond the reasonable control of the Applicant (for example, due to the insolvency of a substantial debtor or customer of the Applicant or the withdrawal or reduction by a credit insurer of any credit insurance limit previously available to the Applicant);

"Type E Eligible Facility"

means:-

- (a) where the Applicant does not have an Existing Revolving Facility, a new Revolving Facility to be made available by the Lender to the Applicant in order to provide the Applicant with new working capital;
- (b) where the Applicant has an Existing Revolving Facility which is a Type E Eligible Facility, a new Revolving Facility which is to be used to refinance all or part of the then utilised portion of such Existing Revolving Facility; or
- (c) where the Applicant has an Existing Revolving Facility which is a Non-Scheme Facility, an increase to the Existing Revolving Facility Limit by the Type E Revolving Facility Limit in order to provide the Applicant with additional working capital (for the avoidance of doubt, in any such case that element of the increased Revolving Facilities which comprises the Existing Revolving Facility is not a Type E Eligible Facility),

provided that, in each case, for the avoidance of doubt:-

- (a) the only type of facility which is eligible as a Type E Eligible Facility is a Revolving Facility; and
- (b) a Revolving Facility will not be eligible as a Type E Eligible Facility if it is to be utilised in whole or in part to replace/refinance an Existing Revolving Facility which is a Non-Scheme Facility;

"Type E Eligible Facility Availability" means, in respect of a Type E Eligible Facility, the date of that Scheme Facility Letter which

Start Date" was first issued by the Lender to the relevant Borrower to document the terms on which the Lender would make available to the Borrower the relevant Type E Eligible Facility;

"Type E Eligible Facility Expiry Date" means, in respect of a Type E Eligible Facility, the date specified by the Lender in the relevant Scheme Facility Letter (in accordance with its obligations under Clause 4.1.4(b)) and notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) as being the date on or before which the Borrower is required to have repaid:-

- (a) where the Type E Eligible Facility is a new Revolving Facility, all outstanding utilisations under the Type E Eligible Facility; or
- (b) where the Type E Eligible Facility is an increase to an Existing Revolving Facility, any outstanding utilisations of the Existing Revolving Facility which are in excess of the Existing Revolving Facility Limit,

provided that if the date specified by the Lender in the relevant Scheme Facility Letter is later than the date notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the date so notified to the Secretary of State shall be the Type E Eligible Facility Expiry Date;

"Type E Revolving Facility Limit" means, where the Proposed Scheme Facility is a Type E Eligible Facility and:-

- (a) is a new Revolving Facility, the authorised facility limit; or
- (b) is an increase to an Existing Revolving Facility, the amount of the increase to the Existing Revolving Facility Limit,

in each case which the Lender, acting in accordance with Normal Commercial Lending Practice, proposes, or is considering proposing, to make available to the Applicant and as such limit is to be reduced by the Lender if the relevant Type E Eligible Facility is to be repaid by way of staged repayments and which such limit (and any such reductions thereto) has been notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) (provided that, if the amount authorised by the Lender in the relevant Scheme Facility Letter is greater than the amount notified to the

Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the amount so notified to the Secretary of State shall be the Type E Revolving Facility Limit);

"Type F Eligible Facility"

means either:-

(A) where:-

(a) the Applicant has an Existing Invoice Finance Facility; but

(b) the Lender is not prepared, in accordance with Normal Commercial Lending Practice, to increase the Lender Approved Prepayment Percentage,

an increase to the Lender Approved Prepayment Percentage in order to provide the Applicant with additional working capital; or

(B) where:-

(a) the Applicant does not have an Existing Invoice Finance Facility and requires working capital; and

(b) the Lender is prepared to offer the Applicant a Non-Scheme Invoice Finance Facility; but

(c) the Lender Approved Prepayment Percentage in respect of such Non-Scheme Invoice Finance Facility (as determined in accordance with Normal Commercial Lending Practice) is not sufficiently high to provide the Applicant with the full amount of working capital required by the Applicant,

an increase to such Lender Approved Prepayment Percentage in order to provide the full amount of working capital required by the Applicant;

(For the avoidance of doubt, in either such case that element of the increased invoice finance or factoring facility which comprises, as applicable, such Existing Invoice Finance Facility or such Non-Scheme Invoice Finance Facility is not, for the purposes of the Scheme Documents, a

Type F Eligible Facility);

"Type F Eligible Facility Availability Start Date" means, in respect of a Type F Eligible Facility, the date of that Scheme Facility Letter which was first issued by the Lender to the relevant Borrower to document the terms on which the Lender would make available to the Borrower such Type F Eligible Facility;

"Type F Eligible Facility Expiry Date" means, in respect of a Type F Eligible Facility, the date specified by the Lender in the relevant Scheme Facility Letter (in accordance with its obligations under Clause 4.1.5(c)) and notified to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) as being the date on or before which the Type F Eligible Facility will cease to be available for utilisation by the Borrower (provided that if the date specified by the Lender in the relevant Scheme Facility Letter is later than the date notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the date so notified to the Secretary of State shall be the Type F Eligible Facility Expiry Date);

"Type F Increased Maximum Facility Amount" means, in respect of a Type F Eligible Facility, the increase to the Lender Approved Maximum Facility Amount made available by the Lender consequent on the Type F Prepayment Percentage Increase and as such amount is to be reduced by the Lender if the availability of the relevant Type F Eligible Facility is to cease by way of staged reductions and which such amount (and any such reduction thereto) has been notified to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) (provided that if the increased amount authorised by the Lender in the relevant Scheme Facility Letter is greater than the amount notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents and the relevant Scheme Guarantee, the amount so notified to the Secretary of State shall be the Type F Increased Maximum Facility Amount); and

"Type F Prepayment Percentage Increase" means, in respect of a Type F Eligible Facility, that percentage in excess of the relevant Lender Approved Prepayment Percentage which the Lender, acting in accordance with Normal Commercial Lending Practice, proposes, or is considering proposing, to make available to the Applicant under the relevant Scheme Facility Letter and which such percentage has been notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations

under Clause 17.3) and as such percentage is to be reduced by the Lender if the availability of the relevant Type F Eligible Facility is to cease by way of staged reductions (provided that, if the increased percentage authorised by the Lender in the relevant Scheme Facility Letter is greater than the increased percentage notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the increased percentage so notified to the Secretary of State shall be the Type F Prepayment Percentage Increase);

“Type G Eligible Facility”

means a Revolving Facility which is to be used to refinance all or part of the then utilised portion of any Existing Revolving Facility which is a Non-Scheme Facility;

“Type G Eligible Facility Expiry Date”

means, in respect of a Type G Eligible Facility, the date specified by the Lender in the relevant Scheme Facility Letter (in accordance with its obligations under Clause 4.1.6(b)) and notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) as being the date on or before which the Borrower is required to have repaid all outstanding utilisations under the Type G Eligible Facility provided that if the date specified by the Lender in the relevant Scheme Facility Letter is later than the date notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the date so notified to the Secretary of State shall be the Type G Eligible Facility Expiry Date;

“Type G Eligible Facility Availability Start Date”

means, in respect of a Type G Eligible Facility, the date of that Scheme Facility Letter which was first issued by the Lender to the relevant Borrower to document the terms on which the Lender would make available to the Borrower the relevant Type G Eligible Facility; and

“Type G Revolving Facility Limit”

means, where the Proposed Scheme Facility is a Type G Eligible Facility, the authorised facility limit which the Lender, acting in accordance with Normal Commercial Lending Practice, proposes, or is considering proposing, to make available to the Applicant and as such limit is to be reduced by the Lender if the relevant Type G Eligible Facility is to be repaid by way of staged repayments and which such limit (and any such reductions thereto) has been notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) (provided that, if the amount authorised by the Lender in the relevant Scheme Facility Letter is greater than the amount notified to the Secretary of State through the Scheme Website then, for the

purposes of the Scheme Documents, the amount so notified to the Secretary of State shall be the Type G Revolving Facility Limit);

“Type H Eligible Facility”

means an Invoice Finance Facility which is to be used to refinance all or part of any Existing Invoice Finance Facility which is a Non-Scheme Invoice Finance Facility;

"Type H Eligible Facility Availability Start Date"

means, in respect of a Type H Eligible Facility, the date of that Scheme Facility Letter which was first issued by the Lender to the relevant Borrower to document the terms on which the Lender would make available to the Borrower such Type H Eligible Facility;

"Type H Eligible Facility Expiry Date"

means, in respect of a Type H Eligible Facility, the date specified by the Lender in the relevant Scheme Facility Letter (in accordance with its obligations under Clause 4.1.7(b)4.1.5(c)) and notified to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) as being the date on or before which the Type H Eligible Facility will cease to be available for utilisation by the Borrower (provided that if the date specified by the Lender in the relevant Scheme Facility Letter is later than the date notified to the Secretary of State through the Scheme Website then, for the purposes of the Scheme Documents, the date so notified to the Secretary of State shall be the Type H Eligible Facility Expiry Date);

“Type H Maximum Facility Amount”

means, in respect of a Type H Eligible Facility, the maximum aggregate amount of financing which the Lender has calculated and approved in accordance with Normal Commercial Lending Practice;

“Type H Prepayment Percentage”

means, in respect of a Type H Eligible Facility, the prepayment percentage in respect of the financing of Eligible Debts which the Lender has calculated and approved in accordance with Normal Commercial Lending Practice;

“Type H Prepayment Percentage Supplement”

means, in respect of a Type H Eligible Facility, the percentage by which the Type H Prepayment Percentage exceeds the relevant Lender Approved Prepayment Percentage and which such percentage has been notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3); and

“United Kingdom”

means Great Britain and Northern Ireland.

1.2 In this Agreement:-

1.2.1 the headings to Clauses and Schedules are for ease of reference only;

- 1.2.2 a reference to a "**Clause**" or a "**Schedule**" is to a Clause or Schedule in this Agreement;
- 1.2.3 the term "**month**" means calendar month;
- 1.2.4 the term "**person**" includes any individual, firm, partnership, joint venture, company, corporation, unincorporated body, state, Agency or association or any two or more of the foregoing and shall be construed so as to include that person's assignees, transferees or successors in title;
- 1.2.5 references to any one gender include references to all other genders;
- 1.2.6 references in this Agreement to "**this Agreement**" or any other document shall be construed as references to this Agreement or that other document as amended, varied, replaced, novated or supplemented from time to time, as the case may be;
- 1.2.7 words importing the singular shall include the plural and vice versa unless the context otherwise requires;
- 1.2.8 references to any statute or statutory provision include any statute or statutory provision which amends, extends, consolidates, or replaces the same, or which has been amended, extended, consolidated, re-enacted or replaced, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.2.9 references to "**assets**" shall include revenues and the right to revenues and property and rights of every kind, present, future and contingent and whether tangible or intangible (including uncalled share capital);
- 1.2.10 the words "**other**" and "**otherwise**" shall not be construed ejusdem generis with any foregoing words where a wider construction is possible;
- 1.2.11 the words "**including**" and "**in particular**" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any foregoing words;
- 1.2.12 references to "**quarter**" and "**quarterly**" shall be construed, respectively, as being and relating to a period of 3 months;
- 1.2.13 references to the "**Secretary of State**" shall be construed, save as regards the use of such references in Clause 5, Clauses 6.2.1 to 6.2.4 inclusive and Schedule 1, so as to include any person to whom the Secretary of State has delegated authority to act on his behalf, or any person through whom the obligations and functions of the Secretary of State are performed, under or in connection with this Agreement and/or the operation of the Scheme (including, but not limited to, the British Business Bank);
- 1.2.14 references to the "**Lender**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.15 the term "**holding company**" means, in relation to a company or corporation, any other company or corporation in respect of which it is a subsidiary;
- 1.2.16 the term "**subsidiary**" has the meaning set out in section 1159 of the CA;
- 1.2.17 references to anything being "**remedied**" or "**unremedied**" means remedied or not remedied (as the case may be) to the satisfaction of the Secretary of State and references to anything being "**waived**" or "**unwaived**" means

waived or not waived (as the case may be) in writing by the Secretary of State;

1.2.18 the Schedules shall be treated as an integral part of this Agreement and references to "**this Agreement**" shall include the Schedules; and

1.2.19 where the Applicant/Borrower comprises more than one person because the relevant Proposed Scheme Facility or Scheme Facility is to be, or has been, made available to more than one Group Company then references to "**Applicant**" and "**Borrower**" in the Scheme Documents shall be construed, as the context requires, as though all such persons were a single person.

1.3 The provisions of this Agreement shall come into effect on the Effective Date.

2. **ELIGIBILITY**

2.1 Subject to the other provisions of this Agreement, the Lender shall be entitled to make available such Scheme Facilities as it shall in its sole discretion see fit (including, but not limited to, the making available of more than one Scheme Facility to a Business). For the avoidance of doubt, nothing in this Agreement shall oblige a Lender to make available a particular type of Scheme Facility to any Business at all if to do so is contrary to such Lender's Normal Commercial Lending Practice.

2.2 An Applicant shall only be eligible for a Scheme Facility if:-

2.2.1 the Lender would, in the absence of the Scheme, be prepared to offer the Applicant a Non-Scheme Facility in the Proposed Scheme Facility Amount and the only reason it cannot do so is because the Applicant either has:-

(a) no Collateral available (any such Applicant being an "**Applicant Without Collateral**"); or

(b) insufficient Collateral available (any such Collateral which is available but which is insufficient being the "**Available Collateral**"),

to secure such Proposed Scheme Facility Amount (the availability and value of any such Collateral to be determined by the Lender in accordance with Normal Commercial Lending Practice) or, in the case of a Scheme Facility which is a Type F Eligible Facility, the nature of the debts which the Lender is proposing to finance thereunder (including, but not limited to, the credit worthiness of the proposed invoice debtors and the degree of concentration in one or more particular invoice debtors), as assessed by the Lender in accordance with Normal Commercial Lending Practice, is not sufficient to support the proposed Type F Increased Maximum Facility Amount;

2.2.2 in the Lender's Opinion, the Applicant has a viable business proposition that, inter alia, will enable it to meet its repayment obligations under the Proposed Scheme Facility;

2.2.3 in the Lender's Opinion, the provision to the Applicant of financing of the type comprised in the Proposed Scheme Facility is an appropriate means of financing (for the avoidance of doubt, where the provision of financing of that type is only one of a number of elements of an overall financing package which would be appropriate for the Applicant (irrespective of the immediate availability of, or the identity of those persons who will or could provide, such other elements of financing), provided that financing of that type is, in the Lender's Opinion, an appropriate element of such financing package, the requirements of this Clause 2.2.3 will be deemed to have been satisfied);

2.2.4 the Applicant is engaged or will be engaged in an Eligible Business Activity;

- 2.2.5 the Proposed Scheme Facility is to be utilised for an Eligible Purpose;
- 2.2.6 subject to the provisos to Clause 4.1, the Proposed Scheme Facility is an Eligible Facility;
- 2.2.7 the Applicant is not, in the Lender's Opinion, a Business in Difficulty;
- 2.2.8 the Business Turnover does not exceed the Turnover Limit;
- 2.2.9 the aggregate amount of:-
- (a) the Proposed Scheme Facility Amount;
 - (b) any Outstanding Scheme Facility Principal, Outstanding Type E Balance, Outstanding Type F Balance, Outstanding Type G Balance and Outstanding Type H Balance due from the Applicant to the Lender under any Scheme Facilities made available by the Lender to the Applicant; and
 - (c) if the Applicant is a Group Company, the total of the Outstanding Scheme Facility Principal, Outstanding Type E Balance, Outstanding Type F Balance and Outstanding Type G Balance due from any other Group Companies to the Lender under any Scheme Facilities made available to such Group Companies,

is an amount which does not exceed the Maximum Amount (in assessing whether the Maximum Amount has been exceeded in respect of the Applicant the Lender shall take into account (i) its own internal records relating to any previous lending to the Applicant, (ii) the information provided to it by the Applicant in connection with the Lender's Application Process (including, but not limited to, as specified in the Data Protection and Disclosure Declaration) and/or (iii) obtained by the Lender having made Due Enquiry (for the avoidance of doubt, the Lender is under no obligation to make Due Enquiry in relation to any credit, financing or loan facility made available under the Scheme which such credit, financing or loan facility is to be assigned, novated or otherwise transferred to the Lender save to the extent (i) required under Clause 17.6 and (ii) of any enquiries, investigations and due diligence processes adopted by the Lender from time to time in accordance with Normal Commercial Lending Practice in relation to the assignment, novation or transfer of credit, financing or loan facilities to it);

- 2.2.10 the provision by the Lender of the Proposed Scheme Facility will not breach any state aid restrictions (in assessing whether restrictions on state aid have been breached in respect of the Applicant, the Lender shall take into account (i) its own internal records relating to any previous lending to the Applicant, (ii) the information provided to it by the Applicant in connection with the Lender's Application Process (including, but not limited to, as specified in the Data Protection and Disclosure Declaration) and/or (iii) obtained by the Lender having made Due Enquiry;
- 2.2.11 where the Proposed Scheme Facility is a Type E Eligible Facility:-
- (a) the Lender has not, within the three month period immediately preceding the Date of Application, cancelled, withdrawn or otherwise terminated any Revolving Facility previously made available by the Lender to the Applicant and has not, within such period, subject to Clause 2.2.11(b), reduced the authorised facility limit in respect of any existing Revolving Facility made available by the Lender to the Applicant; and

- (b) the Lender has not, within the three month period immediately preceding the Date of Application:-
 - (i) declined an application or request from the Applicant for a new and/or increased Revolving Facility save where the sole reason for such declination was because the Applicant had no, or insufficient, Collateral available to secure the new/increased Revolving Facility which had been proposed; or
 - (ii) reduced the authorised facility limit in respect of any Existing Revolving Facility as a result of the Lender having made available to such Applicant a Type C Eligible Facility or a Type G Eligible Facility,

unless the Lender has, as part of its decision making process as regards the Proposed Scheme Facility, re-assessed the facts, circumstances and matters which, wholly or partly, contributed to the Lender's decision :-

- (A) in the case of sub-Clause 2.2.11(b)(i) above, to decline any such an application or request; or
- (B) in the case of sub-Clause 2.2.11(b)(ii) above, to reduce the relevant Existing Revolving Facility to a level (determined by the Lender in accordance with the provisions of Clause 4.1.2(b)) which has, in the period (not exceeding three months) between such reduction and the Date of Application, proved to be insufficient to meet the Applicant's requirements,

and, in either case, has concluded that the provisions of Clause 2.2.1 are then satisfied, in which case the Lender acknowledges and agrees that it might be requested to justify its change in lending stance in relation to any such Applicant as a part of an Audit and it must appropriately document the reasons for any such change in lending stance; and

2.2.12 where the Proposed Scheme Facility is a Type G Eligible Facility:-

- (a) the Lender has not, within the three month period immediately preceding the Date of Application, cancelled, withdrawn or otherwise terminated any Revolving Facility previously made available by the Lender to the Applicant and has not, within such period, subject to Clause 2.2.12(b), reduced the authorised facility limit in respect of any existing Revolving Facility made available by the Lender to the Applicant; and
- (b) the Lender has not, within the three month period immediately preceding the Date of Application:-
 - (i) declined an application or request from the Applicant for a new and/or increased Revolving Facility save where the sole reason for such declination was because the Applicant had no, or insufficient, Collateral available to secure the new Revolving Facility which had been proposed; or
 - (ii) reduced the authorised facility limit in respect of any Existing Revolving Facility as a result of the Lender having made available to such Applicant a Type C Eligible Facility,

unless the Lender has, as part of its decision making process as regards the Proposed Scheme Facility, re-assessed the facts,

circumstances and matters which, wholly or partly, contributed to the Lender's decision :-

- (A) in the case of sub-Clause 2.2.12(b)(i) above, to decline any such an application or request; or
- (B) in the case of sub-Clause 2.2.12(b)(ii) above, to reduce the relevant Existing Revolving Facility to a level (determined by the Lender in accordance with the provisions of Clause 4.1.2(b)) which has, in the period (not exceeding three months) between such reduction and the Date of Application, proved to be insufficient to meet the Applicant's requirements,

and, in either case, has concluded that the provisions of Clause 2.2.1 are then satisfied, in which case the Lender acknowledges and agrees that it might be requested to justify its change in lending stance in relation to any such Applicant as a part of an Audit and it must appropriately document the reasons for any such change in lending stance.

2.3 The Lender agrees that, if it is unwilling to offer a comparable Non-Scheme Facility in circumstances where the Applicant has sufficient Collateral available to secure such a Non-Scheme Facility (the availability and value of any such Collateral to be determined by the Lender in accordance with Normal Commercial Lending Practice) which it is unwilling to arrange to be provided to the Lender, the Lender will not offer a Scheme Facility to such Applicant.

2.4 No Scheme Facility shall be made available:-

2.4.1 where the Scheme Facility is a Term Loan Scheme Facility, such that the Term Loan Scheme Facility Expiry Date is less than three months from the date of first drawdown thereunder or after the expiry of the Maximum Guarantee Term from such date;

2.4.2 such that the Proposed Scheme Facility Amount is less than the Minimum Amount;

2.4.3 where the Scheme Facility is to be utilised (in whole or in part) in supporting or engaging in Commercial Activity in an Excluded Sector;

2.4.4 such that, where the Scheme Facility:-

(a) is a Term Loan Scheme Facility, the initial drawdown can be made later than 6 months after the date of the Scheme Facility Letter; or

(b) is a Type E Eligible Facility, a Type F Eligible Facility, a Type G Eligible Facility or a Type H Eligible Facility, the offer of such Scheme Facility is capable of being accepted by the Applicant later than the date determined by the Lender acting in accordance with Normal Commercial Lending Practice (which such date must not, in any event, be later than 6 months after the date of the Scheme Facility Letter);

2.4.5 where the Scheme Facility is a Type E Eligible Facility, such that the Type E Eligible Facility Expiry Date falls on a date other than a date which is:-

(a) a whole number of months;

(b) three months or more; and

(c) less than or equal to three years,

in each case from the Type E Eligible Facility Availability Start Date and, therefore, for the avoidance of doubt, if a Scheme Facility which is a Type E Eligible Facility is repaid in full by the Borrower before the date which falls three years after the Type E Eligible Facility Availability Start Date and is cancelled, withdrawn or otherwise terminated by agreement between the Lender and the Borrower then, if the Lender subsequently wishes to make available to the Borrower another new or increased Revolving Facility under the Scheme then that proposal must be treated as a new Proposed Scheme Facility such that all the provisions of this Agreement relating to eligibility and application processing must be complied with (accordingly, in such circumstances the Lender is not permitted to seek to reinstate the Type E Eligible Facility which has been cancelled, withdrawn or otherwise terminated);

2.4.6 where the Scheme Facility is a Type F Eligible Facility, such that:-

- (a) the Type F Prepayment Percentage Increase (when aggregated with any Type F Prepayment Percentage Increase in respect of any other Type F Eligible Facility previously made available by the Lender to the relevant Applicant and which remains available for utilisation) exceeds 30%;
- (b) the sum of the Lender Approved Prepayment Percentage and the Type F Prepayment Percentage Increase (when aggregated with any Type F Prepayment Percentage Increase in respect of any other Type F Eligible Facility previously made available by the Lender to the relevant Applicant and which remains available for utilisation) exceeds 100%;
- (c) the Type F Eligible Facility Expiry Date is less than three months or more than three years from the Type F Eligible Facility Availability Start Date; or
- (d) the debts available to be financed thereunder include debts other than Eligible Debts;

2.4.7 where the Scheme Facility is a Type G Eligible Facility, such that the Type G Eligible Facility Expiry Date falls on a date other than a date which is:-

- (i) a whole number of months;
- (ii) three months or more; and
- (iii) less than or equal to three years,

in each case from the Type G Eligible Facility Availability Start Date and therefore, for the avoidance of doubt, if a Scheme Facility which is a Type G Eligible Facility is repaid in full by the Borrower before the date which falls three years after the Type G Eligible Facility Availability Start Date and is cancelled, withdrawn or otherwise terminated by agreement between the Lender and the Borrower then, if the Lender subsequently wishes to make available to the Borrower another new or increased Revolving Facility under the Scheme then that proposal must be treated as a new Proposed Scheme Facility such that all the provisions of this Agreement relating to eligibility and application processing must be complied with (accordingly, in such circumstances the Lender is not permitted to seek to reinstate the Type G Eligible Facility which has been cancelled, withdrawn or otherwise terminated);

2.4.8 where the Scheme Facility is a Type H Eligible Facility, such that:-

- (a) the Type H Prepayment Percentage Supplement exceeds 30% (when aggregated with any other Type H Prepayment Percentage Supplement in respect of any other Type H Eligible Facility previously made available by the Lender to the relevant Applicant and which remains available for utilisation);
- (b) the Type H Prepayment Percentage (when aggregated with any other Type H Prepayment Percentage Supplement in respect of any other Type H Eligible Facility previously made available by the Lender to the relevant Applicant and which remains available for utilisation) exceeds 100%;
- (c) the Type H Eligible Facility Expiry Date is less than three months or more than three years from the Type H Eligible Facility Availability Start Date; or
- (d) the debts available to be financed thereunder include debts other than Eligible Debts;

2.4.9 on terms requiring repayment on demand (save (i) in respect of a Type E Eligible Facility or a Type G Eligible Facility which, in accordance with Normal Commercial Lending Practice, provides for repayment on demand or (ii) in respect of a Type F Eligible Facility or a Type H Eligible Facility, without prejudice to Clause 4.1.5(f) or Clause 4.1.7(e) below respectively or (iii) to the extent that a Scheme Facility is placed on demand by the Lender following the occurrence of an event of default under the Scheme Facility Letter, howsoever described); and

2.4.10 other than in sterling or in such lawful currency of the United Kingdom from time to time.

2.5 Subject to Clause 2.2.11, an Applicant will not cease to be eligible for a Scheme Facility by reason only of that Applicant (or any partner or shareholder in, or director, committee member or member of, that Applicant or any person in any way connected with any such Applicant), having been a party to a Scheme Facility or an SFLG Scheme Facility which was cancelled or declared due and payable prior to its specified maturity date following the occurrence of any event of default, howsoever described.

3. **APPLICATION PROCESSING AND ELIGIBILITY CHECKING**

3.1 Prior to the granting of any Scheme Facility the Lender shall:-

- 3.1.1 complete the Lender's Application Process and make Due Enquiry;
- 3.1.2 obtain a Data Protection and Disclosure Declaration from the Applicant; and
- 3.1.3 complete the Scheme Website Application Process.

3.2 If an application for a Scheme Facility is rejected following the Lender's completion of any element of the Scheme Website Application Process pursuant to its obligations under Clause 3.1, then the Lender shall not offer the Proposed Scheme Facility to the relevant Applicant.

4. **OFFER AND NOTIFICATION OF NEW SCHEME FACILITIES**

4.1 If an Applicant is eligible for a Scheme Facility under the provisions of Clause 2.2 (subject to Clause 2.3) and the Lender has complied with its obligations under Clause 3.1 (subject to Clause 3.2), then the Lender shall, subject to the remaining provisions of this Agreement, be entitled to offer, within such timescales as are consistent with

Normal Commercial Lending Practice, the Applicant the Proposed Scheme Facility under the terms of a Scheme Facility Letter provided that:-

- 4.1.1 if the Proposed Scheme Facility is a Type B Eligible Facility, the Lender must, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of any Relevant Available Collateral and shall ensure that any such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter;
- 4.1.2 if the Proposed Scheme Facility is a Type C Eligible Facility, the Lender:-
- (a) must, if the Applicant has any Relevant Available Collateral, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of such Relevant Available Collateral and shall ensure that such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter; and
 - (b) undertakes to the Secretary of State that it will not, consequent on the making available of the Proposed Scheme Facility and such refinancing, withdraw the relevant Revolving Facility but that it will continue to provide a Revolving Facility to the relevant Applicant on terms and to an extent which are consistent with Normal Commercial Lending Practice taking into account the terms of the Proposed Scheme Facility (including, but not limited to, the Proposed Scheme Facility Amount) and the ability of the relevant Borrower, in the Lender's Opinion, to be able to meet its repayment obligations under the Proposed Scheme Facility and such continuing Revolving Facility;
- 4.1.3 if the Proposed Scheme Facility is a Type D Eligible Facility, the Lender:-
- (a) must, if the Applicant has any Relevant Available Collateral, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of such Relevant Available Collateral and shall ensure that such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter;
 - (b) must not, in connection with the provision of the Proposed Scheme Facility, release the Type D Eligible Facility Relevant Security (as defined in the definition of "Type D Eligible Facility" in Clause 1.1);
 - (c) must, in determining the terms of the restructuring (as contemplated in the definition of "Type D Eligible Facility" in Clause 1.1) act in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, if the Applicant has more than one Relevant Existing Term Loan Facility, the Lender is not obliged to refinance all such Relevant Existing Term Loan Facilities but is permitted, provided in doing so it acts in accordance with Normal Commercial Lending Practice and the other terms of this Agreement, to select which of the Relevant Existing Term Loan Facilities should be refinanced);

- (d) if the Lender has determined that all of the Applicant's Relevant Existing Term Loan Facilities are to be refinanced in circumstances where the Applicant also has a Revolving Facility with the Lender then the whole or part of the amount outstanding under that Revolving Facility may also be refinanced (the amount which is to be refinanced being the "**Type D Revolving Facility Refinancing Amount**"), provided that if the Lender does so it must not, consequent on the making available of the Proposed Scheme Facility and such refinancing, withdraw the relevant Revolving Facility but must continue to provide a Revolving Facility to the relevant Applicant on terms and to an extent which are consistent with Normal Commercial Lending Practice taking into account the terms of the Proposed Scheme Facility (including, but not limited to, the Proposed Scheme Facility Amount), any Type D Linked Non-Scheme Facility (as defined in Clause 4.1.3(e)) and the ability of the relevant Borrower, in the Lender's Opinion, to be able to meet its repayment obligations under the Proposed Scheme Facility, any Type D Linked Non-Scheme Facility and such continuing Revolving Facility);
- (e) is permitted, acting in accordance with Normal Commercial Lending Practice, in restructuring each Type D Refinanced Existing Term Loan Facility and any Revolving Facility which is to be refinanced in accordance with the provisions of this Clause 4.1.3, to make available to the Borrower both a new Non-Scheme Facility in the form of a term loan (any such new Non-Scheme Facility being a "**Type D Linked Non-Scheme Facility**") and a Proposed Scheme Facility the total aggregate principal amounts of which are sufficient to ensure that the total principal, interest and other amounts outstanding to the Lender under each Type D Refinanced Existing Term Loan Facility and any Type D Revolving Facility Refinancing Amount can, subject to Clause 4.1.3(g), be refinanced in full;
- (f) if it exercises its rights under Clause 4.1.3(e), may determine the principal amounts of such Proposed Scheme Facility and Type D Linked Non-Scheme Facility in its absolute discretion (provided that in determining the principal amount of the Type D Linked Non-Scheme Facility it must take into account the value of any Relevant Available Collateral and any other Collateral then held by the Lender which, according to its terms, is or will be capable of being used as a means of repaying the Type D Linked Non-Scheme Facility such values and associated loan to value ratios to be determined by the Lender in accordance with Normal Commercial Lending Practice);
- (g) may, for the avoidance of doubt and provided that in doing so it is acting in accordance with Normal Commercial Lending Practice and the other terms of this Agreement, in effecting the relevant refinancing make available to the Applicant additional term loan financing, such additional financing to be effected through the principal amount of the Proposed Scheme Facility and any Type D Linked Non-Scheme Facility exceeding the amount which is required to ensure a full refinancing of each Type D Refinanced Existing Term Loan Facility and any Type D Revolving Facility Refinancing Amount;
- (h) must ensure that, subject to Clause 4.1.3(i), the term, repayment frequency and, if any, the capital repayment holiday profile and the other terms and conditions of such Proposed Scheme Facility and

any Type D Linked Non-Scheme Facility are the same and are in accordance with Normal Commercial Lending Practice; and

- (i) must ensure that the pricing of such Proposed Scheme Facility and Type D Linked Non-Scheme Facility is determined in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, such pricing may, therefore, differ);

4.1.4 if the Proposed Scheme Facility is a Type E Eligible Facility, the Lender:-

- (a) must, if the Applicant has any Relevant Available Collateral, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of such Relevant Available Collateral and shall ensure that such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter;
- (b) must, in the relevant Scheme Facility Letter, specify a Type E Eligible Facility Expiry Date (the determination of which must be made, subject to the time limits specified in Clause 2.4.5, by the Lender in accordance with Normal Commercial Lending Practice and notified to the Secretary of State through the Scheme Website in compliance with its obligations under Clause 17.3) on which such date the Lender must cancel, withdraw or otherwise terminate the availability of the Type E Eligible Facility by reducing the Type E Revolving Facility Limit to zero;
- (c) must make available the Type E Eligible Facility:-
 - (i) where the Borrower has no Existing Revolving Facility, on an appropriate account of the Borrower; or
 - (ii) where the Type E Eligible Facility comprises an increase to an Existing Revolving Facility, on the same account on which the Existing Revolving Facility is made available save to the extent that the Lender would be acting in accordance with Normal Commercial Lending Practice to operate separate accounts for the Type E Eligible Facility and the Existing Revolving Facility in which case the Lender must put in place appropriate systems and procedures to ensure that the Existing Revolving Facility is utilised in preference to the Type E Eligible Facility (the Lender acknowledges and agrees that it might be requested to demonstrate that such systems and procedures are in place, and are being operated, as a part of an Audit);
- (d) must, in the relevant Scheme Facility Letter, provide that the Type E Eligible Facility is to be repaid in full by the Borrower either by way of a single repayment no later than the Type E Eligible Facility Expiry Date or by staged repayments during the period from the Type E Eligible Facility Availability Start Date to the Type E Eligible Facility Expiry Date (the determination of which must be made by the Lender in accordance with Normal Commercial Lending Practice including due consideration being given by the Lender as to the ability of the Borrower to be able to meet such repayment obligations) and provided that, if the Type E Eligible Facility comprises an increase to an Existing Revolving Facility and that

Existing Revolving Facility is to be repaid by staged reductions to the Existing Revolving Facility Limit then the Lender must apply the amount of each such staged reduction, at the relevant time, to firstly to reduce, by that amount, the Type E Revolving Facility Limit and only when the Type E Revolving Facility Limit has been reduced to zero may any further staged reductions be applied by the Lender to reduce the Existing Revolving Facility Limit;

- (e) must ensure that the pricing of the Type E Eligible Facility is determined in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, the pricing of the Type E Eligible Facility may differ from the pricing of any Existing Revolving Facility if to do so is in accordance with Normal Commercial Lending Practice);
- (f) undertakes to the Secretary of State that it will not, during the period from the Type E Eligible Facility Availability Start Date to the Type E Eligible Facility Expiry Date (as such date may be extended in accordance with the provisions of Clause 4.1.4), cancel, withdraw or otherwise terminate, or reduce the authorised facility limit in respect of, any Existing Revolving Facility, unless the Lender:-
 - (i) in cancelling, withdrawing or terminating an Existing Revolving Facility is acting in accordance with Normal Commercial Lending Practice; and
 - (ii) it simultaneously cancels, withdraws or terminates the Type E Eligible Facility made available to the Applicant;
- (g) undertakes to the Secretary of State that, where the Type E Eligible Facility comprises an increase to an Existing Revolving Facility, any credits which are made to the Relevant Revolving Account (irrespective as to whether such credits are made before or after the date on which the Lender makes demand for repayment of the whole of the sums then outstanding under the Existing Revolving Facility and the Type E Eligible Facility but excluding any amounts which are to be applied in accordance with the provisions of Clause 18) shall be applied by the Lender:-
 - (i) firstly, to reduce the amount outstanding in respect of the Existing Revolving Facility; and
 - (ii) thereafter, to reduce the amount outstanding in respect of the Type E Eligible Facility,

regardless of the fact that utilisations under the Existing Revolving Facility may have occurred before utilisations under the Type E Eligible Facility and, accordingly, the Lender agrees with the Secretary of State that the common law presumption as to the order of application of payments to debts known as the rule in Clayton's Case (Devaynes v Noble, Clayton's Case, 1816, Merivale's Reports, Chancery, Vol 1, 572) will not apply for the purposes of the Scheme Documents; and

- (h) is permitted to make available the Proposed Scheme Facility on either an on-demand or a committed basis, the determination as to which basis to adopt, in the case of any particular Applicant, must be made by the Lender acting in accordance with Normal Commercial Lending Practice (provided that, where the Applicant

has an Existing Revolving Facility, such that the Type E Eligible Facility comprises an increase to an Existing Revolving Facility Limit, the basis on which the Type E Eligible Facility is provided by the Lender must be the same as the basis on which the Existing Revolving Facility is provided);

4.1.5 if the Proposed Scheme Facility is a Type F Eligible Facility, the Lender:-

- (a) must, if the Applicant has any Relevant Available Collateral, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of such Relevant Available Collateral and shall ensure that such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter;
- (b) must, in determining the Type F Prepayment Percentage Increase, subject to the provisions of Clause 2.4.6, act in accordance with Normal Commercial Lending Practice;
- (c) must, in the relevant Scheme Facility Letter, specify a Type F Eligible Facility Expiry Date (the determination of which must be made, subject to the time limits specified in Clause 2.4.6(c) by the Lender in accordance with Normal Commercial Lending Practice and notified to the Secretary of State through the Scheme Website in compliance with its obligations under Clause 17.3) on which such date the Lender must cancel, withdraw or otherwise terminate the availability of the Type F Eligible Facility by reducing the Type F Prepayment Percentage Increase and the Type F Increased Maximum Facility Amount to zero;
- (d) must, in the relevant Scheme Facility Letter, provide that the Type F Eligible Facility will cease to be available for utilisation by the Borrower either by way of a single reduction to the Type F Increased Maximum Facility Amount and the Type F Prepayment Percentage Increase no later than the Type F Facility Expiry Date or by staged reductions during the period from Type F Eligible Facility Availability Start Date to the Type F Eligible Facility Expiry Date (the determination of which must be made by the Lender in accordance with Normal Commercial Lending Practice including due consideration being given by the Lender as to the ability of the Borrower to be able to meet such repayment obligations);
- (e) must ensure that the pricing of the Type F Eligible Facility is determined in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, the pricing of the Type F Eligible Facility may differ from the pricing of the Relevant Non-Scheme IF Facility if to do so is in accordance with Normal Commercial Lending Practice);
- (f) undertakes to the Secretary of State that it will not, during the period from the Type F Eligible Facility Availability Start Date to the Type F Eligible Facility Expiry Date reduce the Lender Approved Prepayment Percentage, the Lender Approved Maximum Facility Amount, the Type F Prepayment Percentage Increase or the Type F Increased Maximum Facility Amount except where to do so the Lender would be acting in accordance with Normal Commercial Lending Practice and if the Lender makes any such reductions to the Type F Prepayment Percentage Increase and the Type F

Increased Maximum Facility Amount then such reductions must be notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 16.3) and the provisions of Clause 4.1.5(h) will apply to the Type F Eligible Facility (as so reduced) (in particular, but without prejudice to the generality of the foregoing, the Lender represents and warrants on the commencement and completion of the Scheme Website Application Process that it has not made any reduction to the Lender Approved Prepayment Percentage or the Lender Approved Maximum Facility Amount with the intention of balancing such reduction through the provision of the Type F Eligible Facility);

- (g) undertakes to the Secretary of State that any credits which are made to the Relevant Invoice Finance Account (irrespective as to whether such credits are made before or after the date on which the Lender makes demand for repayment of the whole of the sums then outstanding under the Relevant Non-Scheme IF Facility and the Type F Eligible Facility (but excluding any amounts which are to be applied in accordance with the provisions of Clause 18) shall be applied by the Lender in reducing:-
- (i) firstly, the amount which is outstanding under the Relevant Non-Scheme IF Facility; and
 - (ii) secondly, the amount which is outstanding under the Type F Eligible Facility,

in relation to the Eligible Debt in respect of which such credit was received, regardless of the timing of utilisations under the Relevant Non-Scheme IF Facility and the Type F Eligible Facility and, accordingly, the Lender agrees with the Secretary of State that the common law presumption as to the order of application of payments to debts known as the rule in Clayton's Case (*Devaynes v Noble*, Clayton's Case, 1816, Merivale's Reports, Chancery, Vol 1, 572) will apply for the purposes of the Scheme Documents; and

- (h) if, following the granting of a Type F Eligible Facility, the Lender and the Borrower wish to increase the Type F Increased Maximum Facility Amount and the Type F Prepayment Percentage Increase then any such proposal must be treated as a new Proposed Scheme Facility such that all the provisions of this Agreement relating to eligibility and application processing must be complied with;

4.1.6 if the Proposed Scheme Facility is a Type G Eligible Facility, the Lender:-

- (a) must, if the Applicant has any Relevant Available Collateral, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of such Relevant Available Collateral and shall ensure that such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter;
- (b) must, in the relevant Scheme Facility Letter, specify a Type G Eligible Facility Expiry Date (the determination of which must be made, subject to the time limits specified in Clause 2.4.7, by the Lender in accordance with Normal Commercial Lending Practice

and notified to the Secretary of State through the Scheme Website in compliance with its obligations under Clause 17.3) on which such date the Lender must cancel, withdraw or otherwise terminate the availability of the Type G Eligible Facility by reducing the Type G Revolving Facility Limit to zero;

- (c) must, in the relevant Scheme Facility Letter, provide that the Type G Eligible Facility is to be repaid in full by the Borrower either by way of a single repayment no later than the Type G Eligible Facility Expiry Date or by staged repayments during the period from the Type G Eligible Facility Availability Start Date to the Type G Eligible Facility Expiry Date (the determination of which must be made by the Lender in accordance with Normal Commercial Lending Practice including due consideration being given by the Lender as to the ability of the Borrower to be able to meet such repayment obligations);
- (d) must ensure that the pricing of the Type G Eligible Facility is determined in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, the pricing of the Type G Eligible Facility may differ from the pricing of any Existing Revolving Facility if to do so is in accordance with Normal Commercial Lending Practice);
- (e) is permitted to make available the Proposed Scheme Facility on either an on-demand or a committed basis; and
- (f) must, in determining the terms of the refinancing (as contemplated in the definition of "Type G Eligible Facility" in Clause 1.1) act in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, if the Applicant has more than one Existing Revolving Facility, the Lender is not obliged to refinance all such Existing Revolving Facilities but is permitted, provided in doing so it acts in accordance with Normal Commercial Lending Practice and the other terms of this Agreement, to select which of the Relevant Existing Revolving Facilities should be refinanced);

4.1.7 if the Proposed Scheme Facility is a Type H Eligible Facility, the Lender:-

- (a) must, if the Applicant has any Relevant Available Collateral, as a condition of the grant by the Lender of that Proposed Scheme Facility, require (if to do so is in accordance with Normal Commercial Lending Practice) the grant to it by the relevant Applicant of such Relevant Available Collateral and shall ensure that such Relevant Available Collateral is provided prior to permitting the Applicant to drawdown under the relevant Scheme Facility Letter;
- (b) must, in the relevant Scheme Facility Letter, specify a Type H Eligible Facility Expiry Date (the determination of which must be made, subject to the time limits specified in Clause 2.4.8(c) by the Lender in accordance with Normal Commercial Lending Practice and notified to the Secretary of State through the Scheme Website in compliance with its obligations under Clause 17.3) on which such date the Lender must cancel, withdraw or otherwise terminate the availability of the Type H Eligible Facility by reducing the Type H Prepayment Percentage and the Type H Maximum Facility Amount for such Type H Eligible Facility to zero;

- (c) must, in the relevant Scheme Facility Letter, provide that the Type H Eligible Facility will cease to be available for utilisation by the Borrower either by way of a single reduction to the Type H Maximum Facility Amount and the Type H Prepayment Percentage no later than the Type H Facility Expiry Date or by staged reductions during the period from Type H Eligible Facility Availability Start Date to the Type H Eligible Facility Expiry Date (the determination of which must be made by the Lender in accordance with Normal Commercial Lending Practice including due consideration being given by the Lender as to the ability of the Borrower to be able to meet such repayment obligations);
- (d) must, subject to Clause 2.4.8(a), ensure that the pricing of the Type H Eligible Facility is determined in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, the pricing of the Type H Eligible Facility may differ from the pricing of the Existing Invoice Finance Facility being refinanced if to do so is in accordance with Normal Commercial Lending Practice);
- (e) undertakes to the Secretary of State that it will not, during the period from the Type H Eligible Facility Availability Start Date to the Type H Eligible Facility Expiry Date reduce the Type H Prepayment Percentage or the Type H Maximum Facility Amount except where to do so the Lender would be acting in accordance with Normal Commercial Lending Practice and if the Lender makes any such reductions to the Type H Prepayment Percentage or the Type H Maximum Facility Amount then such reductions must be notified by the Lender to the Secretary of State through the Scheme Website (in accordance with its obligations under Clause 17.3) and the provisions of Clause 4.1.7(g) will apply to the Type H Eligible Facility (as so reduced);
- (f) undertakes to the Secretary of State that any credits which are made to the Relevant Invoice Finance Account (irrespective as to whether such credits are made before or after the date on which the Lender makes demand for repayment of the whole of the sums then outstanding under any Relevant Non-Scheme Invoice Finance Facility and the Type H Eligible Facility (but excluding any amounts which are to be applied in accordance with the provisions of Clause 18) shall be applied by the Lender in reducing:-
- (i) firstly, the amount which is outstanding under the Relevant Non-Scheme Invoice Finance Facility; and
 - (ii) secondly, the amount which is outstanding under the Type H Eligible Facility,
- in relation to the Eligible Debt in respect of which such credit was received, regardless of the timing of utilisations under the Relevant Non-Scheme Invoice Finance Facility and the Type H Eligible Facility and, accordingly, the Lender agrees with the Secretary of State that the common law presumption as to the order of application of payments to debts known as the rule in Clayton's Case (Devaynes v Noble, Clayton's Case, 1816, Merivale's Reports, Chancery, Vol 1, 572) will apply for the purposes of the Scheme Documents;
- (g) if, following the granting of a Type H Eligible Facility, the Lender and the Borrower wish to increase the Type H Maximum Facility Amount or the Type H Prepayment Percentage then any such

proposal must be treated as a new Proposed Scheme Facility such that all the provisions of this Agreement relating to eligibility and application processing must be complied with; and

- (h) must, in determining the terms of the refinancing (as contemplated in the definition of "Type H Eligible Facility" in Clause 1.1) act in accordance with Normal Commercial Lending Practice (for the avoidance of doubt, if the Applicant has more than one Existing Invoice Finance Facility, the Lender is not obliged to refinance all such Existing Invoice Finance Facilities but is permitted, provided in doing so it acts in accordance with Normal Commercial Lending Practice and the other terms of this Agreement, to select which of the Relevant Existing Invoice Finance Facilities should be refinanced);

4.1.8 the Lender shall be entitled, as a condition of the grant by the Lender of any Scheme Facility, to procure the grant to it of any guarantee and/or indemnity from an individual provided further that:-

- (a) the terms of such guarantee and/or indemnity are such that it may only be used by the Lender as a means of repaying that Scheme Facility (and not any other Business Facilities); and
- (b) the imposition of such a condition is in accordance with Normal Commercial Lending Practice; and

4.1.9 the Lender shall not, as a condition of the grant by the Lender of any Scheme Facility, procure the grant to it of any Excluded Residential Security.

4.2 If the Lender makes an offer of a Scheme Facility to an Applicant, after becoming entitled to do so in accordance with the provisions of Clause 4.1, then, at the time of making such an offer, it shall send to the Applicant the Scheme Facility Offer Documents.

4.3 If, at any time after the Lender becomes entitled to make an offer of a Scheme Facility to an Applicant, in accordance with the provisions of Clause 4.1, but prior to making such offer, the Lender considers that it would be undesirable to offer to that Applicant the Proposed Scheme Facility (whether in its entirety or in relation to certain terms of the Proposed Scheme Facility) then the Lender shall not be obliged to make such offer to that Applicant and the Lender shall inform that Applicant accordingly.

4.4 The Lender may charge each Borrower an Arrangement Fee in respect of a Scheme Facility.

4.5 As soon as reasonably practicable following the date on which the Lender makes an offer of a Scheme Facility but, in any event, no later than the end of the tenth Business Day following such date, the Lender shall notify the Secretary of State of such offer by completing an Offer Notification in respect of such Scheme Facility.

5. **SCHEME GUARANTEE**

5.1 The Secretary of State hereby agrees that each Scheme Facility offered in accordance with the terms of this Agreement shall have the benefit of a guarantee by him upon the terms contained in Schedule 1. Each such Scheme Guarantee shall have effect from the date on which the Lender makes the offer of the relevant Scheme Facility as set out in the Scheme Facility Letter (provided the Lender has complied with its obligations under Clause 4.5), without the need for any further request, authorisation, consent or other matter.

5.2 For the avoidance of doubt, if the Lender makes available an Eligible Facility which is not a Permitted Eligible Facility then such Eligible Facility shall not have the benefit of any Scheme Guarantee and shall not be subject to the terms of the Scheme Documents.

6. MARKETING, SCHEME FACILITY LETTER AND SCHEME GUARANTEE PREMIUM

6.1 The Lender shall ensure that any marketing material utilised by the Lender in respect of the Scheme includes a clear provision to the effect that, in making the Scheme available, there is no implication of endorsement or warranty of the Lender from the government of the United Kingdom (including the Secretary of State) and the Lender (and its officers and employees) must not represent in any way that the Secretary of State's participation in the Scheme implies any such endorsement or warranty of the Lender from the government of the United Kingdom.

6.2 The Lender shall ensure that each Scheme Facility Letter contains substantially the following terms, or such other terms as may be agreed from time to time between the Lender and the Secretary of State in respect of such matters, regarding the provision of the relevant Scheme Guarantee, the payment by the Borrower to the Secretary of State of the Scheme Guarantee Premium and the completion by the Borrower of the Direct Debit Mandate and the Information Declaration:-

6.2.1 that the Secretary of State has agreed under section 8 of the IDA to guarantee the Borrower's payment obligations or, in the case of a Scheme Facility which is a Type F Eligible Facility, the amount outstanding, under the Scheme Facility on the terms agreed between the Lender and the Secretary of State and subject to the payment by the Borrower of the Scheme Guarantee Premium;

6.2.2 that the Borrower shall pay to the Secretary of State quarterly payments of the Scheme Guarantee Premium, at such times and in such manner as the Secretary of State may require, the due date and amount of each such payment being as specified in the Premium Payment Schedule;

6.2.3 that the Lender shall at all times be entitled (but not obliged) to pay any sum due from the Borrower to the Secretary of State in respect of the Scheme Guarantee Premium under the Scheme Facility Letter and the Borrower shall forthwith on demand reimburse the Lender for any sums paid by the Lender to the Secretary of State in that respect;

6.2.4 that the Borrower's undertakings to pay the Scheme Guarantee Premium are expressed to be for the benefit of, and to be enforceable by, the Secretary of State notwithstanding that the Secretary of State is not a party to the Scheme Facility Letter; and

6.2.5 that the Borrower shall not be permitted to make any drawdown under the Scheme Facility Letter or, in the case of a Scheme Facility which is a Type F Eligible Facility, make any utilisation of the Type F Increased Maximum Facility Amount, or, in the case of a Scheme Facility which is a Type H Eligible Facility, make any utilisation of the Type H Maximum Facility Amount for such Type H Eligible Facility, unless and until the Borrower provides a satisfactory means of payment of the first instalment of the Scheme Guarantee Premium and returns the Direct Debit Mandate and the Information Declaration to the Lender, each duly signed, dated and completed, and, as regards the Information Declaration, without any amendments or variations having been made to the information contained therein (if the Information Declaration is returned by the Borrower with any amendment or variation to the information contained therein or the Borrower informs the Lender, having received such Information Declaration, that any

of the information contained therein needs to be amended or varied then the provisions of Clause 8 shall apply).

- 6.3 The Secretary of State shall be primarily responsible, subject to Clause 6.5, for the collection of any payments of the Scheme Guarantee Premium.
- 6.4 The Lender must provide such information and grant such assistance to any Collection Agent (only for the purposes of this Agreement in the collection of the Scheme Guarantee Premium) and at such times and in such manner as is reasonably necessary to enable such Collection Agent to properly fulfil its obligations and responsibilities as Collection Agent in each case as advised in writing by the Secretary of State.
- 6.5 In the event that a Borrower fails to make payment of the Scheme Guarantee Premium when such payment falls due in accordance with the terms of the relevant Scheme Facility Letter and as specified in the Premium Payment Schedule (each an "**Overdue Premium Payment**"), provided the Lender is aware of such failure (as a result of written notification received from the Collection Agent), the Lender shall seek to ensure that the Borrower makes payment of the Overdue Premium Payment within 12 weeks of the due date of such Overdue Premium Payment.

7. INITIAL DRAWDOWN/AVAILABILITY OF NEW SCHEME FACILITIES

As soon as reasonably practicable following the date on which, in respect of any Scheme Facility:-

- 7.1 which is a Term Loan Scheme Facility, an initial drawdown is made by the Borrower under the Term Loan Scheme Facility;
- 7.2 which is a Type E Eligible Facility, the Lender marks on the Relevant Revolving Account the availability of the Type E Revolving Facility Limit;
- 7.3 which is a Type F Eligible Facility, the Lender marks on the Relevant Invoice Finance Account the availability of the Type F Increased Maximum Facility Amount;
- 7.4 which is a Type G Eligible Facility, the Lender marks on the Relevant Revolving Account the availability of the Type G Revolving Facility Limit,
- 7.5 which is a Type H Eligible Facility, the Lender marks on the Relevant Invoice Finance Account the availability of the Type H Maximum Facility Amount for such Type H Eligible Facility;

but, in any event, no later than the end of the tenth Business Day following such date, the Lender shall notify the Secretary of State of, as applicable, such drawdown or availability by completing an Initial Drawdown Notification in respect of such Scheme Facility.

8. INFORMATION DECLARATION

If, following the issue by the Lender of an Information Declaration pursuant to its obligations under Clause 4.2, the relevant Borrower returns the Information Declaration with any amendment or variation to the information contained therein or that Borrower informs the Lender, having received such Information Declaration, that any of the information contained therein needs to be amended or varied then:-

- 8.1 the Lender shall, as soon as reasonably practicable, cancel the relevant Scheme Facility through the Scheme Website; and
- 8.2 the Scheme Guarantee issued by the Secretary of State in respect of the relevant Scheme Facility shall be deemed void and of no effect and, accordingly, the Secretary of State shall have no liabilities or obligations thereunder.

9. **MONITORING AND REVIEW OF TYPE E ELIGIBLE FACILITIES AND TYPE G ELIGIBLE FACILITIES**

9.1 In respect of each Type E Eligible Facility and each Type G Eligible Facility made available by the Lender, the Lender shall, at least once in each Annual Scheme Period (or at such other frequency in accordance with Normal Commercial Lending Practice) review each such Type E Eligible Facility and Type G Eligible Facility to:

9.1.1 ensure that, in the Lender's Opinion, the Borrower remains viable and will be able to meet its repayment obligations in respect of the Scheme Facility; and

9.1.2 consider whether, taking into account the Available Collateral and the Borrower's ability to meet the repayment obligations in respect of such Scheme Facility as at the date of such review, the Lender would, acting in accordance with Normal Commercial Lending Practice, make available a Non-Scheme Facility in substitution for the Scheme Facility.

9.2 Where it is determined by the Lender pursuant to Clause 9.1.2 above that a Non-Scheme Facility would be made available to a Borrower in substitution for a Scheme Facility, the Lender shall as soon as reasonably practicable make a Non-Scheme Facility available to the Borrower on such terms as are appropriate taking into account Normal Commercial Lending Practice but so that the term, repayment frequency and any capital repayment holiday profile and the other terms and conditions of the Non-Scheme Facility are the same as those which are currently applied to the Scheme Facility and such Non-Scheme Facility shall be applied firstly in the refinance of the existing Scheme Facility.

10. **CAPITAL REPAYMENT RESCHEDULING AND MULTIPLE DRAWDOWNS**

10.1 The Lender may:-

10.1.1 in respect of any Scheme Facility which is a Term Loan Scheme Facility, subject to the provisions of Clause 2.4.1 and Clause 17.7;

10.1.2 in respect of any Scheme Facility which is a Type E Eligible Facility or a Type G Eligible Facility which is to be repaid by way of staged repayments, subject to the provisions of Clause 2.4.5, Clause 2.4.7 and Clause 17.7; and

10.1.3 in respect of any Scheme Facility which is a Type F Eligible Facility or a Type H Eligible Facility the availability of which is to cease by way of staged reductions, subject to the provisions of Clause 2.4.6(c), Clause 2.4.8(c) and Clause 17.7,

at any time, agree to a deferral or other rescheduling of the repayment of principal or, in the case of a Type F Eligible Facility or a Type H Eligible Facility, to a deferral or restructuring of the scheduled reductions, under the relevant Scheme Facility Letter, provided that, in determining whether to grant such a deferral or other rescheduling in respect of any such Scheme Facility and, as applicable, the duration or terms thereof, the Lender must act in accordance with Normal Commercial Lending Practice.

10.2 Subject to provisions of Clause 2.4.4(a), the Lender may in respect of any Term Loan Scheme Facility permit a Borrower to draw down the Term Loan Scheme Facility in a number of tranches, provided that the Lender must act in accordance with Normal Commercial Lending Practice and in accordance with the terms of the Scheme Facility Letter.

11. **ANNUAL LENDING AND FACILITY LIMITS**

11.1 In respect of each Annual Scheme Period, the Annual Lending Total shall not exceed the Annual Lending Limit provided that additionally in relation to each Annual Scheme

Period or on any day during an Annual Scheme Period the aggregate principal amount of Type C Eligible Facilities, Type D Eligible Facilities, Type G Eligible Facilities and Type H Eligible Facilities made available by the Lender (calculated using the same principles utilised in the definition of "Annual Lending Total" in Clause 1.1) must not exceed 20% (or such other percentage as the Secretary of State may, in his absolute discretion, at any time notify for such purpose to the Lender) of the Annual Lending Total.

- 11.2 Without prejudice to Clause 11.7, within one month of the end of each Annual Scheme Period, the Secretary of State shall inform the Lender of its Annual Base Lending Limit and Annual Projected Claim Limit for the then current Annual Scheme Period (provided that the Secretary of State shall not be in breach of his obligations under this Clause 11.2 to so inform the Lender in respect of any failure or delay in the performance of his obligations arising out of or caused, directly or indirectly, by circumstances beyond his reasonable control, it being agreed that the Secretary of State shall resume performance as soon as is practicable under the circumstances). The Annual Base Lending Limit and Annual Projected Claim Limit so notified shall supersede, for the purposes of this Agreement, the Indicative Annual Base Lending Limit and Indicative Projected Annual Claim Limit for the then current Annual Scheme Period. The determination by the Secretary of State of such Annual Base Lending Limit and Annual Projected Claim Limit shall be in the absolute discretion of the Secretary of State and shall be conclusive and binding on the Lender.
- 11.3 If at any time during an Annual Scheme Period the Lender anticipates that it will or is likely to exceed 105% of the amount of the Annual Base Lending Limit then it will, as soon as reasonably practicable after having become aware of such matter, notify the Secretary of State accordingly and provide full details of its anticipated lending levels in respect of Scheme Facilities for that Annual Scheme Period and its proposals to manage the possibility of such an excess occurring.
- 11.4 Following receipt by the Secretary of State of any notification from the Lender under Clause 11.3 and the information required to be provided by the Lender under Clause 11.3, the Secretary of State and the Lender shall meet with a view to agreeing what steps, if any, are to be taken to manage the possibility of the Lender exceeding the Annual Base Lending Limit, where such steps could include, but are not limited to:-
- 11.4.1 the Lender utilising, at the absolute discretion of the Secretary of State, the Annual Base Lending Limit in respect of the next following Annual Scheme Period in order to increase the maximum permissible lending level of Scheme Facilities for the then current Annual Scheme Period, such utilisation to be accounted for as a utilisation of the Annual Base Lending Limit which is notified to the Lender in respect of the next following Annual Scheme Period pursuant to Clause 11.2;
- 11.4.2 the Lender being granted a temporary increase, at the absolute discretion of the Secretary of State, in its Annual Base Lending Limit for the then current Annual Scheme Period on the grounds that the Scheme Facilities already made available by the Lender during that Annual Scheme Period are likely to suffer from lower default rates than had been assumed in the Secretary of State's calculation as to the aggregate principal amount of loan, revolving, invoice finance or factoring facilities which all those lending institutions participating in the Scheme are permitted to make during the then current Annual Scheme Period (in connection with the granting of any such temporary increase the Secretary of State may, in the absolute discretion of the Secretary of State, restrict (in whole or in part) the extent to which the principal amount of any Scheme Facilities offered by the Lender within the scope of such temporary increase are taken into account in calculating the Annual Claim Limit for the relevant Annual Scheme Period (the aggregate principal amount so restricted, being the "**Restricted Principal Amount**"),

the extent of any such restriction (if in part) to also be in the absolute discretion of the Secretary of State); or

- 11.4.3 the Lender agreeing to accept a reduced level of the Guaranteed Percentage for Scheme Facilities to be completed in the remainder of the then current Annual Scheme Period (the level of any such reduction and availability of the same to be at the absolute discretion of the Secretary of State).
- 11.5 If, pursuant to Clause 11.4, the Lender and the Secretary of State reach agreement as to the nature of any Remedial Steps, then the Lender and the Secretary of State will negotiate in good faith in order to agree and document any amendments to this Agreement which the Secretary of State determines to be necessary to properly implement or record such Remedial Steps.
- 11.6 Without prejudice to the generality of Clause 11.4, and for the avoidance of doubt, the Lender shall not be entitled to utilise, or apply for, any Specific Lending Limit in respect of an Annual Scheme Period to fund any lending in excess of the Annual Base Lending Limit during that Annual Scheme Period.
- 11.7 At any time during an Annual Scheme Period the Secretary of State may (in his absolute discretion) by written notice to the Lender increase or decrease the then existing Annual Base Lending Limit (including, in respect of the first Annual Scheme Period, the Initial Annual Base Lending Limit) and, with effect from the date specified in such notice, the amount specified in such notice shall be, for the purposes of the Scheme Documents, the Annual Base Lending Limit (and, in respect of the first Annual Scheme Period, the Initial Annual Base Lending Limit) and shall supersede the limit which applied before such increase or decrease, in respect of the relevant Annual Scheme Period (for the avoidance of doubt, there is no limit on the number of occasions during an Annual Scheme Period in respect of which the Secretary of State may exercise his rights under this Clause 11.7).
- 11.8 Where, for any Annual Scheme Period, a Small Lender has not utilised the full Annual Claim Limit available to it for that Annual Scheme Period, the Secretary of State shall permit an amount equal to the unutilised amount of the Annual Claim Limit to be added to the Annual Claim Limit for the next following Annual Scheme Period. For the avoidance of doubt, this ability to carry forward any Annual Claim Limit that has not been utilised pursuant to this Clause 11.8 will only be available to Small Lenders.

12. **SPECIFIC LENDING LIMIT**

- 12.1 Subject to Clause 12.4, following the receipt from the Secretary of State, prior to the end of each Annual Scheme Period, of an invitation (if any, the decision as to whether or not to make such an invitation being in the absolute discretion of the Secretary of State) to apply for a Specific Lending Limit, and in accordance with the timescales set out in any such invitation, the Lender may submit a proposal to the Secretary of State requesting that a Specific Lending Limit be made available by the Secretary of State to the Lender, such proposal:-
- 12.1.1 to state the amount of the proposed Specific Lending Limit for the forthcoming Annual Scheme Period;
- 12.1.2 to detail the specific purposes for which such proposed Specific Lending Limit is to be utilised by the Lender (which such purposes may include, but are not limited to, aiming to (i) grow the Lender's usage of the Scheme (subject to Clause 11.6), (ii) increase availability of the Scheme in a particular target region of the United Kingdom or in respect of a particular type of Business or (iii) target high growth Businesses); and

- 12.1.3 incorporating a business plan in support of its request for a Specific Lending Limit, to demonstrate, inter alia, how the Lender proposes to utilise the Specific Lending Limit to achieve the specific purposes detailed in the proposal.
- 12.2 Following receipt of a Specific Lending Limit Proposal, the Secretary of State may request such additional information from the Lender as he considers necessary to enable him to determine whether it would be appropriate to agree to the proposed Specific Lending Limit (for the avoidance of doubt, the Secretary of State may make more than one request for additional information under this Clause 12.2).
- 12.3 After concluding an assessment of the Specific Lending Limit Proposal and any additional information supplied by the Lender under Clause 12.2, the Secretary of State shall notify the Lender in writing as to whether he consents to the granting of a Specific Lending Limit (the decision to grant such consent and any conditions attached thereto to be in the absolute discretion of the Secretary of State) and, if so, the amount of the Specific Lending Limit (to take effect from the date of such notification in respect of the Annual Scheme Period as advised in such notification) and the specific purpose or purposes for which such Specific Lending Limit is to be utilised.
- 12.4 Without prejudice to Clause 12.1, the Secretary of State may, but shall not be obliged to, in his absolute discretion, consider any Specific Lending Limit Proposal submitted by the Lender at any time during an Annual Scheme Period. The provisions of Clauses 12.1, 12.2 and 12.3 shall, to the extent applicable, apply mutatis mutandis to any Specific Lending Limit Proposal submitted and considered by the Secretary of State under this Clause 12.4.
- 13. ANNUAL REPORT**
- 13.1 As soon as reasonably practicable after each Annual Scheme Date but, in any event, no later than the last Business Day of the month which immediately follows the month in which such Annual Scheme Date falls, the Lender shall, subject to Clause 13.2, provide to the Secretary of State an Annual Report.
- 13.2 If, during the Annual Scheme Period in respect of which the Lender would otherwise be required to provide an Annual Report, the Lender offered less than 100 Scheme Facilities, in respect of such Annual Scheme Period, the Lender may, but shall not be obliged, to provide an Annual Report to the Secretary of State under Clause 13.1.
- 13.3 Each Annual Report shall contain such minimum information as is particularly or generally specified from time to time by the Secretary of State and may, at the discretion of the Lender, incorporate such additional information regarding its operation of the Scheme and the Scheme Facilities which the Lender considers appropriate to bring to the attention of the Secretary of State.
- 14. AUDIT, PROVISION OF INFORMATION AND MEETINGS**
- 14.1 At such frequency and at such times as the Secretary of State may from time to time determine, in his absolute discretion, the Secretary of State may conduct an audit of such of the individual Scheme Facilities made available by the Lender as the Secretary of State considers appropriate, in his absolute discretion, provided that such an audit may only be conducted during the Lender's usual working hours and if the Secretary of State has given to the Lender at least 5 Business Days' notice of his intention to carry out the same.
- 14.2 The Lender shall, and shall procure that its officers, employees and agents shall, afford the Secretary of State all such reasonable assistance (including, but not limited to, investigating (where appropriate) and responding to any enquiries raised by the Secretary of State in connection with an Audit) and make available to the Secretary of

State all such documents, records and information maintained by the Lender in respect of those Applicants and/or Scheme Facilities which are the subject of an Audit as may be required by the Secretary of State to enable him to complete an Audit to his satisfaction (save, without prejudice to Clause 26, where the Lender is prohibited from such disclosure by law (including by way of Court Order)).

14.3 The Lender shall supply to the Secretary of State such information, documents, reports and records about the Scheme and/or individual Scheme Facilities as the Secretary of State may from time to time require and investigate (where appropriate) and respond to any enquires made by the Secretary of State in respect of the same (save, without prejudice to Clause 26, where the Lender is prohibited from such disclosure by law (including by way of Court Order)).

14.4 At such frequency as the Secretary of State may reasonably determine, the Lender agrees to ensure that one or more of its officers or employees (being in each case an officer or employee who holds a senior position in the Lender in relation to the Lender's operation of the Scheme as a whole and its lending to small and medium sized enterprises) will be available to attend a meeting with a representative of the Secretary of State, each such meeting:-

14.4.1 to be held at a location and on a date and at a time which is agreed as being mutually convenient to both the Lender and the Secretary of State; and

14.4.2 to be used as a forum for discussing any relevant matters relating to the operation of the Scheme and this Agreement including, but not limited to, any operational difficulties or issues that have arisen and which need to be addressed.

15. **PROBATIONARY LENDER**

If the Lender is designated as a Probationary Lender, at all times during the Probationary Period:-

15.1 the Lender covenants and undertakes to comply with the terms of the Probationary Lender Side Letter; and

15.2 to the extent that there is any inconsistency between the terms of the Probationary Lender Side Letter and the terms of this Agreement, the terms of the Probationary Lender Side Letter shall prevail but otherwise all the provisions of this Agreement shall remain in full force and effect.

16. **BREACH OF SCHEME DOCUMENT**

If there occurs:-

16.1 without prejudice to Clause 16.2, a breach, as determined by the Secretary of State, by the Lender of any provision of any Scheme Document, which is continuing unremedied and unwaived, then, if the Secretary of State so requires, the Lender and the Secretary of State shall meet with a view to agreeing what steps, if any, are to be taken by the Lender to remedy the relevant breach (if, in the opinion of the Secretary of State, it is capable of being remedied) or to seek to prevent, or minimise the risk of, any possible re-occurrence of such breach; or

16.2 without prejudice to Clause 20.2, a material breach, as determined by the Secretary of State, by the Lender of any provision of any Scheme Document, which is continuing unremedied and unwaived, the Secretary of State may impose such terms and conditions on the continuing participation of the Lender in the Scheme and its rights under any Scheme Document as are, in the opinion of the Secretary of State, appropriate in light of all the relevant circumstances.

17. GENERAL COVENANTS AND UNDERTAKINGS

The Lender covenants and undertakes to the Secretary of State that:-

- 17.1 it will use all reasonable endeavours to ensure that appropriate and adequate information and training regarding the availability and the operation of the Scheme will be communicated and provided to those offices and branches in the United Kingdom and those of its employees and officers who, on a day to day basis, are the principal points of contact with potential Applicants with a view to ensuring that:-
- 17.1.1 there is sufficient awareness of the availability and operation of the Scheme in those employees and officers as aforementioned; and
 - 17.1.2 the Scheme is available on a consistent geographical basis, taking into account the extent of the Lender's operations, throughout the United Kingdom;
- 17.2 it will maintain, in accordance with Normal Commercial Lending Practice, appropriate and adequate documents, records and information in relation to the completion and ongoing monitoring of each Scheme Facility made available under the terms of this Agreement;
- 17.3 the information required to be provided, maintained and/or obtained by the Lender, in respect of each Scheme Facility, through the Scheme Website is provided, maintained and/or obtained at the relevant times and in the relevant manner as prescribed by the Scheme Website (provided that the Lender shall not be in breach of this Clause 17.3 in respect of any failure or delay in the performance of its obligations arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, it being agreed that the Lender shall use reasonable efforts to resume performance as soon as is practicable under the circumstances. The Lender shall notify the Secretary of State as soon as reasonably practicable in the circumstances after such event or events as described in this proviso has occurred).
- 17.4 it will act in good faith at all times in participating in the Scheme and making available Scheme Facilities;
- 17.5 it will not, following the making of an offer by the Lender to an Applicant of a Scheme Facility where the Scheme Facility is :-
- 17.5.1 a Term Loan Scheme Facility, increase the aggregate principal amount;
 - 17.5.2 a Type E Eligible Facility, increase the Type E Revolving Facility Limit;
 - 17.5.3 a Type F Eligible Facility, increase the Type F Increased Maximum Facility Amount and/or the Type F Prepayment Percentage Increase;
 - 17.5.4 a Type G Eligible Facility, increase the Type G Revolving Facility Limit; or
 - 17.5.5 a Type H Eligible Facility, increase the Type H Maximum Facility Amount and/or the Type H Prepayment Percentage for such Type H Eligible Facility;
- initially made or to be made available to that Applicant under such Scheme Facility;
- 17.6 it will not assign, novate or otherwise transfer its rights and obligations in respect of a Scheme Facility to any person other than a person who, at the time of such assignment, novation or transfer, is a participant in the Scheme and provided that, in relation to such assignment, novation or transfer, the Loan Transfer Process has first been successfully completed;

17.7 it will, in relation to any Capital Repayment Rescheduling, to the extent prescribed by the Scheme Website, complete the Scheme Facility Rescheduling Process; and

17.8 it will pursue any Scheme Facilities which have been provided against or written-off for accounting purposes in accordance with Normal Commercial Lending Practice.

18. PROVISIONS AS TO SECURITY AND RECOVERIES

The Parties shall deal with Collateral and recoveries in the manner set out in Schedule 2 or in such other manner as may from time to time be agreed in writing between the Lender and the Secretary of State.

19. RELATIONSHIP BETWEEN THE PARTIES

Save as may be expressly agreed between them from time to time, neither the Lender nor the Secretary of State shall, as a result of the participation of either in the Scheme, (i) be or have authority to act as agent for the other or (ii) (without prejudice to (i)) be or be treated as being in a fiduciary relationship to the other.

20. TERMINATION

20.1 Either Party may at any time by notice in writing, and without the need to provide any reason therefor, specify to the other Party a date of termination which shall be not less than six months from the date on which such notice is given.

20.2 If a material breach, as determined by the Secretary of State in his absolute discretion, by the Lender of any provision of any Scheme Document occurs which is continuing unremedied and unwaived, the Secretary of State may by notice in writing to the Lender immediately terminate this Agreement, such termination to be effective from the date specified by the Secretary of State in such notice as being the date of termination.

20.3 No Scheme Guarantee shall be issued after the Termination Date and no Scheme Facility may be offered by the Lender after the Termination Date.

20.4 On the occurrence of the Termination Date the rights and obligations of the Parties under this Agreement shall terminate save that a termination notice issued under Clause 20.1 or 20.2 and the occurrence of the Termination Date shall not affect:-

20.4.1 any Scheme Facilities offered by the Lender under the Scheme prior to the Termination Date;

20.4.2 for the avoidance of doubt, any Scheme Guarantee issued by the Secretary of State pursuant to Clause 5 in respect of any such Scheme Facility (notwithstanding that acceptance of any such offer may take place on or after the Termination Date);

20.4.3 any obligations on the part of the Lender to pay a recovery to the Secretary of State under Schedule 2 in connection with any such Scheme Facilities;

20.4.4 any rights which have accrued to one Party against the other prior to the Termination Date; nor

20.4.5 the provisions of the Surviving Clauses which shall, to the extent that the same are capable of continuing to apply, expressly survive the occurrence of the Termination Date.

20.5 Where the Secretary of State serves notice pursuant to Clause 20.1 of the closure of the Scheme to new Scheme Facilities, the Lender shall be entitled to reassess each Type C Eligible Facility (where a Revolving Facility was retained), each Type E

Eligible Facility, each Type F Facility, each Type G Eligible Facility and each Type H Eligible Facility made available by the Lender, and where necessary, the Lender may make replacement Scheme Facilities (which, in the Lender's Opinion, are the most appropriate taking into account the requirements of the relevant Borrower) available to the Borrowers prior to the closure of the Scheme.

21. NOTICES

21.1 All notices, requests, demands or other communications required to be given to or served upon the Parties under the provisions of a Scheme Document shall, unless the provisions of that Scheme Document require any such notice, request, demand or other communication to be given or made electronically through the Scheme Website in which case the provisions of Clause 21.2 will apply, be given or made in writing and shall be deemed to be duly given or made (i) when delivered (if given or made by personal delivery) or (ii) three Business Days after posting (if given or made by first class letter post) and shall be addressed as follows:-

21.1.1 if to the Secretary of State, care of the Managing Director Lending Solutions at The British Business Bank, Foundry House, 4 Millsands, Sheffield S3 8NH; and

21.1.2 if to the Lender at [] marked for the attention of [Title];

or at such other address and/or to such other person as the relevant addressee may prior to such notice, request, demand or other communication from time to time specify for such purposes to the other by at least 5 Business Days' notice.

21.2 Where, under the provisions of a Scheme Document any notice, request, demand or other communication is to be given or made to a Party electronically through the Scheme Website, such notice, request, demand or other communication:-

21.2.1 shall be sent/submitted to that Party in the manner specified in the Scheme Website; and

21.2.2 shall be deemed to have been duly given or made when received by that Party.

22. DEMANDS AND CLAIM LIMITS

22.1 The Secretary of State agrees that any Demand shall be effective notwithstanding the failure by the Lender in any particular case to include the information specified therein. The Lender shall provide any outstanding information as soon as reasonably practicable.

22.2 The Lender shall, as soon as reasonably practicable after the end of each Demand Invoice Period submit to the Secretary of State a combined invoice (a "**Demand Invoice**"), in form and substance satisfactory to the Secretary of State, detailing, for each Scheme Facility in respect of which during the Demand Invoice Period which has just ended the Lender has made a Demand on the Secretary of State in accordance with the provisions of this Agreement, those amounts claimed by the Lender under the terms of the relevant Scheme Guarantee and containing such other information as the Secretary of State may from time to time require to be included therein.

22.3 If the Secretary of State makes payment to the Lender pursuant to a Scheme Guarantee, and it is subsequently determined (in each case, in the absolute discretion of the Secretary of State) that:-

22.3.1 the relevant Demand was made fraudulently or otherwise than in good faith then, on the demand of the Secretary of State, the Lender shall immediately

reimburse to the Secretary of State the amount paid to the Lender under the relevant Scheme Guarantee; or

22.3.2 the amount claimed under the Scheme Guarantee was incorrectly overstated by way of administrative error then, on the demand of the Secretary of State, the Lender shall as soon as reasonably practicable reimburse to the Secretary of State the difference between the amount which was paid by the Secretary of State under the Scheme Guarantee and the amount which should have been paid; or

22.3.3 the amount claimed under the Scheme Guarantee was incorrectly understated by way of administrative error, then the Secretary of State shall pay to the Lender as soon as reasonably practicable the additional amount owed to the Lender under the Scheme Guarantee; or

22.3.4 the relevant Demand was made by the Lender in breach of Clause 22.4 then, on the demand of the Secretary of State, the Lender shall immediately reimburse to the Secretary of State the amount paid to the Lender under the relevant Scheme Guarantee.

22.4 The maximum aggregate amount in respect of which the Lender may make Demands in respect of those Scheme Facilities offered by the Lender during a particular Annual Scheme Period is the Annual Claim Limit in respect of that Annual Scheme Period and, accordingly, no Demand may be made by the Lender in respect of a Scheme Facility to the extent that the making of such Demand would result in the relevant Annual Claim Limit being exceeded, provided that, if the Lender makes a Demand in respect of a Scheme Facility and then, in accordance with its obligations under paragraph 5 of Schedule 2 subsequently makes one or more payments to the Secretary of State in respect of that Scheme Facility (the aggregate amount of any such payments, in respect of that Scheme Facility, being the "**Scheme Facility Secretary of State Repayment Amount**"), then, for the purposes of the calculations set out in this Clause 22.4 and in paragraph 1.2 of Schedule 1, the amount of the Demand made by the Lender in respect of that Scheme Facility will be deemed to be the actual amount demanded from the Secretary of State less the Scheme Facility Secretary of State Repayment Amount (for the avoidance of doubt, the deemed amount of any such Demand can never be less than zero).

23. **SERVICE LEVEL AGREEMENT**

23.1 The Secretary of State undertakes to the Lender that, no later than the Effective Date, a service level agreement will be in effect in relation to the availability, reliability and maintenance of the Scheme Website, such service level agreement to include appropriate confidentiality provisions regarding information of the type specified in Clause 26.1 and provisions as to the implementation and observance of appropriate disaster recovery and back-up procedures, and entered into by the Secretary of State with such person who could reasonably be expected to be able to properly fulfil its obligations and liabilities under the service level agreement.

23.2 The Secretary of State undertakes to the Lender that, no later than the Effective Date, service level agreements will be in place in relation to the collection of the Scheme Guarantee Premium and such other services as are necessary to implement and operate the Scheme, such service level agreements to include appropriate confidentiality provisions regarding information of the type specified in Clause 26.1. Such service level agreements as referred to in Clause 23.1 and 23.2 shall be referred to as "**Service Level Agreements**" and each shall be a "**Service Level Agreement**".

23.3 The Secretary of State covenants with the Lender that, for such period as the Scheme continues appropriate Service Level Agreements will be maintained, and, for the avoidance of doubt, the Secretary of State shall be at liberty, without the consent of the Lender, to effect any new Service Level Agreement to replace any previous

Service Level Agreement which has been terminated or otherwise ceased to be in effect (provided that the provisions of Clause 23.1 and/or 23.2 as to the contents of a Service Level Agreement and the identity of the other person party thereto are satisfied in relation to any new Service Level Agreement).

24. **SECRETARY OF STATE'S LIABILITY**

24.1 Subject to Clause 25, the Secretary of State shall have no liability to the Lender (whether in contract, tort (including negligence or breach of statutory duty) or otherwise), save where such liability may not by law be effectively excluded or limited, for any costs, expenses, damages or losses (whether direct or indirect) in respect of loss of profit, contracts, opportunity, business or revenue, failure to realise anticipated savings or benefits, loss of goodwill, loss of operation time, loss of or corruption to data, wasted management or staff time or for any indirect, special or consequential cost, expense, damage or loss of any kind whatsoever and howsoever caused, even if reasonably foreseeable and even if it has been advised of the possibility of such costs, expenses, damages or losses, sustained or incurred by the Lender under or in connection with this Agreement, any other agreement or document entered into with the Lender, as contemplated in or ancillary to this Agreement or the Scheme, the Scheme or the operation of the Scheme Website.

24.2 The Parties have considered the exclusions and limitations of liability in Clause 24.1 in the context of all the circumstances of the transaction to which this Agreement relates and all the factors referred to in Schedule 2 of the Unfair Contracts Terms Act 1977. The Parties consider that such exclusions and limitations of liability are fair and reasonable and that, but for such exclusions and limitations, the Parties would not have entered into this Agreement. For the purposes of the Unfair Contracts Terms Act 1977 each Party acknowledges and agrees that every provision of this Agreement has been the subject of negotiations between the Parties.

25. **DATA PROTECTION**

25.1 Each Party agrees that it will comply with all statutory requirements for the time being in force in relation to the performance of this Agreement and for the proper and/or lawful operations of this Agreement so far as they apply to it including (without limitation) the requirements of the Data Protection Act 1998 ("**DPA**") and any regulations and orders made thereunder, and any applicable code(s) of practice.

25.2 Without prejudice to the generality of Clause 25.1, if and to the extent that either Party acts as a data processor under the DPA on behalf of the other Party (the data controller, as defined in the DPA) under this Agreement the data processor Party agrees that for the purpose of the data controller Party's compliance with the Seventh Principle of the DPA to comply with the following obligations, namely:-

25.2.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed by the Seventh Principle;

25.2.2 only to process Personal Data (as defined in the DPA) for and on behalf of the other Party for the purpose of performing and in accordance with this Agreement (and only on instructions from the other Party to ensure compliance with the DPA); and

25.2.3 to allow the other Party to audit compliance with the requirements of this Clause 25.2 on reasonable notice and/or to provide evidence of compliance with such requirements.

25.3 Without prejudice to the generality of Clause 25.1, if and to the extent that either Party engages another person as its agent or sub-contractor to act as a data processor under the DPA, that Party agrees to procure that any such agent or sub-contractor will comply with the following obligations, namely:-

- 25.3.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed by the Seventh Principle;
 - 25.3.2 only to process Personal Data (as defined in the DPA) for the purpose of performing and in accordance with this Agreement (and only on instructions from the Party appointing them as data processor); and
 - 25.3.3 to allow the appointing Party to audit compliance with the requirements of this Clause 25.3 on reasonable notice.
- 25.4 Subject to Clause 25.5, each Party (the "**Indemnifying Party**") shall indemnify and keep indemnified the other Party (the "**Indemnified Party**") against all claims and proceedings and all liability, loss, damages, costs and expenses (including legal expenses and disbursements) incurred by the Indemnified Party in connection therewith made or brought by any person, organisation or authority in respect of any loss, damage or distress caused as a result of the Indemnifying Party's unauthorised and/or unlawful processing or the Indemnifying Party's destruction and/or damage to any Personal Data processed by the Indemnifying Party or its staff or its agents or sub-contractors and/or the Indemnifying Party's failure to comply with its obligations under this Clause (each such event being an "**Indemnified Event**").
- 25.5 The liability of an Indemnifying Party under Clause 25.4 shall not exceed £10,000 in respect of any one Indemnified Event.
- 25.6 The provisions of this Clause shall apply during the life of this Agreement and indefinitely afterwards.
26. **CONFIDENTIALITY**
- 26.1 Notwithstanding the terms of this Agreement, the Lender shall not be required to disclose to the Secretary of State or any other person who is from time to time engaged in any aspect of the operation or monitoring of the Scheme, any information which it has either as at the date of this Agreement or acquires in the future, in connection with any Applicant, the Lender's Application Process or any Scheme Facility, which would otherwise be in breach of its duty of confidentiality to an Applicant, save to the extent provided in Clauses 26.3 and 26.4.
- 26.2 Subject to Clauses 26.3 and 26.4, each Party undertakes to the other that it will, and undertakes that it will use its reasonable endeavours to procure that any person engaged by it as its agent or sub-contractor in respect of any aspect of the operation or monitoring of the Scheme will, treat as strictly confidential all information received or obtained as a result of entering into and performing this Agreement or otherwise in connection with the operation or monitoring of the Scheme.
- 26.3 Each Party may disclose information which would otherwise be confidential under the terms of this Clause 26 if and to the extent:
- 26.3.1 required by law or contemplated by the terms of this Agreement;
 - 26.3.2 required by any securities exchange or regulatory or governmental body to which either Party is subject, wherever situated, whether or not the requirement for information has the force of law including, for the avoidance of doubt, disclosure by the Secretary of State to Parliament to discharge his duty to report as to the operation of the Scheme;
 - 26.3.3 disclosed to the Party's professional advisers to enable them to advise it on this Agreement;
 - 26.3.4 the information has come into the public domain through no fault of that Party; or

- 26.3.5 the other Party and/or the relevant Applicant (as required) has given prior written approval to the disclosure (whether pursuant to the Data Protection and Disclosure Declaration or otherwise).
- 26.4 Each Party may disclose information to, in the case of the Lender, other members of its group, and in the case of each Party to their respective employees, directors, auditors or other advisers, and any person to whom a Party is proposing to assign or transfer any of its rights or obligations under this Agreement pursuant to Clause 32.
- 26.5 If, in the opinion of the Secretary of State (in his absolute discretion), the provisions of this Clause 26 prevent the efficient operation and/or monitoring of the Scheme then the Secretary of State and the Lender shall meet with a view to agreeing what steps, if any, are to be taken to resolve the relevant issue and, to the extent that such agreement is reached, will each take all actions reasonably necessary to properly implement such steps.
- 26.6 The Lender confirms that the provisions of this Clause 26 have been incorporated into this Agreement at its request, have been the subject of negotiations with the Secretary of State and that it would not have entered into this Agreement without the inclusion of such provisions.
- 26.7 The Secretary of State undertakes to the Lender that it will, in relation to any request for information made to the Secretary of State for the provision of information which the Secretary of State undertakes under Clause 26.2 to treat as strictly confidential, have due regard to relevant guidance contained in any code of practice issued under section 45 of the Freedom of Information Act 2000 (as revised from time to time).
- 26.8 In Clause 26.7 :
- 26.8.1 "request for information" has the meaning given by section 8 of the Freedom of Information Act 2000; and
- 26.8.2 "relevant guidance" means guidance relating to consultation by a public authority with third parties in relation to requests for information (as defined in Clause 26.8.1) made to the public authority.

27. **SCHEME WEBSITE RIGHTS**

The Secretary of State and the Lender acknowledge and agree that all rights in data, text, databases, records and logs, graphics and images which are embodied in any electronic or tangible medium comprised in or generated via the Scheme Website (but not, for the avoidance of doubt, generated by the Lender itself) pursuant to this Agreement are assigned to and shall vest in the Secretary of State absolutely.

28. **WAIVER**

No failure on the part of a Party to exercise nor any delay in exercising any right or remedy under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

29. **INVALIDITY AND SEVERABILITY**

If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:

- 29.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

29.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

30. **VARIATIONS**

30.1 Any variation to the terms of this Agreement must be recorded in writing and before it takes effect such document must:-

30.1.1 be signed by both Parties; and

30.1.2 record all consequential amendments required to be made to this Agreement as a result of such variation.

30.2 Any variations will take effect as from the date specified in the signed record of variation and shall not have retrospective effect, unless expressly provided for in such record.

30.3 In all respects other than as provided in each record of variation, this Agreement will continue in full force and effect.

30.4 Any variation of this Agreement is not intended to be and shall not be construed as a new agreement unless the contrary intention is expressly stated on its terms.

30.5 If the Secretary of State agrees that any other type of credit, financing or loan facility is to be an Eligible Facility for the purposes of this Agreement (as contemplated by subparagraph (g) of the definition of that term in Clause 1.1), then the Lender and the Secretary of State will negotiate in good faith in order to agree any amendments to this Agreement which the Secretary of State determines to be necessary as a result of such agreement.

31. **EUROPEAN ECONOMIC AND MONETARY UNION**

31.1 Without prejudice to Article 3 of Regulation (EC) No. 1103/97 of 17 June 1997 of the Council of Ministers of the European Union, the introduction of the euro shall not, of itself:-

31.1.1 have the effect of altering any provision of, or (in whole or in part) of discharging, cancelling, rescinding, terminating or otherwise excusing performance under this Agreement; or

31.1.2 give the Lender or the Secretary of State the right unilaterally to alter any provision of, or (in whole or in part) to discharge, cancel, rescind, terminate or otherwise avoid its obligations under this Agreement.

31.2 If, following the introduction of the euro, Sterling is substituted by the euro as the currency of the United Kingdom, then all references in this Agreement to "Sterling" or "£" shall be construed as references to "euro" or "€" (as the case may be), at the agreed Sterling-euro conversion rate, provided that the provisions of this Clause 31.2 shall not apply during any transitional period when Sterling is a sub-unit of the euro, unless the Lender and the Secretary of State otherwise agree.

31.3 Without prejudice to Clauses 31.1 and 31.2, the Lender and the Secretary of State will negotiate in good faith in order to agree any amendments to this Agreement which the Secretary of State and the Lender determine to be necessary as a result of the introduction of the euro.

31.4 In this Clause 31:-

31.4.1 "euro" or "€" means the single or unified European currency (whether known as the "euro" or otherwise) adopted as their lawful currency by certain member states of the European Union; and

31.4.2 "introduction of the euro" means the introduction into the United Kingdom of the euro as a substitute for Sterling, the economic and/or commercial consequences thereof and any event or matter associated or connected therewith.

32. **ASSIGNMENT AND TRANSFER**

32.1 This Agreement shall be binding upon and ensure to the benefit of each Party and its successors in title and permitted assignees and permitted transferees.

32.2 The Lender shall not be entitled to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Secretary of State.

33. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

34. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English Law and each Party submits to the jurisdiction of the courts of England for all purposes in connection with this Agreement.

IN WITNESS whereof the Parties have caused this Agreement to be duly executed the day and year first above written.

SCHEDULE 1

SCHEME GUARANTEE

(SEE CLAUSE 5)

1. The Secretary of State pursuant to section 8 of the IDA hereby guarantees to the Lender and its successors and any person to whom the Lender has assigned or otherwise transferred its rights in respect of a Scheme Facility in accordance with the provisions of Clause 17.6 the due and punctual payment of (A) all principal due and to become due from the Borrower under or pursuant to a Term Loan Scheme Facility and (B) all amounts due and to become due from the Borrower under or pursuant to a Scheme Facility which is a Type E Eligible Facility or a Type F Eligible Facility (all such sums being hereinafter collectively referred to in this Schedule as "**Monies**") and the Secretary of State hereby agrees that if and whenever the Borrower shall fail to pay any such Monies when due the Secretary of State shall, within 30 calendar days of the receipt of the Demand Invoice referred to in paragraphs 1.1 and 1.2 below, make payment of the amount claimed to the Lender, **provided that:-**
 - 1.1 the Lender has made a duly completed Demand of the Secretary of State and the Secretary of State has received a duly completed Demand Invoice in respect of the Scheme Facility (in form and substance, and the contents of which are, satisfactory to the Secretary of State (in his absolute discretion)); and
 - 1.2 the amount claimed by the Lender, in respect of the relevant Scheme Facility, under the Demand and in the corresponding Demand Invoice when aggregated with, subject to the proviso to Clause 22.4, the total amount already claimed by the Lender under Demands in respect of other Scheme Facilities offered by the Lender during the same Annual Scheme Period as that Scheme Facility does not result in the relevant Annual Claim Limit being exceeded (and, if the making of such a Demand would result in the relevant Annual Claim Limit being exceeded, the Secretary of State shall have no liability under the guarantee set out in this Schedule in respect of any such excess and shall have no obligation to make payment of any such excess which is claimed in a Demand Invoice);
 - 1.3 the Secretary of State's liability under the guarantee set out in this Schedule shall not:-
 - (i) where the Scheme Facility is a Term Loan Scheme Facility, exceed an amount equal to the Guaranteed Percentage of the Outstanding Scheme Facility Principal at the date of the Demand;
 - (ii) where the Scheme Facility is a Type E Eligible Facility, exceed an amount equal to the Guaranteed Percentage of the Outstanding Type E Balance at the date of the Demand;
 - (iii) where the Scheme Facility is a Type F Eligible Facility, exceed an amount equal to the Guaranteed Percentage of the Outstanding Type F Balance at the date of the Demand;
 - (iv) where the Scheme Facility is a Type G Eligible Facility, exceed an amount equal to the Guaranteed Percentage of the Outstanding Type G Balance at the date of the Demand; and
 - (v) where the Scheme Facility is a Type H Eligible Facility, exceed an amount equal to the Guaranteed Percentage of the Outstanding Type H Balance at the date of the Demand;
 - 1.4 any Demand on the Secretary of State shall be made not later than 6 months (or such longer period as may be agreed between the Secretary of State and the Lender) after the earlier of the following dates:-

- (i) the date on which the Lender, having complied with its obligations under paragraph 2 of this Schedule, has, in its reasonable opinion, fully completed the realisation of all Business Facilities Collateral (subject to the proviso to paragraph 2.6 of this Schedule); and
 - (ii) the date which falls 18 months after the Final Demand Date (as defined in paragraph 2 of this Schedule); and
- 1.5 for the avoidance of doubt, where the Lender has demanded in writing from the Borrower the repayment of the whole of the principal amount and any other sums then outstanding under a Scheme Facility Letter (a "**Scheme Facility Demand**"), its rights in respect of which the Lender, acting in good faith and in accordance with Normal Commercial Lending Practice, subsequently withdraws or waives (irrespective of whether such withdrawal or waiver is expressed or implied (by a course of conduct or otherwise)) or otherwise treats as having been satisfied, the Lender shall not be precluded from making a Demand on the Secretary of State in respect of any subsequent Scheme Facility Demand made by the Lender, acting in good faith and in accordance with Normal Commercial Lending Practice, on that Borrower provided the making of such Demand complies with the provisions of this Schedule.
- 2. It is a condition precedent to the performance by the Secretary of State of his obligations set out in this Schedule that:-
 - 2.1 at the time the Scheme Facility was made available to the Borrower:-
 - (a) the Borrower was not a Business in Difficulty;
 - (b) the Lender, in making the Scheme Facility available to the Borrower, was not acting contrary to any applicable legislation or public or regulatory policies to be considered by the Lender pursuant to Normal Commercial Lending Practice; and
 - (c) the Borrower was not engaged in Commercial Activity in an Excluded Sector;
 - 2.2 the Applicant shall have accepted the offer set out in a Scheme Facility Letter made by the Lender to the Applicant and containing those provisions set out in Clause 6.1;
 - 2.3 the Lender has demanded in writing from the Borrower repayment of the whole of the principal amount and any other sums then outstanding under all Business Facilities (the latest of the dates of all such demands being the "**Final Demand Date**") (for the avoidance of doubt, where the term "Lender" comprises more than one person, the terms "Lender" and "Business Facilities" as used in this paragraph 2.3 refer only to that Lender which is the beneficiary of the guarantee of the Scheme Facility set out in this Schedule and those Business Facilities made available by that Lender (and not any other Group Lender (as defined in Schedule 3)) to the relevant Borrower);
 - 2.4 the Final Demand Date falls no later than three months after the Relevant Scheme Facility Expiry Date (as defined below) which relates to the Final Demand Date (such date being the "**Final Demand Cut-Off Date**");
 - 2.5 the Lender has, in compliance with its obligations under Clause 17.3, on or before the earlier of :-
 - (i) the tenth Business Day following the date on which the Lender has demanded in writing from the Borrower repayment of the whole of the principal amount and any other sums then outstanding under a Scheme Facility; and
 - (ii) the Final Demand Cut-Off Date (as defined in paragraph 2.3 of this Schedule),

notified the Secretary of State through the Scheme Website that it has made such a demand for repayment in respect of the Scheme Facility; and

- 2.6 that the Lender has used all reasonable endeavours to realise, prior to the date which falls 18 months after the Final Demand Date, all Business Facilities Collateral provided that the Lender shall not be obliged under this paragraph 2.6 to seek to realise any specific item of Business Facilities Collateral if its decision not to seek realisation of the same is made in accordance with Normal Commercial Lending Practice,

and, accordingly, if any one or more of these conditions precedent has not been satisfied the Secretary of State shall be unconditionally and irrevocably released and discharged from all its obligations and liabilities under the guarantee of such Scheme Facility set out in this Schedule.

For the purposes of this paragraph 2, "**Relevant Scheme Facility Expiry Date**" means, in relation to a particular day:-

- (a) where, on that day, principal or other sums are outstanding from the relevant Borrower to the Lender under only one Scheme Facility, the Term Loan Scheme Facility Expiry Date, the Type E Eligible Facility Expiry Date, the Type F Eligible Facility Expiry Date, the Type G Eligible Facility Expiry Date or the Type H Eligible Facility Expiry Date which applies to that Scheme Facility; or
- (b) where, on that day, principal or other sums are outstanding from the relevant Borrower to the Lender under more than one Scheme Facility, the earliest of the Term Loan Scheme Facility Expiry Date, Type E Eligible Facility Expiry Date, the Type F Eligible Facility Expiry Date, the Type G Eligible Facility Expiry Date and the Type H Eligible Facility Expiry Date which apply to those Scheme Facilities.

3. For the avoidance of doubt, only one Demand may be made by the Lender under the guarantee of the Scheme Facility set out in this Schedule.

4. The guarantee set out in this Schedule shall be a continuing security and shall continue in full force and effect irrespective of the total or partial invalidity or unenforceability of or any irregularity or defect in any Collateral the Lender may hold in respect of all or any of the Monies and notwithstanding dissolution of the Borrower or any change in its status, constitution, functions, control or ownership.

5. If, where the Scheme Facility:-

5.1 is a Term Loan Scheme Facility, the initial drawdown is not made by the Borrower by the date which falls 6 months after the date of the Scheme Facility Letter; or

5.2 is Type E Eligible Facility, a Type F Eligible Facility, a Type G Eligible Facility or a Type H Eligible Facility, the offer of such Scheme Facility is not accepted by the Borrower within the period specified for such acceptance under the Scheme Facility Letter (as determined under Clause 2.4.4(b)),

then the guarantee set out in this Schedule in respect of the Scheme Facility shall immediately terminate on such date and, with effect from such date, the Secretary of State shall be unconditionally and irrevocably released and discharged from all its obligations under such guarantee.

6. Subject to paragraphs 1.4 and 2 of this Schedule and paragraphs 1 and 2 of Schedule 2 and save as may have been from time to time agreed between the Lender and the Secretary of State, the Lender may at any time, provided that in each such case in doing so it is acting in accordance with Normal Commercial Lending Practice, without discharging or otherwise affecting the obligations of the Secretary of State set out in this Schedule:-

- 6.1 vary the terms of or renew or determine any credit or other facilities made or to be made available to the Borrower by the Lender whether under the Scheme Facility or otherwise;
- 6.2 take such Collateral (subject to the provisions of Clause 4.1) in respect of all or any of the Borrower's liabilities in respect of all or any such facilities as it may from time to time think fit;
- 6.3 exchange, release, modify, refrain from perfecting or enforcing or otherwise deal with any such Collateral as it may hold;
- 6.4 grant time or indulgence to or compound with the Borrower or any other person; and
- 6.5 do or omit to do any other act or thing which but for this provision would or might discharge or otherwise affect the obligations of the Secretary of State set out in this Schedule,

provided further that the Lender shall not without the written consent of the Secretary of State agree with the Borrower to any renewal of the Scheme Facility or any variation of:-

- (i) the amount of the Scheme Facility;
- (ii) in relation to a Scheme Facility (other than a Type F Eligible Facility or a Type H Eligible Facility), the scheduled final date for repayment of all the amounts outstanding under the Scheme Facility;
- (iii) in relation to a Scheme Facility which is a Type F Eligible Facility or a Type H Eligible Facility, the scheduled final date on which the Type F Eligible Facility or the Type H Eligible Facility (as appropriate) will cease to be available for utilisation by the Borrower; or
- (iv) the purpose for which the Scheme Facility is provided.

7. The Lender shall be entitled to credit any sums received, recovered or realised by the Lender pursuant to the guarantee set out in this Schedule (together "**Scheme Guarantee Proceeds**") to any suspense or impersonal account provided that:-

7.1 the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could be reasonably be expected to occur in the future; and

7.2 if it does so such Scheme Guarantee Proceeds shall only be held in such account for such time as reflects Normal Commercial Lending Practice.

The Lender shall promptly apply (a) any such Scheme Guarantee Proceeds which are released from such suspense or impersonal account and (b) any Scheme Guarantee Proceeds which are not credited to a suspense or impersonal account, in or towards the discharge of the Monies.

8. Unless all liabilities of the Borrower to the Lender in respect of Business Facilities have been paid in full or otherwise discharged the Secretary of State shall not, save as may have been from time to time agreed between the Lender and the Secretary of State:-

8.1 subject to the provisions of Schedule 2, be entitled to share in or succeed to or benefit from (by subrogation or otherwise) any rights the Lender may have or any Collateral the Lender may hold or all or any of the proceeds thereof;

- 8.2 exercise, enforce or seek to enforce without the prior written consent of the Lender any rights he may have against the Borrower or any other person and arising by reason of the Lender's receipt or recovery of, or the payment and discharge of, part only of the Monies **provided that** if any sums shall be received, recovered or realised by the Secretary of State in, or as a result of, the exercise (whether with or without the Lender's consent) of such rights, then, in the case of sums received, recovered or realised otherwise than in Scotland, such sums shall be held by the Secretary of State as trustee upon trust to apply the same as if they were sums received, recovered or realised by the Lender under the guarantee set out in this Schedule and, in the case of sums received, recovered or realised in Scotland, the Secretary of State shall promptly pay and account for such sums to the Lender and if he shall not promptly pay and account for such sums to the Lender he shall acknowledge that he holds such sums as trustee upon trust to apply the same as if they were sums received, recovered or realised by the Lender under the guarantee set out in this Schedule; and
- 8.3 prove or rank in any bankruptcy, sequestration, liquidation or other insolvency procedure of the Borrower in competition with the Lender in respect of any sums owed due or payable to the Secretary of State by the Borrower as a result of any payment by the Secretary of State under the guarantee set out in this Schedule.
9. Any settlement or discharge between the Secretary of State and the Lender shall be conditional upon no Collateral or payment in respect of the Monies being avoided or reduced by virtue of any provision of law or enactment relating to bankruptcy or liquidation for the time being in force.
10. The Secretary of State has not taken and will not take without the written consent of the Lender any Collateral from the Borrower in connection with the guarantee set out in this Schedule or the Monies and any Collateral so taken shall be, in the case of Collateral other than in Scotland, held in trust for the Lender and, in the case of Collateral in Scotland, made available to the Lender for the fulfilment of the Secretary of State's obligations under the guarantee set out in this Schedule and the Secretary of State shall forthwith assign to or deposit with the Lender the said Collateral for that purpose.
11. A certificate of a manager or officer of the Lender as to the amount for the time being of the Monies due owing or incurred to the Lender by the Borrower shall be prima facie evidence of the amount thereof.
12. The guarantee set out in this Schedule is and will remain the property of the Lender.
13. If:-
- 13.1 any payment of the Scheme Guarantee Premium is not paid by the Borrower when such payment falls due in accordance with the terms of the Scheme Facility Letter and the Premium Payment Schedule and that payment remains outstanding (whether in whole or in part) on the day which falls 12 weeks (or, in respect of any Scheme Facility where the term of the facility is one year or less, 6 weeks) after the due date for such payment of the Scheme Guarantee Premium then, provided that the Lender is aware of such failure (as a result of written notification from the Collection Agent), with effect from the date which falls 6 months (or, in respect of any Scheme Facility where the term of the facility is 6 months or less, the term of the facility) after the due date for such payment of the Scheme Guarantee Premium (unless the Lender has, prior to that date, demanded in writing from the Borrower repayment of the whole of the principal amount and any other sums then outstanding under all Business Facilities), the guarantee of such Scheme Facility set out in this Schedule shall determine and the Secretary of State shall be unconditionally and irrevocably released and discharged from all its obligations and liabilities under the guarantee of such Scheme Facility set out in this Schedule; and

- 13.2 there occurs a breach by the Lender, as determined by the Secretary of State, of its obligations under Clause 17.4 or the Lender has acted fraudulently in participating in the Scheme and making available Scheme Facilities, then the Secretary of State shall be entitled, by notice to the Lender, to immediately determine the guarantee of a Scheme Facility set out in this Schedule such that, with effect from the date of such notice, the Secretary of State shall be unconditionally and irrevocably released and discharged from all its obligations and liabilities under the guarantee of the Scheme Facility set out in this Schedule.
14. Any:-
- 14.1 Demand must be made by completing and submitting, in accordance with Clause 21.2, the relevant form accessible through the Scheme Website;
- 14.2 any other notice, request, demand or other communication to be given or made to the Secretary of State under the guarantee set out in this Schedule may be made or given by any manager or officer of the Lender addressed to the Secretary of State at the address specified in or pursuant to Clause 21.1;
- 14.3 any notice, request, demand or other communication to be given or made to the Lender under the guarantee set out in this Schedule shall be given addressed to the Lender at its address specified in or pursuant to Clause 21.1; and
- 14.4 any such notice, request, demand (including any Demand) or other communication shall be deemed to have been duly given or made in accordance with the provisions of Clause 21.1 or 21.2 (as the case may be).
15. The guarantee set out in this Schedule shall be governed by and construed in accordance with English law.
16. The Secretary of State hereby consents to the registration in Scotland of the guarantee set out in this Schedule and of any certificate referred to in paragraph 11 of this Schedule for preservation and execution.

SCHEDULE 2

Security and Recoveries

(See Clause 18)

In this Schedule, the following expressions shall have the respective meanings set out below:-

"Demand Date" means (in relation to a Scheme Facility) the day upon which the Lender makes Demand on the Secretary of State under the Scheme Guarantee relating thereto;

"Demand Date Suspense Net Proceeds" means such amount (if any) of any Pre-Demand Date Net Proceeds which is, on the Demand Date, being held by the Lender in a suspense or impersonal account (consequent on the exercise by the Lender of its rights set out in paragraph 1 of this Schedule) and, accordingly, at that time have not been applied in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of the Business Facilities;

"Enforcement Collateral" means any Collateral which is acquired by the Lender following the earliest of the dates of those demands for repayment of all Business Facilities, as made by the Lender in compliance with its obligations under paragraph 2.2 of Schedule 1, whether as a result of the taking of court proceedings (for example, the obtaining of a charging order) or the voluntary granting of any such Collateral, in its pursuing, in accordance with Normal Commercial Lending Practice, the repayment of amounts outstanding to the Lender under Business Facilities and which such Collateral is, according to its terms, capable of being used as a means of repaying the Business Facilities but excluding any such Collateral which comprises Excluded Residential Security;

"Enforcement Collateral Net Proceeds" means any sums received, recovered or realised by the Lender in enforcing its rights in respect of, or otherwise in connection with, any Enforcement Collateral after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt, recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses;

"Excluded Residential Net Proceeds" means any sums received, recovered or realised by the Lender :-

- (i) in enforcing its rights in respect of any Excluded Residential Security; or
- (ii) in circumstances where the Lender is aware, or ought reasonably to be aware, that such receipt, recovery or realisation derives from, or is otherwise attributable to, the proceeds of sale of, or the release of equity in, a principal private residence of a type referred to in the definition of "Excluded Residential Security" in Clause 1.1,

after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses;

"Linked Collateral Net Proceeds" means all sums received, recovered or realised by the Lender in the enforcement of its rights in respect of, or otherwise in connection with, any Linked Collateral after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses provided that:-

- (A) where the Linked Collateral comprises Purchased Debts; or

- (B) in circumstances where any Linked Collateral (other than Purchased Debts) was granted to the Lender in connection with the simultaneous provision by the Lender to the relevant Borrower of a Scheme Facility and a Non-Scheme Facility,

(in the case of sub-paragraph (A) above, the Relevant Non-Scheme Invoice Finance Facility, and in the case of sub-paragraph (B) above, any such Non-Scheme Facility being a "**Linked Non-Scheme Facility**"), if the total amount ("**Total A**") received, recovered or realised by the Lender in the enforcement of its rights in respect of, or otherwise in connection with, such Linked Collateral (after the making of any deductions and provisions, as aforementioned, relating to the same):-

- (i) exceeds or is equal to the total amount ("**Total B**") of any, principal, interest or other sums outstanding from the Borrower to the Lender under the Linked Non-Scheme Facility, then an amount equal to Total B shall not constitute Linked Collateral Net Proceeds; or
- (ii) is less than the total amount of any, principal, interest or other sums outstanding from the Borrower to the Lender under the Linked Non-Scheme Facility, then an amount equal to Total A shall not constitute Linked Collateral Net Proceeds;

"Linked Collateral Net Proceeds Repayment Amount" means:-

- (i) in respect of any Linked Collateral Net Proceeds which as at the Demand Date are held by the Lender in a suspense or impersonal account, pursuant to the exercise by the Lender of its rights set out in paragraph 1 of this Schedule and which, accordingly, are only released from such suspense or impersonal account following the Demand Date; and
- (ii) in respect of any Linked Collateral Net Proceeds which are received, recovered or realised by the Lender, on or after the Demand Date, whether in compliance with its obligations under paragraph 2 of this Schedule or otherwise,

an amount equal to the lesser of (a) 75% of the amount of such Linked Collateral Net Proceeds and (b) the sums paid by the Secretary of State to the Lender under the relevant Scheme Guarantee in respect of demand made by the Lender on the Demand Date (taking into account any payments already made by the Lender to the Secretary of State, in respect of the relevant Scheme Guarantee and Scheme Facility, pursuant to the provisions of paragraph 5 of this Schedule);

"Linked Scheme Facility" means, in respect of a Borrower, any Scheme Facility made available by the Lender to that Borrower in respect of which Linked Collateral was provided to the Lender (for the avoidance of doubt, where the Scheme Facility is a Type F Eligible Facility such Scheme Facility shall constitute a "Linked Scheme Facility");

"Post-Demand Date Net Proceeds" means the aggregate of:-

- (i) all sums received, recovered or realised by the Lender, on or after the Demand Date, in respect of, or otherwise in connection with, all Business Facilities Collateral whether in enforcing its rights in respect of the same in compliance with its obligations under paragraph 2 of this Schedule (subject to the proviso set out in paragraph 2 of this Schedule in relation to such enforcement) or otherwise;
- (ii) any payments made by the Secretary of State under any Scheme Guarantee relating to the relevant Borrower,

after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt recovery or realisation and of such further sum, if any, as

the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses; and

- (iii) any Unsecured Net Proceeds received, recovered or realised by the Lender on or after the Demand Date;

"Pre-Demand Date Net Proceeds" means the aggregate of :-

- (i) all sums received, recovered or realised by the Lender, prior to the Demand Date, in respect of, or otherwise in connection with, all Business Facilities Collateral whether in enforcing its rights in respect of the same in compliance with its obligations under paragraph 2.5 of Schedule 1 (subject to the proviso to paragraph 2.5 of Schedule 1) or otherwise, after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses; and
- (ii) any Unsecured Net Proceeds received, recovered or realised by the Lender prior to the Demand Date;

"Post-EFG Non-Scheme Facility" means, in respect of a Borrower, any Non-Scheme Facility made available by the Lender to the Borrower dated after the date of the first Scheme Facility made available to the Borrower and in respect of which the obligations assumed by the Borrower are in connection with, or for the benefit of, the Borrower's Business and **"Post-EFG Non-Scheme Facilities"** shall be construed accordingly (provided that, for the avoidance of doubt, where any such Non-Scheme Facility is a Revolving Facility, any amounts outstanding in respect of such Revolving Facility in excess of the limit applicable to such Revolving Facility which applied on the date of the first Scheme Facility made available to the Borrower shall be treated, for the purposes of this Schedule 2, as being outstanding under a Post-EFG Non-Scheme Facility notwithstanding that the original Revolving Facility may have been granted on or before the date of the first Scheme Facility made available to the Borrower);

"Pro-Rata Factor" means, in respect of a Scheme Facility, the result of the following calculation :-

$$\frac{A}{A + B}$$

where :-

- A = the amount of principal due and payable to the Lender under the Scheme Facility on (i) for the purposes of the definitions of "Surplus Post-Demand Date Net Proceeds Repayment Amount" and "Surplus Pre-Demand Date Net Proceeds Repayment Amount", the Demand Date and (ii) for the purposes of paragraphs 1(A)(c)(x) and 1(B)(b) of this Schedule, the date on which the calculation of the Pro-Rata Factor is to be made; and
- B = the aggregate principal amount due and payable to the Lender under any Post-EFG Non-Scheme Facilities;

"Surplus Post-Demand Date Net Proceeds Repayment Amount" means an amount equal to the lesser of (a) 75% of the result of multiplying the amount of any Surplus Post-Demand Date Net Proceeds (as defined in paragraph 2 of this Schedule) by the Pro-Rata Factor and (b) the sums paid by the Secretary of State to the Lender under the relevant Scheme Guarantee in respect of demand made by the Lender on the Demand Date (taking into account any payments already made by the Lender to the Secretary of State, in respect of the relevant Scheme Guarantee and Scheme Facility, pursuant to the provisions of paragraph 5 of this Schedule);

"Surplus Pre-Demand Date Net Proceeds Repayment Amount" means an amount equal to the lesser of (a) 75% of the result of multiplying the amount of any Surplus Pre-Demand Date Net Proceeds (as defined in paragraph 1 of this Schedule) by the Pro-Rata Factor and (b) the sums paid by the Secretary of State to the Lender under the relevant Scheme Guarantee in respect of demand made by the Lender on the Demand Date (taking into account any payments already made by the Lender to the Secretary of State, in respect of the relevant Scheme Guarantee and Scheme Facility, pursuant to the provisions of paragraph 5 of this Schedule);

"Surplus Proceeds" means that amount (if any) of the aggregate of (i) the Post-Demand Date Net Proceeds and (ii) any Demand Date Suspense Net Proceeds, which are not applied by the Lender in discharge of the Business Facilities in accordance with its obligations under paragraphs 1 and 2 of this Schedule because such amount represents a surplus recovery or realisation and/or because such amount has been utilised by the Lender in repaying any Linked Collateral Net Proceeds Repayment Amount, any Surplus Post-Demand Date Net Proceeds Repayment Amount or any Surplus Pre-Demand Date Net Proceeds Repayment Amount payable to the Secretary of State respectively under paragraphs 5.1 and 5.2 of this Schedule; and

"Unsecured Net Proceeds" means all sums received, recovered or realised by the Lender following the earliest of the dates of those demands for repayment of all Business Facilities (as made by the Lender in compliance with its obligations under paragraph 2.2 of Schedule 1) in respect of any amounts outstanding from the Borrower to the Lender in respect of the Business Facilities :-

(A) including, but not limited to, :-

- (i) any repayments made to the Lender on a voluntary basis or as a result of the taking of court proceedings (including, but not limited to, as a result of the obtaining of judgment, a warrant of execution, an attachment of earnings order or a third party debt order);
- (ii) lump sum or ad hoc repayments or repayments made by way of an agreed repayment plan;
- (iii) payments made to the Lender consequent on any bankruptcy or insolvency proceedings (including any payments made consequent on an individual or company voluntary arrangement); and
- (iv) Enforcement Collateral Net Proceeds,

but

(B) excluding any sums received, recovered or realised by the Lender :-

- (i) in respect of, or otherwise in connection with, all Business Facilities Collateral whether in enforcing its rights in respect of the same in compliance with, as applicable, its obligations under paragraph 2.5 of Schedule 1 or paragraph 2 of this Schedule (subject to the proviso, as applicable, to paragraph 2.5 of Schedule 1 or paragraph 2 of this Schedule)) or otherwise; or
- (ii) which comprise Excluded Residential Net Proceeds,

after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses.

PROVIDED THAT, for the avoidance of doubt, any Excluded Residential Net Proceeds shall not be taken into account in calculating the amount of the Demand Date Suspense Net Proceeds, the Enforcement Collateral Net Proceeds, the Linked Collateral Net Proceeds, the Post-Demand Date Net Proceeds, the Pre-Demand Date Net Proceeds, the Surplus Post-Demand Date Net Proceeds (as defined in paragraph 2 of this Schedule), the Surplus Pre-Demand Date Net Proceeds (as defined in paragraph 1 of this Schedule), the Surplus Proceeds or the Unsecured Net Proceeds.

1. The Lender may, acting in accordance with Normal Commercial Lending Practice, credit any Pre-Demand Date Net Proceeds to any suspense or impersonal account provided that:-
 - (i) the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future (and not, for the avoidance, of doubt with the intention of seeking to maximise the amount payable by the Secretary of State under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower); and
 - (ii) if it does so such Pre-Demand Date Net Proceeds shall only be held in such account for such time as reflects Normal Commercial Lending Practice,

and provided further that the Lender shall:-
 - (A) In respect of any such Pre-Demand Date Net Proceeds which are released from such suspense or impersonal account:-
 - (a) where such release occurs prior to the Demand Date and to the extent that any such Pre-Demand Date Net Proceeds comprise Linked Collateral Net Proceeds, promptly apply such Linked Collateral Net Proceeds firstly in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under the Linked Scheme Facility;
 - (b) where such release occurs on or after the Demand Date and to the extent that any such Pre-Demand Date Net Proceeds comprise Linked Collateral Net Proceeds, promptly apply the Linked Collateral Net Proceeds less the Linked Collateral Net Proceeds Repayment Amount in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of the Business Facilities the order of such application to be made in accordance with Normal Commercial Lending Practice; and
 - (c) promptly apply any Pre-Demand Date Net Proceeds which does not comprise Linked Collateral Net Proceeds where :-
 - (x) such release occurs prior to the Demand Date, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of :-
 - (l) firstly, the Business Facilities (but excluding any Scheme Facility and any Post-EFG Non-Scheme Facility) the order of such application in respect of such Business Facilities to be made in accordance with Normal Commercial Lending Practice;

- (II) secondly, the Scheme Facility (in an amount equal to the sum (if any) remaining after application under sub-paragraph (I) above multiplied by the Pro-Rata Factor); and
 - (III) thirdly, any Post-EFG Non-Scheme Facility (in an amount equal to the sum (if any) remaining after application under sub-paragraph (I) above multiplied by the result of subtracting the Pro-Rata Factor from 1); or
- (y) such release occurs on or after the Demand Date :-
- (I) firstly, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of Business Facilities (but excluding any Scheme Facility and any Post-EFG Non-Scheme Facility) the order of such application in respect of such Business Facilities to be made in accordance with Normal Commercial Lending Practice (any amount of such Pre-Demand Date Net Proceeds remaining after such application being the "**Surplus Pre-Demand Date Net Proceeds**"); and
 - (II) secondly, in an amount equal to the Surplus Pre-Demand Date Net Proceeds less the Surplus Pre-Demand Date Net Proceeds Repayment Amount, in discharge of any principal, interest or other sums remaining outstanding from the Borrower to the Lender in respect of any Post-EFG Non-Scheme Facilities and the Scheme Facility, the order of such application in respect of the same to be made in accordance with Normal Commercial Lending Practice;

AND

- (B) In respect of any Pre-Demand Date Net Proceeds which are not credited to a suspense or impersonal account:-
- (a) to the extent that any such Pre-Demand Date Net Proceeds comprise Linked Collateral Net Proceeds, promptly apply such Linked Collateral Net Proceeds firstly in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under the Linked Scheme Facility (any amount of such Linked Collateral Net Proceeds remaining after such application being the "**Surplus Pre-Demand Date Linked Collateral Net Proceeds**"); and
 - (b) promptly apply any Pre-Demand Date Net Proceeds which does not comprise Linked Collateral Net Proceeds and any Surplus Pre-Demand Date Linked Collateral Net Proceeds, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of :-
 - (x) firstly, the Business Facilities (but excluding any Scheme Facility and any Post-EFG Non-Scheme Facility) the order

of such application in respect of such Business Facilities to be made in accordance with Normal Commercial Lending Practice;

- (y) secondly, the Scheme Facility (in an amount equal to the sum (if any) remaining after application under sub-paragraph (x) above multiplied by the Pro-Rata Factor); and
- (z) thirdly, any Post-EFG Non-Scheme Facility (in an amount equal to the sum (if any) remaining after application under sub-paragraph (x) above multiplied by the result of subtracting the Pro-Rata Factor from 1).

2. On and following the Demand Date, the Lender shall, to the extent that, as at the Demand Date, any Business Facilities Collateral is still in the process of being realised or remains to be realised, use all reasonable endeavours to realise, as soon as reasonably practicable thereafter, such Business Facilities Collateral (provided that the Lender shall not be obliged under this paragraph 2 to seek to realise any specific item of Collateral which constitutes Business Facilities Collateral if its decision not to seek realisation of the same is made in accordance with Normal Commercial Lending Practice). The Lender may, acting in accordance with Normal Commercial Lending Practice, credit any Post-Demand Date Net Proceeds (excluding any payments made by the Secretary of State under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower, which such payments, as regards the manner and timing of their application, shall be subject to the provisions of paragraph 7 of Schedule 1) to any suspense or impersonal account provided that:-

- (i) the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future (and not, for the avoidance, of doubt with the intention of seeking to maximise the amount payable by the Secretary of State under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower); and
- (ii) if it does so such Post-Demand Date Net Proceeds shall only be held in such account for such time as reflects Normal Commercial Lending Practice,

and provided further that the Lender shall:-

- (A) in respect of any such Post-Demand Date Net Proceeds which are released from such suspense or impersonal account; and
- (B) in respect of any Post-Demand Date Net Proceeds (excluding any payments made by the Secretary of State under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower, which such payments, as regards the manner and timing of their application, shall be subject to the provisions of paragraph 7 of Schedule 1) which are not credited to a suspense or impersonal account:-
 - (a) to the extent that any such Post-Demand Date Net Proceeds comprise Linked Collateral Net Proceeds, promptly apply the Linked Collateral Net Proceeds less the Linked Collateral Net Proceeds Repayment Amount in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of the Business Facilities the order of such application to be made in accordance with Normal Commercial Lending Practice; and

- (b) promptly apply any Post-Demand Date Net Proceeds which does not comprise Linked Collateral Net Proceeds:-
 - (x) firstly, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of Business Facilities (but excluding any Scheme Facility and any Post-EFG Non-Scheme Facility) the order of such application in respect of such Business Facilities to be made in accordance with Normal Commercial Lending Practice (any amount of such Post-Demand Date Net Proceeds remaining after such application being the "**Surplus Post-Demand Date Net Proceeds**"); and
 - (y) secondly, in an amount equal to the Surplus Post-Demand Date Net Proceeds less the Surplus Post-Demand Date Net Proceeds Repayment Amount, in discharge of any principal, interest or other sums remaining outstanding from the Borrower to the Lender in respect of any Post-EFG Non-Scheme Facilities and the Scheme Facility, the order of such application in respect of the same to be made in accordance with Normal Commercial Lending Practice.
- 3. For the avoidance of doubt, the Lender must not apply any Excluded Residential Net Proceeds in the discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under a Scheme. If any surplus results from the application by the Lender of any Excluded Residential Net Proceeds in the discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of Business Facilities (other than Scheme Facilities) then such surplus must not be used by the Lender to discharge any principal, interest or other sums outstanding in respect of any Scheme Facilities but must be returned by the Lender to the person entitled to the same.
- 4. If, in respect of a Borrower:-
 - 4.1 principal, interest or other sums are outstanding from that Borrower to the Lender under both a Scheme Facility and other Business Facilities;
 - 4.2 the Lender has available to it both:-
 - (i) Excluded Residential Net Proceeds; and
 - (ii) amounts which it has received, recovered or realised (whether before or after the Demand Date) in the enforcement of its rights in respect of, or otherwise in connection with, Business Facilities Collateral (after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses)(each such net receipt, recovery or realisation in respect of Business Facilities Collateral being "**Business Facilities Collateral Net Proceeds**");
 - 4.3 the date of the application by the Lender of the Excluded Residential Net Proceeds in discharging any principal, interest or other sums outstanding from the Borrower to the Lender under Business Facilities (other than the Excluded Facilities (as defined in paragraph 3 of this Schedule)) falls prior to the date on which the Lender has applied in full all Business Facilities Collateral Net Proceeds; and

4.4 the effect of the timing of application (referred to in paragraph 4.3 of this Schedule) is such that the amount (if any) which would be returned to:-

- (i) the Borrower; or
- (ii) any individual who has provided a guarantee and/or indemnity in favour of the Lender in respect of that Borrower; or
- (iii) any individual, not falling within sub-paragraph (ii) above, who has provided Security over a principal private residence in favour of the Lender in respect of that Borrower,

is less than, due to the application of paragraph 3 of this Schedule, the amount which would be returned had the Excluded Residential Net Proceeds been applied after the full application by the Lender of all Business Facilities Collateral Net Proceeds (any such difference being the "**Excluded Residential Net Proceeds Additional Return Amount**"),

then, following the application of the Excluded Residential Net Proceeds:-

- (A) the Lender shall not be entitled to, in respect of the Business Facilities Collateral Net Proceeds, apply such amount of the Business Facilities Collateral Net Proceeds as is equal to the Excluded Residential Net Proceeds Additional Return Amount in discharge of Business Facilities (other than the Excluded Facilities (as defined in paragraph 3 of this Schedule)); and
- (B) shall return the Excluded Residential Net Proceeds Additional Return Amount to, as applicable, the Borrower or the relevant individual who has provided a guarantee and/or indemnity or Security over a principal private residence in favour of the Lender in respect of that Borrower.

5. Subject to the Secretary of State having paid to the Lender all sums due to the Lender and demanded on the Demand Date from the Secretary of State, in accordance with the terms of the relevant Scheme Guarantee, in respect of the relevant Scheme Facility :-

5.1 the Lender shall, as soon as reasonably practicable after:-

- (i) the receipt, recovery or realisation of any Linked Collateral Net Proceeds Repayment Amount; or
- (ii) where any Linked Collateral Net Proceeds Repayment Amount has been placed into a suspense or impersonal account, the release of that Linked Collateral Net Proceeds Repayment Amount from such suspense or impersonal account,

pay the Linked Collateral Net Proceeds Repayment Amount (if any) to the Secretary of State;

5.2 the Lender shall, as soon as reasonably practicable after the same has been determined, pay any Surplus Post-Demand Date Net Proceeds Repayment Amount and any Surplus Pre-Demand Date Net Proceeds Repayment Amount to the Secretary of State; and

5.3 in the event that there are Surplus Proceeds, the Secretary of State shall be entitled to receive from the Lender an amount (a "**recovery**") equal to the lesser of:-

- (i) the sums so paid by the Secretary of State (taking into account any amounts received by the Secretary of State under the provisions of paragraphs 5.1 or 5.2 above); or

(ii) the Surplus Proceeds,

and, accordingly, as soon as reasonably practicable after such Demand Date and from time to time thereafter the Lender shall make such payments to the Secretary of State as will result in receipt by the Secretary of State of the amount to which he is so entitled.

6. Nothing in this Schedule shall affect the Lender's discretion as to the order in which such Business Facilities Collateral is enforced or the method of such enforcement.

7. If the Lender shall have made available to a Borrower more than one Scheme Facility, the foregoing provisions of this Schedule shall have effect and be construed as if all such facilities constituted a single Scheme Facility granted at the time the last such facility was made available.

8. If, in relation to a particular Scheme Facility, the Lender makes payment to the Secretary of State under the provisions of this Schedule and the Lender subsequently proves to the satisfaction of the Secretary of State that the amount paid was in excess of that which should have been paid:-

8.1 due to an administrative error; or

8.2 because the amount of Surplus Proceeds, Linked Collateral Net Proceeds or Surplus Post-Demand Date Net Proceeds (as defined in paragraph 2 of this Schedule), utilised in the calculation set out in paragraph 5 of this Schedule, was overstated due to the inclusion in such calculation of an amount of Pre-Demand Date Net Proceeds, Post-Demand Date Net Proceeds or Demand Date Suspense Net Proceeds which it is subsequently determined, in accordance with any applicable law or regulation, the Lender was not entitled to receive and retain,

then the Secretary of State shall, as soon as reasonably practicable after being satisfied that such excess should not have been paid, repay the amount of such excess to the Lender.

SCHEDULE 3

MULTIPLE LENDERS : INTERPRETATION

Where the term "Lender" comprises more than one person (as defined in Clause 1.2.4) (each such person being a "**Group Lender**") the obligations and liabilities of each Group Lender under the Scheme Documents shall, where the context requires, be several and not joint and several and any references to "Lender", "Party" or "Parties" shall be construed, and all relevant agreements and undertakings on each Group Lender's part shall take effect, accordingly provided that:-

1. the Annual Base Lending Limit, Annual Claim Limit, Annual Lending Limit, Annual Lending Total, Annual Projected Claim Limit, Indicative Annual Base Lending Limit, Indicative Projected Annual Claim Limit, Initial Annual Base Lending Limit and Specific Lending Limit will apply as though the Lender were a single person (such that each Group Lender will not have separate limits and totals but instead there will be one amount in respect of each such limit or total applicable to all the Group Lenders on an aggregated basis) and any use of the term "Lender" (subject to the remaining provisos to this Schedule 3) in those definitions or in any related provision of a Scheme Document (including, but not limited to, in Clauses 11.2, 11.7, 22.4 and paragraph 1.2 of Schedule 1) shall, where the context requires, be construed accordingly;
2. any notice, request, demand or other communication given or made by the Secretary of State in accordance with the provisions of Clause 21 shall, unless otherwise specified by the Secretary of State in the relevant notice, request, demand or other communication, be deemed to have been given or made to every Group Lender notwithstanding that any such notice, request, demand or other communication might not have been given, made, delivered or addressed to that Group Lender;
3. any provision in a Scheme Document which refers to the agreement of the Secretary of State and the Lender shall, if the relevant agreement is reached with any one Group Lender, be binding on each other Group Lender (unless otherwise agreed by the Secretary of State or in circumstances where the nature of the agreement which is reached, or the context of the relevant provision, is such that the agreement is only capable of applying to one or more specific Group Lenders);
4. any notification to be given by the Lender under Clause 11.3 or proposal or information submitted by the Lender under Clause 12 must be given by either one Group Lender as agent for and on behalf of all the Group Lenders (in which case all the Group Lenders shall be bound) or by all the Group Lenders;
5. any provision in a Scheme Document which requires a meeting between the Secretary of State and the Lender shall be attended by those Group Lenders which the Secretary of State specifies as being required to attend such meeting and, in default of any such specification being made by the Secretary of State, by one Group Lender as agent for and on behalf of all the Group Lenders (in which case all the Group Lenders shall be bound by any agreement reached at any such meeting);
6. any provision in a Scheme Document which requires the Secretary of State and the Lender, if the relevant specified circumstances apply, to seek to negotiate amendments to a Scheme Document shall take place between the Secretary of State and either one Group Lender as agent for and on behalf of all the Group Lenders (in which case all the Group Lenders shall be bound) or by all the Group Lenders;
7. in relation to Clauses 13.1 and 13.3, each Annual Report should be provided by one Group Lender as agent for and on behalf of, and in relation to the Scheme lending activities of, all the Group Lenders unless the Secretary of State notifies the Lender that it requires an Annual Report to be prepared separately by each Group Lender;

8. in Clauses 16 and 20.2, each reference to "the Lender" shall be construed as references to "the Group Lenders or any Group Lender";
9. in Clause 20.1, references to "Either Party" and "the other Party" shall be construed as references respectively to "The Group Lenders (or one Group Lender as agent for and on behalf of all the Group Lenders, each of whom shall be bound by such notice) or the Secretary of State" and ", as the case may be, the Secretary of State or the Lender";
10. if the Secretary of State exercises his rights under Clause 20.2 to terminate this Agreement such termination may, in the absolute discretion of the Secretary of State, be specified to apply to all the Group Lenders or to those particular Group Lenders specified in such notice (those Group Lenders being the subject of any such notice and each Group Lender in the case of any notice served under Clause 20.1 being a "**Terminated Group Lender**") (if a notice under Clause 20.2 applies to some, but not all, of the Group Members then the rights and obligations of the Secretary of State and each Group Lender which is not a Terminated Group Lender shall continue);
11. in Clauses 20.3 and 20.4 :-
 - 11.1 each reference to "the Lender" shall be construed as a reference to "a Terminated Group Lender"; and
 - 11.2 any references to "the Parties" or "one Party" shall be construed as a reference respectively to "the Secretary of State and a Terminated Group Lender" and "the Secretary of State or a Terminated Group Lender";
12. in Clauses 24.1 and 31.1.2, references to "the Lender" shall be construed as a reference to "any Group Lender";
13. in Clauses 25 and 26 :-
 - 13.1 references to "either Party" shall be construed as a reference to "a Group Lender or the Secretary of State"; and
 - 13.2 references to "the other Party" shall be construed, as the context requires, as references to "respectively the Secretary of State or a Group Lender" or "as applicable, the Secretary of State or the relevant Group Lender";
14. in Clause 26.2, the phrase "each Party undertakes to the other" shall be construed as reading "each Party undertakes to each other Party";
15. in Clause 30.1.1, the phrase "both Parties" shall be construed as reading "all Parties"; and
16. in Clause 32.2, the phrase "The Lender shall not be entitled" shall be construed as reading "Neither the Group Lenders or any Group Lender shall be entitled".

SCHEDULE 4

MAXIMUM LOAN AMOUNT and MAXIMUM GUARANTEE TERM

	Maximum Amount	Maximum Guarantee Term
Applicant carrying on Business in any eligible sector save for the Road Freight Transport sector, the Agriculture sector or the Fisheries sector	£1,200,000	5 years
	£600,000	10 years
Applicant carrying on Business in the Road Freight Transport sector	The lesser of (1) £1,200,000 and (2) such amount as would result in the aggregate <i>de minimis</i> State aid being made available to the Applicant equalling €100,000, as calculated by the Scheme Website Application Process	5 years
	The lesser of (1) £600,000 and (2) such amount as would result in the aggregate <i>de minimis</i> State aid being made available to the Applicant equalling €100,000, as calculated by the Scheme Website Application Process	10 years
Applicant carrying on Business in the Agriculture sector	The lesser of (1) £1,200,000 and (2) such amount as would result in the aggregate <i>de minimis</i> State aid being made available to the Applicant equalling €15,000, as calculated by the Scheme Website Application Process	5 years
	The lesser of (1) £600,000 and (2) such amount as would result in the aggregate <i>de minimis</i> State aid being made available to the Applicant equalling €15,000, as calculated by the Scheme Website Application Process	10 years
Applicant carrying on Business in the Fisheries sector	The lesser of (1) £1,200,000 and (2) such amount as would result in the aggregate <i>de minimis</i> State aid being made available to the Applicant equalling €30,000, as calculated by the Scheme Website Application Process	5 years

	The lesser of (1) £600,000 and (2) such amount as would result in the aggregate <i>de minimis</i> State aid being made available to the Applicant equalling €30,000, as calculated by the Scheme Website Application Process	10 years
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**EXECUTED FOR AND ON BEHALF OF
THE SECRETARY OF STATE FOR BUSINESS,
INNOVATION AND SKILLS acting by:**

.....
Signature

.....
Name

In the presence of:-

Signature of witness:

Name of witness:

Address:

Occupation:

Signed by

.....
Duly Authorised Signatory/Attorney
for and on behalf of []

Name:

Title: