

THIS AGREEMENT SUPPLEMENT is dated [***] 2022 and made

BETWEEN:

- (1) **THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND**, (the “**Guarantor**”);
and
- (2) **[•]**, (the “**Lender**”), registered in [•] as company number [•] and having its registered office at [•].¹

BACKGROUND:

The Guarantor and the Lender have entered into this Agreement Supplement for the purpose of the Guarantor providing a guarantee to the Lender of the Covered EMFS Financing, details of which are set out below.

The terms of the document (the “**Agreement**”) annexed to this Agreement Supplement are incorporated by reference into this Agreement Supplement, which collectively is referred to as the “**EMFS Guarantee**”.

HMT has provided an indemnity to the Guarantor for all amounts paid by the Guarantor under the EMFS Guarantee.

1. Definitions and interpretation

1.1 Definitions

Unless otherwise defined herein, all capitalised terms have the meanings given to them in Part 1 (*Definitions*) of Schedule 1 (*Definitions and interpretation*) to the Agreement.

1.2 Interpretation

The EMFS Guarantee will be construed in accordance with Part 2 (*Interpretation*) of Schedule 1 (*Definitions and interpretation*) to the Agreement.

1.3 Form of the EMFS Guarantee

The terms of the Agreement are incorporated by reference into this Agreement Supplement and thereby form part of the EMFS Guarantee.

1.4 Precedence of the EMFS Guarantee and the other Lender Scheme Documents

- (A) Under the terms of the EMFS Guarantee, the Lender is required to comply with the terms of this Agreement Supplement, the Agreement, the EMFS Procedures and any other Lender Scheme Documents.
- (B) In the event of any conflict between the Lender Scheme Documents (other than a Market Notice) and the EMFS Guarantee, the EMFS Guarantee shall prevail.
- (C) Market Notices relating to the Scheme form part of, and should be read alongside, the Lender Scheme Documents and in the event of any conflict between such a Market Notice and the EMFS Guarantee, the Market Notice shall prevail.

2. Covered EMFS Financing

¹ The Agreement Supplement and the Guarantee could be amended to cater for signing by more than one lender, for instance in case of a syndicate. This will be assessed on a case by case basis.

The EMFS Guarantee is given in respect of the Eligible EMFS Financing with the following details:

- (A) [Name, registered number and registered address of the Borrower] (the “**Borrower**”);
- (B) [type and date of Eligible EMFS Financing and the existing facility to which it relates]; and
- (C) Interest rate [and basis of any other amounts charged to the Borrower] pursuant to the Covered EMFS Financing: [include details of interest determination including reference rate and any margin],

(the “**Eligible EMFS Financing**”).

3. Information concerning the Borrower

The Lender confirms that it has obtained all permissions or approvals from the Borrower necessary or desirable to enable the Guarantor and each Guarantor Related Party to exercise its rights, or perform its obligations, under the EMFS Guarantee (including its rights under Clauses 8.2 (*Monitoring and audit*) and 10.3 (*Information*) of the Agreement), in each case no later than the date the Application Letter is submitted by the Borrower and the Lender.

4. Eligibility Criteria

- 4.1 The Lender confirms that it and the Borrower have provided the Information Declaration to the Guarantor at least five Business Days before the date of this Agreement Supplement.
- 4.2 The Guarantor and the Lender agree that the following additional Specific Eligibility Criteria shall apply to the Eligible EMFS Financing:
 - [include any other conditions]
- 4.3 The Lender hereby confirms that the Eligibility Criteria apply to the Eligible EMFS Financing and that it has made all Due Enquiry of the Borrower with respect to any information needed to be provided by the Borrower with respect to the Eligibility Criteria.
- 4.4 The Lender confirms that the pricing of the Covered EMFS Financing (including interest and other amounts charged to a Borrower under the Covered EMFS Financing) is as set out in Clause 2(C).
- 4.5 The Guarantor and the Lender agree that the Eligible EMFS Financing shall be the “**Covered EMFS Financing**” for the purposes of the EMFS Guarantee only if the Eligible EMFS Financing satisfies the Eligibility Criteria as at the Effective Date.

5. Effective Date, Maximum Amount and Maximum EMFS Financing Term

- 5.1 The Effective Date of the EMFS Guarantee shall occur on the latest of:
 - (A) the date of this Agreement Supplement;
 - (B) the date on which the Guarantor has received a Confidentiality and Undertaking Agreement duly executed by the Borrower; and
 - (C) the date on which HMT has received a Direct Letter of Undertaking duly executed by the Borrower.

5.2 The Maximum Amount of the Covered EMFS Financing is £[●]² (the “**Maximum Amount**”).

5.3 The Maximum EMFS Financing Term shall start on the Effective Date and end on the earlier of (a) [●]³; and (b) the date falling [12 months/364 days] after the Effective Date (such end date being the “**Scheduled Final Repayment Date**” and such period being the “**Maximum EMFS Financing Term**”).

6. **Fees**

6.1 The Lender agrees to pay to the Guarantor the applicable fee(s) determined in accordance with the most recent Market Notice covering fees payable for the Scheme with such payment being made as follows:

(A) the arrangement fee payable prior to the Bank’s execution on this Agreement Supplement shall be payable not later than the date of this Agreement Supplement; and

(B) the on-going commitment fee shall be determined by reference to the undrawn amount of the Covered EMFS Financing and shall be payable quarterly in arrears on 1 January, 1 April, 1 July and 1 October (or if such date is not a Business Day, the immediately following Business Day).

6.2 The Lender agrees to pay to the Guarantor an amount equal to the scheme interest rate set out in the most recent Market Notice which shall be payable quarterly in arrears on 1 January, 1 April, 1 July and 1 October (or if such date is not a Business Day, the immediately following Business Day) whilst any amount is drawn under the Covered EMFS Financing.

6.3 The Lender agrees to pay to the Guarantor a cancellation fee (if any) in accordance with the most recent Market Notice with such fee being payable within two Business Days of receipt from the Borrower.

6.4 The basis and timing of payment of the amounts set out in this Clause 6 may be updated pursuant to a Market Notice.

6.5 The commitment fee and the scheme interest rate shall accrue from day to day from (a) with respect to the commitment fee, the Effective Date; and (b) with respect to the scheme interest- while any amount is outstanding under the Covered EMFS Financing and, in each case, the amount of any such fee or interest is calculated on the basis of the actual number of days elapsed and a year of 365 days.

7. **Notices**

The Lender’s details for notices under Clause 17(B) of the Agreement are as follows:

[LENDER NAME]

[Address]

Email: [●]

[Copy to:

[BORROWER NAME]

[Address]

² This amount will be set during the application process for each individual financing.

³ This date will be set during the application process for each individual financing.

Email: [●]]

7. Counterparts

This Agreement Supplement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement Supplement.

8. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement Supplement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the EMFS Guarantee, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act, save that a Guarantor Related Party may enforce any term of the EMFS Guarantee which purports to give such Guarantor Related Party any rights or benefit.

9. Governing law and Jurisdiction

The provisions of Clause 24 (*Governing Law and Jurisdiction*) of the Agreement apply to this Agreement Supplement as though they were set out in full in this Agreement Supplement except that references to the Agreement are to be construed as references to this Agreement Supplement.

SIGNATORIES

The Guarantor⁴

Signature: [Signature:]

Name: [Name:]

Authorised signatory Authorised signatory

For and on behalf of **THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND**

The Lender⁵

Signature: [Signature:]⁶

Name: [Name:]

Authorised signatory Authorised signatory

[Director] [Director]

[Company Secretary] [Company Secretary]

[As attorney for the Lender] [As attorney for the Lender]

[Other:] [Other:]

For and on behalf of [•]

[In the presence of:

Signature of witness:

Name of witness:

Address of witness:.....]⁷

⁴ Bank to confirm form of signature block.

⁵ The authorised signator(y)(ies) of the Lender should specify the capacity in which they are signing by deleting all but the relevant option below.

⁶ To be deleted if this Agreement is signed by only one signatory on behalf of the Lender.

⁷ To be deleted if signature of this Agreement by the signatory of the Lender is not witnessed.

Annex to the Agreement Supplement

EMFS Guarantee

relating to

The Energy Markets Financing Scheme

CONTENTS

1.	Guarantee.....	1
2.	Standard of care	1
3.	Lender’s rights	1
4.	Terms of the EMFS Guarantee	2
5.	Making a claim under the EMFS Guarantee	2
6.	Recoveries.....	4
7.	Errors in payment	5
8.	Monitoring, audit and maintenance of records	6
9.	Lender representations and warranties.....	8
10.	General undertakings	10
11.	Events of Default	12
12.	Termination of EMFS Guarantee	13
13.	Survival of rights	14
14.	Liability and indemnity	14
15.	Data protection	15
16.	Confidentiality	15
17.	Notices	16
18.	Relationship between the Parties.....	17
19.	Remedies and waivers.....	17
20.	Invalidity and severability	17
21.	Further assurances.....	17
22.	Amendments and waivers.....	18
23.	Assignment and transfer	18
24.	Governing law and jurisdiction	18
25.	Service of process	19
	SCHEDULE 1 : DEFINITIONS AND INTERPRETATION	20
	SCHEDULE 2 : GENERAL ELIGIBILITY CRITERIA.....	29
	SCHEDULE 3 : FORM OF INFORMATION DECLARATION.....	30
	SCHEDULE 4 : PASSTHROUGH OBLIGATIONS.....	32
	SCHEDULE 5 : FORM OF MONTHLY REPORT.....	33
	SCHEDULE 6 : FORM OF PAYMENT CLAIM.....	35

1. Guarantee

1.1 Guarantee

- (A) The Guarantor guarantees to the Lender the due and punctual payment of 100% of the Outstanding Guaranteed Balance as at the date of the Payment Claim, on the terms of the remainder of the EMFS Guarantee, such amount being the “Guaranteed Amount” provided always that the Guaranteed Amount shall not exceed the Maximum Amount.
- (B) The Lender agrees that claims under the EMFS Guarantee must be made in accordance with Clause 5 (*Making a claim under an EMFS Guarantee*).

1.2 Effectiveness

The EMFS Guarantee will take effect from the Effective Date, without the need for any further request, authorisation or consent from the Guarantor.

1.3 Exercise of rights

Subject to the express terms set out in the Scheme Documents, any liberty or power which may be exercised or any determination which may be made under the Lender Scheme Documents by the Guarantor (including any act, matter or thing as agreed, specified, determined, decided or notified by the Guarantor to the Lender) may be exercised or made generally or in relation to one or more lenders and in the absolute and unfettered discretion of the Guarantor from time to time, which shall not be under any obligation to give reasons for such exercise or determination.

2. Standard of care

Notwithstanding any other provision of the EMFS Guarantee, the Lender agrees that it will:

- (A) always act in good faith towards the Guarantor and HMT;
- (B) in relation to the Covered EMFS Financing, the Borrower or the EMFS Guarantee, comply with its own applicable general policies and procedures relating to similar financings;
- (C) act as a prudent lender in respect of the Covered EMFS Financing and as if it did not have the benefit of the EMFS Guarantee; and
- (D) take reasonable steps to:
 - (1) minimise losses covered by the EMFS Guarantee; and
 - (2) maximise recoveries following a payment under the EMFS Guarantee.

3. Lender's rights

3.1 Lender's rights

The Lender may at any time without discharging or otherwise affecting the Guarantor's obligations, in respect of the Covered EMFS Financing:

- (A) vary the terms of or renew or determine any Non-Scheme Facility made or to be made available to the Borrower by the Lender; or
- (B) grant time or indulgence to or concession with the Borrower or any other person in relation to any Non-Scheme Facility.

3.2 Variations of Covered EMFS Financing

Any variation of the Covered EMFS Financing in the manner contemplated below will be treated as a new proposed Eligible EMFS Financing, and the EMFS Guarantee and the Guarantor's obligations under the EMFS Guarantee shall automatically and immediately terminate, such that all the provisions of the Application Process relating to eligibility and application processing must be complied with:

- (A) any renewal or extension to the term of the Covered EMFS Financing;
- (B) any increase in the amount of the Covered EMFS Financing; or
- (C) any variation of any authorised limit, percentage or other amount in respect of the Covered EMFS Financing which would have the effect of increasing the Guarantor's exposure to the Covered EMFS Financing under the EMFS Guarantee.

4. Terms of the EMFS Guarantee

4.1

- (A) The EMFS Guarantee is a continuing security and continues in full force and effect notwithstanding the commencement of any Insolvency Proceedings against the Borrower or any change in its status, constitution, functions, control or ownership.
- (B) For the avoidance of doubt, if the Covered EMFS Financing is repaid, or treated by the Lender as repaid, as a result of the occurrence of the commencement of any Insolvency Proceedings against the Borrower the EMFS Guarantee will terminate.

4.2 The Guarantor consents to the registration in Scotland of the EMFS Guarantee for preservation and execution (if applicable).

4.3 Notwithstanding any other provision of the EMFS Guarantee, if any amount which has been received by the Lender in settlement of the Covered EMFS Financing (in whole or in part) is returned by the Lender as a result of any law or enactment relating to any Insolvency Proceedings for the time being in force (such amount, a "**Clawback Amount**"):

- (A) the Outstanding Guaranteed Balance shall be calculated as if such Clawback Amount had not been received by the Lender;
- (B) the EMFS Guarantee shall be deemed to be a continuing security and in full force and effect, notwithstanding any prior discharge of the EMFS Guarantee as a result of the repayment in full of the Covered EMFS Financing; and
- (C) (if the Lender has already submitted the Payment Claim) the Lender shall be entitled to submit an additional Payment Claim (an "**Additional Payment Claim**") (which shall be irrevocable) in respect of any increase in the Outstanding Guaranteed Balance as a result of such Clawback Amount.

4.4 For the avoidance of doubt, an Additional Payment Claim shall not cover any part of the Outstanding Guaranteed Balance in respect of which the Payment Claim has already been made.

5. Making a claim under the EMFS Guarantee

5.1 Process for making a claim under the EMFS Guarantee

Subject to Clause 5.2, the Guarantor agrees that, if:

- (A) the Borrower fails to make any payment of the Outstanding Guaranteed Balance to the Lender when due (provided that where a Payment Claim or Additional Payment Claim is being submitted following the exercise by the Lender of the termination option in Clause 12.3 (Termination by Lender), such Payment Claim or Additional Payment Claim must only relate to a failure to pay by the Borrower in the period from the Effective Date to the date falling 30 days after the date of delivery by the Lender of the notice referred to in Clause 12.3); and
- (B) the Lender delivers to the Guarantor the Payment Claim (or in the circumstances set out in Clause 4.3(C) an Additional Payment Claim) in respect of such failed payment in accordance with this Clause 5, provided that the Payment Claim (or collectively the Additional Payment Claim, the Payment Claim and any other Additional Payment Claims) shall not exceed the Maximum Amount,

the Guarantor shall, by 30 calendar days after the date on which the Guarantor receives the Payment Claim (or the Additional Payment Claim) (or if such date is not a Business Day, the immediately following Business Day), pay to the Lender an amount equal to the amount claimed in the Payment Claim (or the Additional Payment Claim) (but only to the extent it corresponds to the Outstanding Guaranteed Balance).

5.2 Conditions to making the Payment Claim or any Additional Payment Claim in respect of the EMFS Guarantee

- (A) The Lender may not deliver the Payment Claim or any Additional Payment Claim unless the following conditions precedent have been satisfied:
 - (1) the Covered EMFS Financing was an Eligible EMFS Financing on the Effective Date;
 - (2) the Lender has notified the Guarantor that a payment or other default in respect of the Covered EMFS Financing is outstanding in accordance with Clause 10.3(A)(1) following the failure of pay in respect of the Covered EMFS Financing; and
 - (3) none of the events set out in Clause 12.1(A)-(D) (*Cancellation of the EMFS Guarantee*) has occurred.

If any one or more of these conditions precedent has not been satisfied on the date that the Payment Claim or Additional Payment Claim is delivered to the Guarantor and has not been waived in writing by the Guarantor, the Guarantor will be unconditionally and irrevocably released and discharged from all its obligations and liabilities under the EMFS Guarantee.

- (B) Each Party agrees that:
 - (1) subject to Clause 4.3(C), the Lender may only submit one Payment Claim to the Guarantor (which shall be irrevocable);
 - (2) the Guarantor's liability under the EMFS Guarantee will not exceed an amount equal to the lower of (i) the Guaranteed Amount and (ii) the Maximum Amount;
 - (3) the Payment Claim and each Additional Payment Claim must be delivered to the Guarantor by the earlier of (i) the date that falls six months (or such later date which may be specified in a Market Notice) after the date of the failure to pay referred to in Clause 5.1(A) and (ii) the Termination Date,

and the Guarantor will not be required to pay any amount to the Lender under Clause 1 (*Guarantee*) or 5 (*Making a claim under the EMFS Guarantee*) unless these conditions have been satisfied.

In relation to Clause 5.2(B)(3)(i), if a default occurs in respect of the Covered EMFS Financing and the Covered EMFS Financing subsequently becomes performing, with the Lender no longer requiring immediate repayment of the sums outstanding under the Covered EMFS Financing, then such default shall be ignored for the purposes of Clause 5.2(B)(3)(i).

- (C) Where the Lender has made a repayment demand on the Borrower which it subsequently withdraws or waives or otherwise treats its rights as having been satisfied in respect of the relevant default under the Covered EMFS Financing, it will not be precluded from making the Payment Claim in respect of any subsequent default under the Covered EMFS Financing, provided the making of the Payment Claim complies with the provisions of the EMFS Guarantee.

- 5.3 Without prejudice to the generality of Clause 2 (*Standard of care*), the Lender shall not apply any sums paid to it by the Guarantor pursuant to the EMFS Guarantee as a result of a Payment Claim (or an Additional Payment Claim) against any amount due by the Borrower under the Covered EMFS Financing.

6. Recoveries

6.1 Lender's recoveries process

The Lender shall complete or cease its recoveries process in respect of the Covered EMFS Financing under which a default is outstanding, in accordance with Clause 2 (*Standard of Care*).

6.2 Recoveries

Following payment of the Payment Claim or any Additional Payment Claim, if the Lender receives, collects or recovers (including via set-off) any money attributable to the Outstanding Guaranteed Balance or attributable to any default or late payment interest arising on the Outstanding Guaranteed Balance, the Lender shall promptly pay to the Guarantor a sum equal to such money, having first deducted any costs incurred by the Lender in relation to any recovery efforts.

6.3 Subrogation rights

The Guarantor shall be entitled to any rights of subrogation or other equitable rights on payment of the Payment Claim or any Additional Payment Claim (as applicable).

6.4 Elevation

- (A) Following payment of the Payment Claim or any Additional Payment Claim, the Guarantor may at any time by notice in writing to the Lender require the Lender to assign absolutely (by way of sale not security) to the Guarantor all the Lender's right, title and interest to the Covered EMFS Facility and to take all steps relating thereto that the Guarantor may reasonably request including:

- (1) executing a deed of assignment in favour of the Guarantor in such form as the Guarantor may reasonably require; and
- (2) delivering a written notice of assignment to the Borrower or any other person.

- (B) If following such assignment the Guarantor receives, collects or recovers (including via set-off) any money not attributable to the Outstanding Guaranteed Balance or to any default or late payment interest arising on the Outstanding Guaranteed Balance, the Guarantor shall promptly pay to the Lender a sum equal to such money, having first deducted any costs incurred by the Guarantor in relation to any recovery efforts.

(C) The Lender acknowledges and agrees that as part of the Guarantor's arrangements with HMT, the Guarantor will assign to HMT all of the Guarantor's right, title and interest in and to:

- (1) the EMFS Guarantee;
- (2) any subrogation or other equitable rights referred to in Clause 6.3; and
- (3) the Covered EMFS Financing (whether before or after the assignment referred to in paragraph (A) above),

and the Lender shall at the request of the Guarantor (or HMT) take such action (including delivering a written notice of assignment to the Borrower or any other person) as the Guarantor (or HMT) may reasonably request in relation to the foregoing.

(D) Following any assignment made pursuant to this Clause 6.4, the Lender shall promptly provide any assistance and/or take any step which the Guarantor (or HMT) may at any time and from time to time reasonably request in relation to the Covered EMFS Financing, the Borrower and/or any of the subject matter of the foregoing, including in relation to any enforcement or recoveries steps.

6.5 **Currency**

All amounts payable by either Party under the EMFS Guarantee shall be payable in Sterling.

7. **Errors in payment**

7.1 If the Guarantor makes a payment to the Lender under the EMFS Guarantee, but afterwards the Guarantor determines that the Payment Claim (or the Additional Payment Claim) was made:

- (A) fraudulently or otherwise than in good faith; or
- (B) other than in compliance with Clauses 2, 5.2(A) and 5.2(B), then, on the Guarantor's demand,

the Lender will immediately reimburse that payment to the Guarantor.

7.2 If the Guarantor determines that the pricing of the Covered EMFS Financing (including interest and other amounts charged to the Borrower) does not satisfy the requirements of the Agreement Supplement, then the Lender will take such action as may be required by the Guarantor to rectify this, including requiring a payment from the Borrower or paying to the Borrower in respect of the Covered EMFS Financing such amount as would place that Borrower in the position that it would have been in had the provisions relating to pricing in the Agreement Supplement been complied with by the Lender.

7.3 If, in relation to the Covered EMFS Financing or the EMFS Guarantee, a Party (the "**Payer**") makes payment to the other Party (the "**Payee**") of any amount pursuant to the terms of the EMFS Guarantee and it is subsequently determined that such amount:

- (A) exceeded the amount that the Payee was entitled to receive under the terms of the EMFS Guarantee, the Payee will as soon as reasonably practicable following a demand by the Payer reimburse to the Payer the difference between the amount which was paid by the Payer in respect of the Covered EMFS Financing or EMFS Guarantee (as applicable) and the amount which should have been paid; or
- (B) was less than the amount that the Payee was entitled to receive under the terms of the EMFS Guarantee, the Payer will pay to the Payee as soon as reasonably practicable the additional amount owed to the Payee under the Covered EMFS Financing or EMFS Guarantee (as applicable),

together with interest on such sum accruing on each day of the over or under payment at the prevailing Bank of England base rate.

8. Monitoring, audit and maintenance of records

8.1

(A) Administration by the Lender of the Covered EMFS Financing

The Lender will establish and maintain, for so long as the Covered EMFS Financing remains outstanding, effective internal processes for the administration of the Covered EMFS Financing in accordance with Clause 2 (*Standard of Care*).

(B) Administration by the Guarantor of the EMFS Guarantee

The Lender hereby acknowledges and agrees that:

- (1) the Guarantor may from time to time appoint third party service providers to assist in the operation and administration of the EMFS Guarantee (each such person, a “**Service Provider**”), including the EMFS Fee and the processing of the Payment Claim and any Additional Payment Claim;
- (2) each Service Provider shall be a Guarantor Related Party for the purposes of the EMFS Guarantee;
- (3) subject to the provisions of Clause 15 (*Data Protection*) and Clause 16 (*Confidentiality*), the Guarantor shall be entitled to make available to the relevant Service Provider such information that is received or generated pursuant to the EMFS Guarantee or otherwise in connection with the EMFS Guarantee that is necessary or desirable for the relevant Service Provider to operate and administer the EMFS Guarantee on the Guarantor’s behalf; and
- (4) each such Service Provider is a third party sub-contractor of the Guarantor and the Lender shall have no direct relationship with or recourse to such Service Provider under the EMFS Guarantee.

8.2 Monitoring and audit

- (A) No Guarantor Related Party is responsible for monitoring or verifying the use of any money advanced by the Lender to the Borrower or utilised from time to time by the Borrower under the Covered EMFS Financing. Notwithstanding this, the Guarantor for itself or on behalf of any other Guarantor Related Party may, at any time, request information from the Lender to enable that Guarantor Related Party to verify whether a financing was an Eligible EMFS Financing as at the Effective Date and whether its inclusion in the Scheme is in compliance with the terms of the EMFS Guarantee and the Scheme Documents. The Lender will promptly supply to the Guarantor any such information requested by the Guarantor.
- (B) To enable the monitoring, control and auditing of the correct use of the EMFS Guarantee and compliance with the EMFS Guarantee, the Lender agrees that any Guarantor Related Party has the right to carry out audits and controls and to request information about the EMFS Guarantee and the Covered EMFS Financing. The Lender will permit monitoring visits and inspections of its business operations, books and records relating to the EMFS Guarantee and the Covered EMFS Financing by any Guarantor Related Party, provided that it receives at least five Business Days’ notice of such visit or inspection. For these purposes, the Lender will permit access to its premises to each Guarantor Related Party during normal business hours.

- (C) The Lender will, and will procure that its officers, employees and agents will, give each Guarantor Related Party all such reasonable assistance (including investigating (where appropriate) and responding to any enquiries raised by that Guarantor Related Party in connection with an audit/monitoring) and disclose to each Guarantor Related Party such documents, records and information maintained by the Lender about the Borrower and/or the Covered EMFS Financing which are relevant to the audit/control as needed by any Guarantor Related Party to enable it to complete an audit to its satisfaction (except where the Lender is prohibited from such disclosure by law (including by a court order)).
- (D) If requested at any time and from time to time by any Guarantor Related Party, the Lender shall promptly and (if a Payment Claim has been made) in any event within two Business Days of any such request:
- (1) supply to that Guarantor Related Party such information, documents, reports and records about the EMFS Guarantee, the Covered EMFS Financing and the subject matter thereof, the Borrower, any Payment Claim and/or any enforcement or recoveries strategy and/or action as that Guarantor Related Party may require;
 - (2) investigate (where appropriate) any matter set out in or arising from the information provided in paragraph (1); and
 - (3) respond to any enquires made by that Guarantor Related Party about any matter set out in or arising from the information provided in paragraph (1),
- except, in each such case, where the Lender is prohibited from such disclosure by law (including by a court order).
- (E) At such frequency as any Guarantor Related Party may reasonably determine, the Lender agrees to ensure that one or more of its officers or employees (in each case holding a senior position in the Lender) is available to meet with a representative of that Guarantor Related Party, each such meeting to be:
- (1) held at a location and at a date and time agreed as being mutually convenient to all of the Lender, the Guarantor and that Guarantor Related Party; and
 - (2) used as a forum for discussing any relevant matters relating to the operation of the EMFS Guarantee including any operational difficulties or issues arising and needing to be addressed.

8.3 Maintenance of records

- (A) The Lender undertakes to prepare, update and at all times maintain and make available for the Guarantor Related Parties, the following documentation:
- (1) information necessary to verify that the Covered EMFS Financing complies with the relevant requirements set by the EMFS Guarantee, including the compliance with the Eligibility Criteria and the provisions relating to pricing in the Agreement Supplement;
 - (2) information about the payment and recovery processes of the Lender; and
 - (3) any other information reasonably required by any Guarantor Related Party,

in each case for such length of time as is consistent with Clause 2 (*Standard of Care*).

- (B) If any deficiency in the maintenance of records is identified by any Guarantor Related Party and the Lender is informed of that deficiency, the Lender undertakes promptly to (and in any event no later than two months after being informed of such deficiency (or such shorter period communicated to it by any Guarantor Related Party)), comply with the instructions given by any Guarantor Related Party and provide any additional information reasonably requested by any Guarantor Related Party.
- (C) The Lender will promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, on request supply certified copies to the Guarantor of, any authorisation required under applicable law or regulations to enable the Lender to perform its rights and obligations under the EMFS Guarantee and the Covered EMFS Financing, to ensure the EMFS Guarantee's legality, validity, enforceability and admissibility in evidence in the Lender's jurisdiction of incorporation and carry out its business.

8.4 Nothing in this Clause 8 requires the Lender to disclose or permit access to any information breaching its obligations under Clause 16 (*Confidentiality*) or any applicable law or regulation.

9. Lender representations and warranties

The Lender makes the following representations and warranties. These representations and warranties will be deemed to be repeated at all times except for the representations and warranties in Clause 9.6 (*No default*) and Clause 9.12 (*Proceedings*) which will be deemed to be made on the Effective Date only.

9.1 Status

- (A) It is duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (B) It has the power to own its assets and carry on its business as it is being conducted.
- (C) It is an Eligible Lender.

9.2 Binding obligations

The obligations expressed to be assumed by it in the EMFS Guarantee are legal, valid, binding and enforceable obligations, in accordance with their terms.

9.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the EMFS Guarantee do not, and will not, conflict with:

- (A) any law or regulation (including any of its licenses or permits issued by any of the regulatory authorities of its places of business relevant to the EMFS Guarantee and jurisdiction of incorporation), or judicial or official order, applicable to it;
- (B) its constitutional documents; or
- (C) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,

where the same would affect its ability to perform its obligations under the EMFS Guarantee.

9.4 Power and authority

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the EMFS Guarantee and the transactions contemplated by the EMFS Guarantee.

9.5 Authorisations and regulatory standards

- (A) All authorisations required to:
 - (1) enable it lawfully to enter into, exercise its rights and comply with its obligations in the EMFS Guarantee; and
 - (2) make the EMFS Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.
- (B) All authorisations necessary for the conduct of the business of the Lender, including, as applicable, lending or leasing activities, have been obtained or effected and are in full force and effect.

9.6 No default

- (A) No Event of Default or Potential Event of Default relating to it is continuing or might reasonably be expected to result from entering into the EMFS Guarantee.
- (B) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which, in either case, might have a Material Adverse Effect.

9.7 No misleading information

- (A) All information (including any factual information) provided by it for the purposes of or pursuant to the EMFS Guarantee (including any information provided before the Effective Date) was true and accurate as at the date it was provided or as at the date (if any) at which it is stated.
- (B) Nothing has occurred or been omitted from the information referred to in paragraph (A) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.

9.8 Governing law and enforcement

- (A) The choice of English law as the governing law of the EMFS Guarantee will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.
- (B) Any judgment given by the courts of England in relation to the EMFS Guarantee will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.

9.9 Good faith

It has entered into the EMFS Guarantee in good faith and entered into the Covered EMFS Financing with a view to achieving the objectives of the Scheme.

9.10 Compliance with Eligibility Criteria

The Covered EMFS Financing complied with the Eligibility Criteria as at the Effective Date of the Covered EMFS Financing.

9.11 Due enquiry

It has made Due Enquiry about the Borrower.

9.12 **Proceedings**

No litigation, arbitration or administrative proceedings or investigations of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have, to its knowledge, been started or threatened against it.

10. **General undertakings**

10.1 **EMFS Procedures**

The Lender acknowledges that it has received copies of the EMFS Procedures (if any) and agrees to:

- (A) comply with the EMFS Procedures and any other Lender Scheme Documents; and
- (B) take account of all sections of the EMFS Procedures (if any) in complying with its obligations hereunder,

in each case, as the EMFS Procedures may be amended and/or updated from time to time by the Guarantor.

10.2 **Passthrough obligations**

The Lender shall ensure that the documentation entered into between the Lender and the Borrower which constitutes the Covered EMFS Financing includes provisions described in Schedule 4 (*Passthrough Obligations*).

10.3 **Information**

The Lender shall:

- (A) promptly notify the Guarantor (with a reasonable level of detail and accompanied by reasonable supporting evidence) if at any time:
 - (1) it becomes aware of any payment default under the Covered EMFS Financing;
 - (2) it becomes aware that a potential event of default or actual event of default (howsoever called) has occurred under the Covered EMFS Financing;
 - (3) it issues any cancellation notice, early repayment notice, acceleration notice or other similar notice under the Covered EMFS Financing;
 - (4) the first drawdown is made under the Covered EMFS Financing;
 - (5) it becomes aware that any loan advance under the Covered EMFS Financing has not been used wholly for the Eligible Purpose;
 - (6) an event described in Clause 10.6(A)(3) (*Loan stops*) occurs;
 - (7) any rescheduling, restructuring or similar discussions commence with the Borrower relating to any Non-Scheme Facility or the Covered EMFS Financing, and to the extent such negotiations related to the Covered EMFS Financing the Lender shall keep the Guarantor closely apprised and closely consult with the Guarantor throughout;
 - (8) there is any prepayment or repayment in part or in full of the Covered EMFS Financing;
 - (9) it becomes aware of any material change in the Borrower's credit risk;

- (10) it becomes aware that the Borrower has ceased purchasing and/or selling electricity and/or gas intended for ultimate supply in the UK domestic market; or
 - (11) it becomes aware that the Borrower is, or has become, or is reasonably likely to become, an Excluded Person.
- (B) promptly copy or forward to the Guarantor any correspondence, communications or notices with, to or from the Borrower pursuant or in relation to the Covered EMFS Financing;
 - (C) monitor the performance of the Covered EMFS Financing and shall provide the Guarantor with the Lender's normal credit risk monitoring information on a regular basis, not less frequently than monthly;
 - (D) no later than the fifth Business Day in each calendar month, provide the Guarantor a report accurate as at the last day of the previous calendar month covering the Covered EMFS Financing in materially the same form as the report set out in Schedule 5 (*Monthly report*), with a copy of each such report being sent to the following at the same time it is sent to the Guarantor:
 - [insert UKGI details];
 - (E) ensure that all loan proceeds advanced under the Covered EMFS Financing are remitted directly to the relevant hedge counterparty of the Borrower; and
 - (F) ensure that it has the right to disclose information to any Guarantor Related Party which it is required to do so under this Clause 10.3, Clause 8.2 (*Monitoring and audit*) and any other relevant provision of the EMFS Guarantee.

10.4 **No endorsement**

The Lender (and its officers and employees) will not represent in any way that the provision by the Guarantor of the EMFS Guarantee implies any endorsement or warranty of the Lender from the Guarantor, HMT or the Government of the United Kingdom and will ensure that any material utilised by it in respect of the Scheme includes a clear provision to that effect.

10.5 **Other Government Schemes**

The Lender may not fund the Covered EMFS Financing using:

- (A) grant or grant-equivalent monies made available directly or indirectly to it by the UK Government or any other state, supranational or public body; or
- (B) any monies provided by, or pursuant to a scheme or facility which is administered by, the Guarantor or any of its Affiliates,

without the consent of the Guarantor.

10.6 **Loan stops**

If at any time:

- (A) the Lender:
 - (1) is notified by the Borrower or HMT that:
 - (a) any advance of cash under the Covered EMFS Financing has not been used wholly for the Eligible Purpose; or
 - (b) the Borrower is, or has become, an Excluded Person;

- (2) is notified by HMT that the Borrower is reasonably likely to become an Excluded Person; or
- (3) becomes aware that the Borrower does not have, or has ceased to have, the Required Credit Rating; or
- (B) the Lender is notified by the Guarantor that the Guarantor has suspended or terminated the Borrower's access to the Scheme,

the Lender shall not advance any further funding under the Covered EMFS Financing (but ignoring for these purposes any rollover of an existing loan under a revolving credit facility or economically equivalent product) following (i) the date of any such notification or (ii) in the case of paragraph (A)(3) above, the date on which the Lender becomes so aware, and if any such further funding is advanced following any such date it shall be disregarded for the purpose of the Outstanding Guaranteed Balance and shall not form any part of the Payment Claim or any Additional Payment Claim, save that paragraph (A)(3) above shall not apply if the Guarantor has given its consent to the further funding. The Guarantor agrees that the Outstanding Guaranteed Balance shall include any funding advanced on or prior to any such date.

11. Events of Default

The Lender will notify, in writing, the Guarantor of any Potential Event of Default or Event of Default occurring in respect of it (and the steps, if any, being taken to remedy it) promptly upon the Lender becoming aware of its occurrence. Each of the events or circumstances set out in this Clause 11 is an "**Event of Default**".

11.1 Breach of obligations

- (A) The Lender does not comply (in the determination of the Guarantor) in any material respect with any provision of the EMFS Guarantee.
- (B) No Event of Default under Clause 11.1(A) will occur if:
 - (1) the failure to comply is capable of remedy and is remedied within the earlier of 10 Business Days of the Lender giving notice of the Event of Default to the Guarantor and the Guarantor becoming aware of the failure to comply; or
 - (2) such failure to comply occurs as a result of any action or inaction by the Guarantor under the terms of the EMFS Guarantee.

11.2 Insolvency

- (A) The Lender is unable, or admits its inability, to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, or, by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (B) The value of the assets of the Lender are less than its liabilities (taking into account contingent and, if applicable under relevant law, prospective liabilities).
- (C) A moratorium is declared in respect of any indebtedness of the Lender. If a moratorium occurs, the end of the moratorium will not remedy any Event of Default caused by that moratorium.

11.3 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (A) a suspension of payments, moratorium of any indebtedness, bankruptcy, controlled management, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Lender;
- (B) a composition, assignment or arrangement with the creditors of the Lender;
- (C) an appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Lender or any of its assets;
- (D) an enforcement of any security over any material asset of the Lender;
- (E) any analogous procedure or step is taken in any jurisdiction; except this Clause 11.3 does not apply to a winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within 28 days of the earlier of (a) its commencement and (b) the date on which it is advertised; or
- (F) any Insolvency Proceeding of the type described in paragraph (i) of the definition of Insolvency Proceedings occurs with respect to the Lender to the extent not already triggered by any of the other provisions of Clause 11.2 (*Insolvency*) or this Clause 11.3.

11.4 **Repudiation and rescission of agreements**

The Lender rescinds or purports to rescind or repudiates or purports to repudiate the EMFS Guarantee or evidences an intention to rescind or repudiate the EMFS Guarantee.

11.5 **Unlawfulness**

It is or becomes unlawful for a Party to perform any of its obligations under the EMFS Guarantee.

11.6 **Misrepresentation**

Any representation or statement made by the Lender to any Guarantor Related Party in the EMFS Guarantee, or any other document delivered by or on behalf of the Lender to the Guarantor in connection with the EMFS Guarantee, is or proves to have been incorrect or misleading in any material respect when made by the Lender.

11.7 **Change of control**

There is any change in the persons exercising Control over the Lender as compared to the position at the Effective Date without prior written confirmation from the Guarantor that this Clause 11.7 will not apply to the same.

12. **Termination of EMFS Guarantee**

12.1 **Termination of the EMFS Guarantee**

If:

- (A) there occurs a breach by the Lender, as determined by the Guarantor, of the Lender's obligations under Clause 2 (*Standard of Care*);
- (B) the Lender has acted fraudulently in participating in the Scheme and making available the Covered EMFS Financing;

- (C) the Covered EMFS Financing did not comply with the Eligibility Criteria as at the Effective Date; or
- (D) an Event of Default under Clauses 11.1, 11.4 and 11.6 has occurred and is continuing,

then the Guarantor may, by notice to the Lender, immediately terminate the EMFS Guarantee, with effect from the date of such notice and, in such case, the Guarantor will be unconditionally and irrevocably released and discharged from all its obligations under the relevant EMFS Guarantee with effect from that date, including in relation to the Payment Claim or any Additional Payment Claim that may have been delivered.

12.2 **Actions to be taken following a Non-Material Breach**

Upon the occurrence of a breach by the Lender of the EMFS Guarantee which, in the opinion of the Guarantor, is a non-material breach (such that no Event of Default would occur under Clause 11.1 (*Events of Default*)), the Lender will discuss with the Guarantor what steps, if any, should be taken by the Lender to redress such breach and will take all such action as is required to put in place any remedial steps agreed between the parties.

12.3 **Termination by Lender**

If at any time the Lender delivers a written notice of termination to the Guarantor referring to this Clause 12.3, the EMFS Guarantee shall automatically terminate on the date falling 30 days after the date of such delivery. Such a notice from the Lender shall be irrevocable (unless, following a request by the Lender, the Guarantor agrees to allow the Lender to revoke the notice).

12.4 **Termination of the Agreement**

- (A) No Payment Claim or Additional Payment Claim may be made after the Termination Date.
- (B) On the occurrence of the Termination Date, and without prejudice to the final paragraph of Clause 12.1, the rights and obligations of the Parties under the EMFS Guarantee will terminate except that the Termination Date does not affect:
 - (1) any rights and obligations of either Party which have accrued before the Termination Date; or
 - (2) the provisions of the Clauses listed in Clause 13 (*Survival of rights*) which will, to the extent that the same are capable of continuing to apply, expressly survive the occurrence of the Termination Date.

13. **Survival of rights**

The provisions of Clause 2 (*Standard of care*), Clause 3.1 (*Lender's rights*), Clause 4.3(C) (*Terms of the EMFS Guarantee*), Clauses 5 (*Making a claim under the EMFS Guarantee*) to 8 (*Monitoring and audit*), Clause 10 (*General Undertakings*), Clauses 12 (*Cancellation of EMFS Guarantee and termination of the Agreement*) to 24 (*Governing Law and Jurisdiction*) and Schedule 1 Part 1 (*Definitions and Interpretation*) will survive termination of the EMFS Guarantee.

14. **Liability and indemnity**

14.1 **Liability and indemnity of the Lender**

The Lender will be liable for and will reimburse and indemnify each Guarantor Related Party and hold each Guarantor Related Party harmless from and against any and all damages, losses, claims, taxes, liability, costs and expenses and other amounts

payable, incurred or suffered by that Guarantor Related Party, arising out of, as a result of, in connection with or related to the EMFS Guarantee or being a Guarantor Related Party hereunder as a result of any material breach by the Lender of any of its obligations arising from or in connection with the EMFS Guarantee or any incorrectness of any representation, warranty, or statement made by the Lender, or any gross negligence, wilful misconduct or fraud, provided that the Lender will not be liable for any indirect or consequential losses.

14.2 **Liability of the Guarantor**

No Guarantor Related Party will have 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 the EMFS Guarantee, any other agreement or document entered into with the Lender, as contemplated in or ancillary to the EMFS Guarantee or the Scheme.

15. **Data protection**

Each of the Parties will comply with its obligations under the Data Protection Legislation.

16. **Confidentiality**

16.1 Each Party will, and will use all reasonable endeavours to, ensure that any of its agents or sub-contractors will, keep confidential all Confidential Information supplied to it in accordance with the EMFS Guarantee.

16.2 Notwithstanding this, each Party is entitled to disclose Confidential Information:

- (A) where required under any applicable law or contemplated by the terms of the EMFS Guarantee (including the visibility and promotion, reporting and monitoring obligations to be complied with by the Lender);
- (B) where requested or required by any securities exchange, court of competent jurisdiction or any competent judicial, regulatory, governmental or supervisory body or administrative order 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 Guarantor to UK Parliament to discharge its duty to report about the operation of the Scheme;
- (C) to each of the Party's officers, directors, employees, Affiliates (if any) and professional advisers to the extent necessary for the purposes of the EMFS Guarantee and to its auditors;
- (D) to any person to whom a Party is proposing to assign or transfer any of its rights or obligations under the EMFS Guarantee pursuant to Clause 23 (*Assignment and transfer*);
- (E) where the information is already in the public domain through no fault of such Party;
- (F) with the prior written consent of the other Party or (if such information relates to an Borrower) such Borrower, in the case of the Lender, not to be unreasonably withheld;
- (G) the Guarantor Related Parties, their Affiliates and their advisers; and

- (H) with respect to disclosure by any Guarantor Related Party:
- (1) to the UK Parliament (including any Committee of the House of Commons or the House of Lords) or to the European Commission;
 - (2) to any minister of the Crown, any UK government department, agency or authority (including the Prudential Regulation Authority), the Financial Conduct Authority, the Financial Policy Committee or any other governmental, banking, taxation or regulatory agency or authority; for the purpose of reporting on the establishment, performance or operation of, or compliance with, the EMFS Guarantee;
 - (3) in the course of any public disclosure relating to the EMFS in accordance with Clause 16.3;
 - (4) to HMT, the Prudential Regulation Authority, the Financial Conduct Authority, HM Revenue & Customs or any other government department, public body, monetary authority, competent regulatory or resolution authority or the operator of any deposit guarantee or investor protection scheme, whether in the United Kingdom or elsewhere;
 - (5) for the purposes of any criminal investigation whatever which is being or may be carried out or of any criminal proceedings whatever which have been or may be initiated, in either case whether in the United Kingdom or elsewhere;
 - (6) for the purpose of enabling or assisting the Bank to discharge its functions as a monetary authority; or
 - (7) for the purposes set out in any Market Notice.

16.3 Any Guarantor Related Party shall be permitted to make public disclosures of the following information:

- (A) drawdown and other statistics;
- (B) the identity of the Borrower (provided that, if such publication is the first one pursuant to which that Guarantor Related Party identifies the Borrower, the relevant Guarantor Related Party shall give the Lender at least one week's notice prior to such publication); in other circumstances, as may be provided in a Market Notice; and
- (C) otherwise in accordance with the details set out in a Market Notice covering disclosure of any aspects of the Scheme,

in each case with the disclosure of such details as described in any Market Notice.

16.4 The Lender undertakes to maintain, and be able to produce, all documentation related to this Clause 16 to the Guarantor Related Parties in accordance with its normal policies and procedures.

16.5 This Clause 16 supersedes any previous confidentiality undertakings given by either Party before the Effective Date.

16.6 Notwithstanding any other term of the EMFS Guarantee, no Party is required to disclose any information to the other Party (or any other entity) if to do so would breach applicable law or regulation.

17. **Notices**

All notices, requests, demands or other communications required to be given to or served upon the Parties under the provisions of a Scheme Document will be given in writing and will be deemed to be duly given (i) when delivered (if given by personal delivery) or (ii) five Business Days after posting (if given by first class letter post) or (iii) when actually received (or made available) in readable form and only if it is addressed to the email addresses set out below (if sent by email) and will be addressed as follows:

(A) if to the Guarantor:

THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND
Threadneedle Street
London

EC2R 8AH

Email: EMFS-Applications@bankofengland.co.uk

(B) if to the Lender, to the notice details contained in the Agreement Supplement,

or at such other address and/or to such other person as the relevant addressee may specify by at least five Business Days' notice.

18. Relationship between the Parties

Save as may be expressly agreed between them from time to time, neither the Lender nor the Guarantor will, 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) be (or be treated as being) in a fiduciary relationship to the other.

19. Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of either Party any right or remedy under the EMFS Guarantee will operate as a waiver thereof nor will 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 the EMFS Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

20. Invalidity and severability

If any provision of the EMFS Guarantee is or becomes illegal, invalid or unenforceable in any jurisdiction, it will not affect the legality, validity or enforceability:

(A) in that jurisdiction of any other provision of the EMFS Guarantee; or

(B) in any other jurisdiction of that or any other provision of the EMFS Guarantee.

21. Further assurances

The Lender will promptly do all further acts and things within its control, and execute and deliver such further documents as the Guarantor may reasonably require (and in such form satisfactory to the Guarantor), as are, in the opinion of the Guarantor, desirable:

(A) to implement and/or required to give full effect to the EMFS Guarantee including the Agreement Supplement;

(B) for the exercise or preservation of any rights, powers and remedies of the Guarantor provided by or pursuant to the EMFS Guarantee or by law; or

(C) to enable the Guarantor to comply with any of its obligations or duties under any State aid or regulatory requirements;

- (D) to facilitate any amendments to the EMFS Guarantee pursuant to Clause 22 (*Amendments and waivers*); and
- (E) to facilitate the transfer of the EMFS Guarantee by the Guarantor in accordance with Clause 23.2(B) (*Assignment and transfer by the Guarantor*).

22. Amendments and waivers

Unless expressly stated otherwise in the EMFS Guarantee, any term of the EMFS Guarantee may be amended or waived only with the written consent of both Parties and any such amendment or waiver will be binding on both Parties.

23. Assignment and transfer

23.1 Transfer of the Covered EMFS Financing

The Lender undertakes that it will not assign, novate or otherwise transfer its rights and obligations in respect of the Covered EMFS Financing to any person, other than in connection with a liquidity scheme provided by the UK Government or any other state, supranational or public body (including the Discount Window Facility), without the prior written consent of the Guarantor. If provided by the Guarantor, such consent may be subject to such conditions as the Guarantor decides.

23.2 Assignment and transfer of rights and obligations under the EMFS Guarantee

(A) Lender

The Lender will not be entitled to assign, novate or otherwise transfer the benefit of the EMFS Guarantee or any of its rights, or obligations under the EMFS Guarantee without the prior written consent of the Guarantor.

(B) Guarantor

- (1) Subject to paragraph (3) below, the Guarantor will be entitled to assign or transfer any of its rights or obligations under the EMFS Guarantee with the prior consent of the Lender, such consent not to be unreasonably withheld or delayed (provided that such consent shall not be required in circumstances where the Guarantor has paid the Payment Claim validly received by it from the Lender in accordance with the terms of the EMFS Guarantee).
- (2) If the Guarantor assigns or transfers any of its rights or obligations under the EMFS Guarantee in accordance with Clause 23.2(B)(1) in circumstances where the Lender's consent is required to such assignment or transfer, the Parties will negotiate in good faith in order to agree any amendments to the EMFS Guarantee which the Guarantor determines to be necessary as a result of such assignment or transfer.
- (3) As contemplated by Clause 6.4(C) (*Elevation*), the Guarantor hereby gives notice to the Lender of the Guarantor's assignment to HMT of all of the Guarantor's rights under the EMFS Guarantee. The Lender's consent shall not be required for such assignment.

24. Governing law and jurisdiction

24.1 Governing law

The EMFS Guarantee, and any non-contractual obligations arising out of or in connection with it, will be governed by, and construed in accordance with, English law.

24.2 Jurisdiction

- (A) The parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the EMFS Guarantee and the documents entered into pursuant to it and that accordingly any proceedings arising out of or in connection with the EMFS Guarantee and such documents will be brought in such courts. The parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground or venue or on the ground that the proceedings have been brought in an inconvenient forum.
- (B) This Clause 24.2 is drafted for the benefit of the Guarantor and will not limit its right to take proceedings in any other court with jurisdiction.

25. Service of process

Without prejudice to any other mode of service allowed under any relevant law, the Lender (if applicable):

- (A) will notify the Guarantor of its agent for service of process in relation to any proceedings before the English courts in connection with the EMFS Guarantee within five Business Days of the Effective Date; and
- (B) agrees that failure by a process agent to notify the Lender will not invalidate the proceedings concerned.

SCHEDULE 1 : DEFINITIONS AND INTERPRETATION

PART 1 : DEFINITIONS

“**Additional Payment Claim**” has the meaning given to it in Clause 4.3(C).

“**Affiliate**” means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

“**Agency**” means an agency, authority, central bank, department, minister, ministry or official of any public or statutory person.

“**Agreement Supplement**” means the agreement supplement entered into with respect to the Covered EMFS Financing of which this Agreement forms a part.

“**Application Letter**” means the letter submitted by a Borrower as part of the Application Process.

“**Application Process**” means the process set out in any applicable Market Notice, any other Scheme Document or as set out on the Guarantor’s website⁸ pursuant to which a Borrower and the Lender may apply to the Guarantor for a proposed Eligible EMFS Financing to be entered into between the Borrower and the Lender to receive the benefit of the EMFS Guarantee, as such process may be updated by any applicable Market Notice, any other Scheme Document or as set out on the Guarantor’s website⁹.

“**Bank of England**” means the Guarantor.

“**Borrower**” has the meaning given to it in the Agreement Supplement.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are generally open in London for dealings in Sterling.

“**Clawback Amount**” has the meaning given to it in Clause 4.3.

“**Confidentiality and Undertaking Agreement**” means an agreement entered into by the Borrower with the Guarantor with respect to the Covered EMFS Financing on or before the Effective Date.

“**Confidential Information**” means any information relating to the Guarantor, the Lender, the Borrower or the EMFS Guarantee provided to a Party by the other Party or any of its Affiliates or advisers, in whatever form, and includes any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (A) is or becomes public knowledge, other than as a result of any breach by a Party of Clause 16 (*Confidentiality*);
- (B) in relation to information about the Lender and the Borrower only, is not marked as confidential by the Lender at the time of delivery;
- (C) in relation to information about the Lender and the Borrower only, is known by the Guarantor before the date the information is disclosed to it by the Lender or any of its Affiliates or advisers; and
- (D) in relation to information about the Lender and the Borrower only, is lawfully obtained by the Guarantor, other than from a source which is connected with the Lender and which, in either case, as far as the Guarantor is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

⁸ <https://www.bankofengland.co.uk/markets/energy-markets-financing-scheme>

⁹ <https://www.bankofengland.co.uk/markets/energy-markets-financing-scheme>

“Control” means, in relation to a party:

- (A) that is a body corporate, the power of a person to secure:
 - (1) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or
 - (2) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate, that the affairs of such body corporate are conducted in accordance with such person’s wishes; or
- (B) in relation to a partnership, the right to a share of more than half the assets, or of more than half the income, of the partnership.

“Covered EMFS Financing” means the Eligible EMFS Financing which the Guarantor has agreed in the Agreement Supplement will be covered by the EMFS Guarantee.

“Data Protection Legislation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, by virtue of section 3 of the European Union (Withdrawal) Act 2018, and the Data Protection Act 2018.

“Discount Window Facility” means the Discount Window Facility provided by the Bank of England as part of its Sterling Monetary Framework.

“Due Enquiry” means those enquiries, investigations and due diligence processes adopted by the Lender from time to time in assessing the Borrower and completing the Lender’s Application Process, taking into account the aims and purposes of the Scheme and in accordance with Clause 2 (*Standard of Care*).

“Effective Date” means the date specified as such in Clause 5.1 of the Agreement Supplement.

“Eligibility Criteria” means the General Eligibility Criteria and any Specific Eligibility Criteria.

“Eligible Borrower” means an entity:

- (A) which holds or has an Affiliate which holds one or more of an electricity generation licence under section 6(1)(a) of the Electricity Act 1989, an electricity supply licence under section 6(1)(d) of the Electricity Act 1989, a gas supply licence under section 7A(1) of the Gas Act 1986, a gas shipper licence under section 7A(2) of the Gas Act 1986 or a licence for electricity generation, electricity supply or gas supply issued by the Northern Ireland Authority for Utility Regulation;
- (B) [which satisfies, or has an Affiliate which satisfies, the Materiality Threshold;]¹⁰
- (C) which has a Required Credit Rating; and
- (D) which is not an Excluded Person.

“Eligible EMFS Financing” means an additional tranche of a specified existing financing arrangement offered by the Lender to the Borrower which meets the Eligibility Criteria.

“Eligible Lender” means:

- (A) a bank regulated by the Prudential Regulation Authority including a branch of an overseas bank where such branch is located in the United Kingdom and is regulated by the Prudential Regulation Authority; or

¹⁰ To be deleted from EMFS Guarantees issued to Northern Irish borrowers.

- (B) only where such bank is deemed eligible for the Scheme by the Guarantor and HMT:
- (1) a bank regulated in any jurisdiction other than the United Kingdom; or
 - (2) another non-bank or non-regulated lending entity including if such entity is involved in a syndicated credit facility.

“Eligible Purpose” means the funding of the Borrower’s obligations to provide initial cash margin and variation cash margin pursuant to exchange-traded and over-the-counter (OTC) Hedging Arrangements, being, in each case, contracts entered into by the Borrower to hedge its exposure under contracts entered into with third parties to purchase or sell electricity or gas that support ultimate supply in the UK domestic market.

“EMFS Fee” means any fee or fees payable by the Borrower in accordance with the Agreement Supplement.

“EMFS Guarantee” means the guarantee provided by the Guarantor to the Lender, details of which are set out in the Agreement Supplement, and where the terms of such guarantee are set out in the terms of the Agreement Supplement and the terms of this Agreement as incorporated into the Agreement Supplement.

“EMFS Procedures” means any procedures relating to the Scheme published by the Bank of England from time to time.

“Event of Default” has the meaning given to it in Clause 11 (*Events of Default*).

“Excluded Person” means an entity which:

- (A) has state-owned entities, national governments, regional governments and/or municipalities holding directly or indirectly more than 25 per cent. of the issued securities of such entity and/or voting rights of such entity and/or exercising direct or indirect control over such entity;
- (B) is within a corporate group whose business activities are predominantly subject to financial sector regulation; or
- (C) is a subsidiary of an entity that is a bank, building society, insurance company or other financial sector entity regulated by the Bank of England or the Financial Conduct Authority.

“General Eligibility Criteria” has the meaning given to it in Schedule 2 (*General Eligibility Criteria*).

“Guaranteed Amount” has the meaning given to it in Clause 1 (*Guarantee*).

“Guarantor” has the meaning given to it in the Agreement Supplement.

“Guarantor Related Parties” means:

- (a) the Guarantor and its auditors, advisers, agents and contractors; and
- (b) HMT and its auditors, advisers, agents and contractors.

“Hedging Arrangement” means an existing or new arrangement the purpose of which is the reduction of risk or costs.

“HMT” means the Commissioners of His Majesty’s Treasury.

“Holding Company” means, in relation to a person, any person in respect of which it is a Subsidiary.

“Information Declaration” means, in respect of an Eligible EMFS Facility, a declaration from the relevant Borrower substantially in the form set out in Schedule 3 (*Form of Information Declaration*) (as the same may be supplemented or amended from time to time by the

Guarantor if the Lender has received at least 30 calendar days' notice of such change in accordance with Clause 17 (*Notices*)).

"Insolvency Proceedings" means, with respect to the Borrower or the Lender:

- (a) that person is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) that person becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) that person makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) that person institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof;
- (e) that person has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent liquidation, consolidation, amalgamation or merger);
- (f) that person seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (g) that person has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter;
- (h) that person causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in (a) to (g) above (inclusive); or
- (i) in the case of the Lender, includes any reorganisation, liquidation or other insolvency proceedings which can be opened in England in respect of the Borrower are those set out in Part 26 of the Companies Act 2006, the Insolvency Act 1986 (as amended) ("**Insolvency Act**"), the Banking Act 2009 (the "**Banking Act**") and the Investment Bank Special Administration Regulations 2011, namely:
 - (i) moratorium;
 - (ii) the approval of a voluntary arrangement;
 - (iii) administration;
 - (iv) administrative receivership;
 - (v) receivership;
 - (vi) the voluntary winding up of a company;
 - (vii) the compulsory winding up of a company, including provisional liquidation;
 - (viii) bank insolvency under the Banking Act;
 - (ix) bank administration under the Banking Act;
 - (x) investment bank special administration;

- (xi) special administration (bank insolvency);
- (xii) special administration (bank administration);
- (xiii) a scheme of arrangement under Part 26 of the Companies Act 2006; and
- (xiv) a scheme of arrangement under Part 26A of the Companies Act 2006.

"Lender" means the person named as the Lender in the Agreement Supplement relating to the Covered EMFS Financing.

"Lender's Application Process" means the Lender's process of approving the entering into of a proposed Eligible EMFS Financing between the Borrower and the Lender.

"Lender Scheme Documents" means:

- (a) the EMFS Guarantee;
- (b) the EMFS Procedures (if any);
- (c) any Market Notices; and
- (d) any other agreement or document which relates to lenders under the Scheme which is at any time designated as a Lender Scheme Document by the Guarantor in writing to the Lender.

"Market Notice" means any notice or notices published by the Bank of England from time to time relating to the Scheme.

"Material Adverse Effect" means a material adverse effect on or a material adverse change in:

- (A) the financial condition, assets, prospects, business, operations, property or condition (financial or otherwise) of the Lender which impacts the Lender's ability to perform or comply with any of its obligations under the EMFS Guarantee; or
- (B) the validity, legality or enforceability of the EMFS Guarantee or the rights and remedies of the Guarantor under the EMFS Guarantee.

["Materiality Threshold" means, in respect of the entity, that it satisfies one or more of the following criteria:

- (A) it supplied gas or electricity to more than 750,000 domestic meter points in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);
- (B) it supplied more than 1,000,000 MWh of electricity to non-domestic customers in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);
- (C) it supplied gas to more than 4,800 non-domestic supply points in the UK, calculated on average each month over the period May 2022 to July 2022 (inclusive);
- (D) it supplied gas to non-domestic customers in the UK with an aggregate gas supply point annual quantity of more than 2,000,000 MWh, calculated on average each month over the period May 2022 to July 2022 (inclusive);
- (E) in its capacity as a gas shipper, it had aggregate gas demand in the UK of more than 0.45 billion cubic metres for a 12-month period ending in the three months prior to the date of this Guarantee, calculated by reference to Xoserve Annual Quantities and direct NTS supply; or

- (F) it is an electricity generator with de-rated capacity of more than 500 MW in the UK, determined by reference to National Grid ESO's Electricity Capacity Report May 2022.]¹¹

"Maximum Amount" means the amount specified as such in the Agreement Supplement.

"Maximum EMFS Financing Term" means the period specified as such in the Agreement Supplement.

"Non-Scheme Facility" means any term loan, revolving or other type of credit, financing, loan or facility available or made available from time to time by the Lender to the Borrower other than the Eligible EMFS Financing.

"Outstanding Guaranteed Balance" means at any time the amount outstanding which is due and payable at that time by the Borrower under the Covered EMFS Financing (excluding default or late payment interest, and any fee or commission if and to the extent it exceeds what the Lender would have charged on a comparable loan facility which did not benefit from the EMFS Guarantee).

"Parties" means the Guarantor and the Lender as parties to the EMFS Guarantee.

"Payee" has the meaning given to such term in Clause 7.3.

"Payer" has the meaning given to such term in Clause 7.3.

"Payment Claim" means a claim under the EMFS Guarantee made by the Lender on the Guarantor and containing the information specified therein, in materially the same form as set out in Schedule 6 (*Form of Payment Claim*), as such form may be amended, varied, supplemented or replaced from time to time by the agreement of the Parties.

"Potential Event of Default" means any event which is or would become (with the passage of time, the giving of notice, the making of any determination hereunder or any combination thereof) an Event of Default.

"Required Credit Rating" means a current long-term issuer credit rating (or equivalent) of BB- (as determined by Standard & Poor's rating agency or Fitch's rating agency) or Ba3 (as determined by Moody's rating agency) or such other credit rating confirmation as may be agreed by the Guarantor, provided that where an entity has a split rating and one or more of its ratings is below BB- or Ba3 (as applicable) it shall not have a "Required Credit Rating".

"Scheduled Final Repayment Date" means the date identified as such in the Agreement Supplement.

"Scheme" means the scheme established on 17 October 2022 known as the Energy Markets Financing Scheme.

"Scheme Documents" means, at any time, the documents, including Lender Scheme Documents, pursuant to which the Scheme is operated.

"Service Provider" has the meaning given to the term in Clause 8.1(B)(1) (*Administration by the Guarantor of the Scheme Guarantees*).

"Specific Eligibility Criteria" means any additional criteria which the Eligible EMFS Financing is required to meet in order to be the Covered EMFS Financing, where such additional criteria are set out in the Agreement Supplement.

"Sterling" and **"£"** mean the lawful currency for the time being of the United Kingdom.

"Subsidiary" means a subsidiary within the meaning of 1159 of the Companies Act 2006.

¹¹ To be deleted from EMFS Guarantees issued to Northern Irish borrowers

“Termination Date” means the earliest to occur of:

- (A) the date notified as being the date of termination under Clause 12.1 (*Cancellation of the EMFS Guarantee*);
- (B) where termination occurs pursuant to Clause 12.3 (*Termination by Lender*), the date falling 30 days after the date of delivery by the Lender of the notice referred to in Clause 12.3 (*Termination by Lender*); and
- (C) the date falling six months after the Scheduled Final Repayment Date, unless such date is extended by the Guarantor and notified to the Lender in accordance with Clause 17 (*Notices*).

“United Kingdom” and **“UK”** means England, Scotland, Wales and Northern Ireland.

PART 2 : INTERPRETATION

1. General

In this Agreement:

- (A) the headings to Clauses and Schedules are for ease of reference only;
- (B) a reference to a “Clause” or a “Schedule” is to a Clause or Schedule in this Agreement;
- (C) the term “month” means calendar month;
- (D) the term “person” includes any individual, firm, partnership, joint venture, company, corporation, corporation sole, unincorporated body, state, Agency or association or any two or more of the foregoing and will be construed so as to include that person’s assignees, transferees or successors in title;
- (E) references to any one gender include references to all other genders;
- (F) references in the EMFS Guarantee to “the EMFS Guarantee” or any other document will be construed as references to the EMFS Guarantee or that other document as amended, varied, replaced, novated or supplemented from time to time, as the case may be;
- (G) words importing the singular will include the plural and vice versa unless the context otherwise requires;
- (H) 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 will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (I) references to “assets” will 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);
- (J) the words “other” and “otherwise” will not be construed as the same as any foregoing words where a wider construction is possible;
- (K) the words “including” and “in particular” will be construed as being by way of illustration or emphasis only and will not be construed as, nor will they take effect as, limiting the generality of any foregoing words;
- (L) references to “quarter” and “quarterly” will be construed, respectively, as being and relating to a period of 3 months;
- (M) references to the “Guarantor” will be construed, save as regards the use of such references in Clause 1.1 (*Guarantee*), so as to include any person to whom the Guarantor has delegated authority to act on his behalf, or any person through whom the obligations and functions of the Guarantor are performed, under or in connection with the EMFS Guarantee and/or the operation of the Scheme (including any of the Guarantor’s Affiliates);
- (N) references to the “Lender” will be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (O) references to anything being “remedied” or “unremedied” means remedied or not remedied (as the case may be) to the satisfaction of the Guarantor and references to anything being “waived” or “unwaived” means waived or not waived (as the case may be) in writing by the Guarantor;

- (P) the Schedules will be treated as an integral part of this Agreement and references to “this Agreement” will include the Schedules; and
- (Q) if there is any inconsistency in the information provided to the Guarantor by the Lender pursuant to, or in connection with, the EMFS Guarantee (including any amount, limit or date in respect of the Covered EMFS Financing) and the terms of the Covered EMFS Financing as agreed with the Borrower, then the information so notified to the Guarantor will be deemed to be correct for the purposes of any determination or calculation to be made pursuant to the EMFS Guarantee.

SCHEDULE 2 : GENERAL ELIGIBILITY CRITERIA¹²

An Eligible EMFS Financing must satisfy each of the following criteria (the “**General Eligibility Criteria**”):

1. **The Borrower**

The Borrower is an Eligible Borrower.

2. **The Lender**

The Lender is an Eligible Lender.

3. **The Scheme Facility**

- (A) The Application Process has been completed in respect of the proposed Eligible EMFS Financing.
- (B) The proposed Eligible EMFS Financing is stated to be used for the Eligible Purpose.
- (C) The proposed Eligible EMFS Financing is an additional tranche of a specified existing financing arrangement offered by the Lender to the Borrower where such additional tranche is in the form of a revolving credit facility, accordion tranche of an existing revolving credit facility, overdraft or economically equivalent product.
- (D) The Borrower's payment obligations under the proposed Eligible EMFS Financing will rank at least equally with all its other unsecured, unsubordinated obligations, except for obligations mandatorily preferred by law applying to companies generally and where the proposed Eligible EMFS Financing is a tranche, facility or other addition or extension of another credit or loan facility, such payment obligations are expected to rank at least equally with the remainder of such other credit or loan facility (including sharing in any security or guarantee package).
- (E) The proposed Eligible EMFS Financing is denominated in Sterling.
- (F) The Lender has received a legal opinion that the proposed Eligible EMFS Financing will, upon its due execution and delivery on behalf of the Borrower, constitute legal, valid and binding obligations of the Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganisation or other similar laws affecting the enforcement of the rights of creditors generally.
- (G) The proposed Eligible EMFS Financing has a term no longer than the Maximum EMFS Financing Term.

¹² [As at [relevant date]]

SCHEDULE 3 : FORM OF INFORMATION DECLARATION*[On Lender's letterhead]*To: The Governor and Company of the Bank of England (the "**Guarantor**")

From: [Lender name]

From: [Borrower name]

Date: [date]

Lender organisation:	[•]
Eligible EMFS Financing type	[•]
Business name:	[•]
Reference:	[•]
Facility amount:	£[•]

System generated identification reference:	[•]
What is the legal name of the Borrower business?	[•]
What is the trading name of the Borrower if the Borrower trades under another business name?	[•]
What is the legal form of the Borrower?	[•]
What is the Borrower's company registration number?	[•]
What is the commencement of trading date of the Borrower business?	[•]
What is the address of the registered office of the Borrower's main business address?	[•]
The initial value of the financing covered by the EMFS Guarantee is:	[•]
What is the term of the financing for which the EMFS Guarantee is required?	[•] years
At what frequency will the Borrower make repayments of the principal of the Eligible EMFS Financing?	[•]
Specify the type of Scheme Facility being applied for:	[•]

To be completed by the Borrower

The Lender's ability to provide you with the Eligible EMFS Financing is dependent upon the Lender receiving a guarantee from or on behalf of the Guarantor under the Energy Markets Financing Scheme (the "**Scheme**")

We confirm to the Lender and the Guarantor that:

- all the answers the Borrower has given here are true and accurate

- the Borrower has not left any information out which is relevant to the above
- information in all other documents the Borrower has given you is true and accurate
- the Borrower understands that:
 - the Guarantor will provide a guarantee of the Eligible EMFS Financing in favour of the Lender
 - the guarantee is not provided to the Borrower and the Borrower remains fully liable for the repayment of the whole of this financing at all times and in the event that the Borrower defaults on the terms of the financing, the Lender is entitled to seek to recover the full amount outstanding from me

IMPORTANT: The information contained in this document forms part of the formal application for a facility. If any of the information contained in this declaration is incorrect the facility must be cancelled and a new application submitted. This document cannot be altered.

[Subject to the application of certain exemptions, information you provide in this document may be subject to disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.]

Signed _____

Print name _____

Position _____

Date _____

Signed _____

Print name _____

Position _____

Date _____

Signed _____

Print name _____

Position _____

Date _____

Signed _____

Print name _____

Position _____

Date _____

Signatories to be the same as those persons who are required to sign in the authorised signatory list provided by the Lender to the Guarantor.

SCHEDULE 4 : PASSTHROUGH OBLIGATIONS

1. The Borrower shall use the proceeds of the Covered EMFS Financing only for the Eligible Purpose.
2. Such proceeds are remitted by the Lender directly to the relevant hedge counterparty to whom the Borrower is obliged to pay the relevant margin.
3. The Borrower shall, if it is reasonably practicable to do so, ensure that any return of any such margin by such counterparty is paid directly by such counterparty to the Lender.
4. Upon receipt of such margin, the Lender shall apply such receipt as a repayment of principal (and accrued interest) under the Covered EMFS Financing.
5. An obligation on the Borrower to pay a sum or sums to the Lender in the circumstances contemplated by clause 7.2 (*Errors in payment*).
6. Authority of the Borrower to disclose any information relating to the Borrower, the Covered EMFS Financing, the subject matter thereof and other relevant information to any Guarantor Related Party.
7. The Borrower shall notify the Lender as soon as reasonably practicable if that Borrower is, or has become, or is reasonably likely to become, an Excluded Person.

SCHEDULE 5 : FORM OF MONTHLY REPORT**Facility Information**

Loan Amount	<The capital borrowed from the lender, on which a guarantee has been provided.
Facility Type	< RCF
Effective date	< signing date, guarantee effective date
Loan term	< full tenor, araciality []months remaining
Loan state	< performing, in lender demand etc
Facility maturity date	
<i>By tranche</i>	
Drawn amount	< include utilisation request and approve of margin call request
Initial draw date	
Repaid date	
Maturity date	
Total drawn amount	
[Cumulative drawn amount?]	
% utilisation	< of total facility, of total guaranteed amount
Headroom	
Fees payable	< contractually due
Fees paid	< cumulative income
Interest payable	< contractually due
Interest accrued	< cumulative income
Probability default	
Loss given default	
Estimated credit loss	
<i>If not performing</i>	
Arrears amount	
Arrears days	
Interest arrears amount	
Default status	
Lender demand date	< Date on which the lender categorised the debt facility as being in default and began its process to recover the debt
Claim date	< Date on which a claim was made under the guarantee by the lender

Borrower Information

Name	
Industry specification	
Internal credit rating	
<i>changes from last period</i>	
External credit rating	
<i>changes from last period</i>	
Date of last available financial	< Latest company financial available

Next financial statement due date	
Date of last compliance certificate	< latest compliance certificate received
Headroom under financial covenants	
Next compliance certificate due date	
Last KYC update	
Fraud Flag?	
[waiver, amendment requests]	

SCHEDULE 6 : FORM OF PAYMENT CLAIM

From: [*Lender*]

To: The Governor and Company of The Bank of England

Copy to: His Majesty's Treasury

Dated: []

EMFS Guarantee dated [] 2022 (as amended and/or supplemented from time to time, the *EMFS Guarantee*)

1. We refer to the EMFS Guarantee. This is [the Payment Claim] [an Additional Payment Claim]. Terms defined in or construed for the purposes of the EMFS Guarantee have the same meaning in this [Additional] Payment Claim unless given a different meaning in this [Additional] Payment Claim.
2. We hereby claim under the EMFS Guarantee as follows:
 - (a) Covered EMFS Financing: [*add description*].
 - (b) Guaranteed Amount: £[].
 - (c) Date of default under Covered EMFS Financing: [].
 - (d) Details of default under Covered EMFS Financing: [].
3. We confirm that:
 - (a) [no other Payment Claim in relation to the details above has been submitted] / [the Payment Claim was submitted for £[] on [date] and the details of the relevant amount returned by the Lender (and the circumstances surrounding it as contemplated by Clause 4.3 of the EMFS Guarantee) are as follows: [*description*]]; and
 - (b) the requirements for submitting this [Additional] Payment Claim under the EMFS Guarantee are met.
4. Please credit the amount under this [Additional] Payment Claim to [*account*].

Yours faithfully

.....
For and on behalf of [*Lender*]