

THE GOVERNOR AND COMPANY OF THE BANK OF ENGLAND

**TERMS AND CONDITIONS FOR THE TERM
FUNDING SCHEME WITH ADDITIONAL
INCENTIVES FOR SMALL & MEDIUM
SIZED ENTERPRISES (TFSME)**

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TERMS AND CONDITIONS FOR THE TERM FUNDING SCHEME WITH ADDITIONAL INCENTIVES FOR SMES

1. The Scheme

- 1.1 These Terms and Conditions together with the Operating Procedures, any Market Notices and the other Documentation set out the terms and conditions for participation in the Bank's Term Funding Scheme with additional incentives for SMEs and govern any TFSME Advance.
- 1.2 An institution is eligible to participate in the Scheme if it is all of (a) an authorised person as defined in FSMA; (b) an eligible institution as defined in paragraph 1 of schedule 2 to the Bank of England Act 1998; and (c) admitted to the Bank's Discount Window Facility under the SMF. The Bank may waive, add to or vary any or all of the eligibility requirements in relation to any institution or institutions.
- 1.3 These Terms and Conditions and the Operating Procedures (including any amendments made from time to time in accordance with clause 19) and any Market Notices will be published on the Bank's website at www.bankofengland.co.uk.
- 1.4 The Scheme is available, and the Bank may make a TFSME Advance during, the TFSME Drawdown Period.

2. Interpretation

- 2.1 Terms defined in Schedule 1 have the same meaning in these Terms and Conditions.

3. Conditions precedent

- 3.1 As conditions precedent to the Bank making the Scheme available to the Participant, the Participant must deliver to the Bank, on request, in form and substance satisfactory to the Bank:
 - (a) one or more certificates setting out the names and specimen signatures of those persons authorised to execute the Scheme Letter on behalf of the Participant and to give all notices and other instructions and communications (including changes in such persons and the specimen signatures of any person replacing the same) under the Documentation;
 - (b) one or more legal opinions in form and substance satisfactory to the Bank, among other things, confirming under the laws of the jurisdiction or jurisdictions in which it is incorporated and has its head or main office:
 - (i) the Participant's power and authority to enter into and to execute the Documentation and the performance of its obligations thereunder; and

- (ii) that the terms and conditions set out in the Documentation constitute valid and legally binding obligations of the Participant enforceable in accordance with their terms;
 - (c) a guarantee in a form and from an entity acceptable to the Bank (the **Guarantor**) of the obligations of the Participant under the Scheme (the **Guarantee**), together with documents of the type referred to in paragraphs (a) and (b) above in relation to the Guarantor and the Guarantee; and
 - (d) any other document or agreement or notice required by the Bank for the purposes of the completion of the advances contemplated by the Documentation.
- 3.2 The Bank's obligation to make any payment or deliver any Equivalent Collateral in connection with any TFSME Advance or otherwise under the Documentation shall be subject to the conditions precedent that no Event of Default or Potential Event of Default shall have occurred and be continuing with respect to the Participant and no obligation owed by the Participant to the Bank under these Terms and Conditions is outstanding.
- 3.3 Without prejudice to clause 3.2, if any of the conditions precedent in clause 3.2 is not satisfied with respect to the Participant when an obligation of the Bank would (but for those conditions precedent not being satisfied) become due and payable or deliverable to the Participant then the Bank's obligation will not be extinguished but will from such time be suspended, so that it will again become due or payable or deliverable if:
- (a) the conditions precedent in clause 3.2 are subsequently satisfied with respect to the Participant;
 - (b) the Participant shall have delivered notice in writing of that fact to the Bank setting out in reasonable detail such evidence of the satisfaction of those conditions precedent as the Bank may require;
 - (c) no Default Notice has been served; and
 - (d) no breach of any other applicable condition precedent has occurred and is continuing.
- 3.4 In such event, the Bank's obligation shall become due and payable or deliverable on the date falling five Business Days after the date on which the confirmation from the Participant in clause 3.3(b) is effective in accordance with clause 25.

4. TFSME Advances

- 4.1 A TFSME Advance is an advance made by the Bank on the terms and subject to the conditions of these Terms and Conditions and the other Documentation, by which:
- (a) on the TFSME Drawdown Date the Bank will make a cash advance to the Participant; and

- (b) on the Repayment Date the Participant will repay the cash advance to the Bank.
- 4.2 Without prejudice to clause 4.1(a), if the making of the TFSME Advance would, either alone or when taken with other TFSME Advances, cause the Adjusted Value of Eligible Collateral received by the Bank to fall below the TFSME Exposure, the Bank may:
- (a) decline to make the TFSME Advance;
 - (b) make the TFSME Advance in full and require the Participant to deliver additional Eligible Collateral to the Bank with an Adjusted Value at least equal to that shortfall; or
 - (c) notify the Participant of the shortfall and, if required by the Bank, following receipt of an amended TFSME Drawdown Request submitted in accordance with clause 6, make the TFSME Advance in such amount as does not result in a shortfall.
- 4.3 Each TFSME Advance shall have the following terms:
- (a) the TFSME Drawdown Date is the date specified in accordance with clause 6.2;
 - (b) the Repayment Date is the earlier of:
 - (i) the Scheduled Repayment Date; and
 - (ii) the Early Repayment Date;
 - (c) the amount of any TFSME Advance will be determined by the Bank.

5. Interest payments

- 5.1 In respect of each TFSME Advance, the Participant shall pay to the Bank interest calculated in accordance with the Operating Procedures, Market Notice or as otherwise specified by the Bank.
- 5.2 TFSME Interest shall be payable by the Participant to the Bank in arrears on each TFSME Interest Payment Date in respect of all TFSME Interest accrued but unpaid on such TFSME Interest Payment Date.

6. Initiation, Repayment and Extension of TFSME Advances

- 6.1 The Participant may, on any Business Day during the TFSME Drawdown Period, request the Bank to make a TFSME Advance by sending a TFSME Drawdown Request to the Bank in accordance with the Operating Procedures.
- 6.2 A TFSME Drawdown Request shall be in writing and shall specify:
- (a) the Business Day on which the TFSME Advance is requested to be made by the Bank (which, provided that the TFSME Drawdown Request is delivered by the Cut-Off Time, may be the same day as the day on which the Bank receives the TFSME Drawdown Request), such date being the *TFSME Drawdown Date*;

- (b) the amount of the TFSME Advance requested to be made by the Bank;
and
 - (c) the requested Scheduled Repayment Date.
- 6.3 Subject to clause 6.4, following receipt of the TFSME Drawdown Request, and only once such request has been processed by the Bank, the Bank shall notify the Participant by email (or by any other form of communication as the Bank sees fit) confirming:
 - (a) the TFSME Drawdown Date;
 - (b) the amount of the TFSME Advance; and
 - (c) the Scheduled Repayment Date.
- 6.4 Without limiting the generality of the foregoing, the Bank reserves the right to:
 - (a) reject an TFSME Drawdown Request, including, without limitation, where making an TFSME Advance would have the result that the Adjusted Value of Eligible Collateral received by the Bank (and in respect of which Equivalent Collateral has not been delivered to the Participant) is less than the TFSME Exposure; or
 - (b) cancel a TFSME Advance at any time before payment is made to the Participant.
- 6.5 Subject to clause 6.4, on the TFSME Drawdown Date for each TFSME Advance, the Bank shall make an advance to the Participant in the amount notified to the Participant by the Bank; provided that no advance shall be effective if following the payment there would be a Collateral Shortfall.
- 6.6 On the Repayment Date the Participant shall repay each TFSME Advance to the Bank.
- 6.7 Without prejudice to clauses 10 and 11, if:
 - (a) the Bank determines that the Participant has breached the representation and warranty in clause 15.1(a); or
 - (b) the Bank determines that the Potential Event of Default specified in clause 10.1(t) has occurred; or
 - (c) any other Potential Event of Default has occurred,the Bank may by written notice to the Participant require the repayment of any TFSME Advance in whole on the Early Repayment Date specified in the notice which may be the same day as the date of the notice.
- 6.8 The Participant may by written notice to the Bank request the repayment of any TFSME Advance in whole or in part on the Early Repayment Date specified in such notice, which shall be not less than two Business Days after the day such notice is effective or such shorter period as the Bank may agree. If the Participant elects to repay a TFSME Advance in accordance with this

clause 6.8, it may not redraw such TFSME Advance within the TFSME Drawdown Period.

- 6.9 In accordance with the Operating Procedures, the Participant may by written notice to the Bank request an extension of the Scheduled Repayment Dates notified to it under clause 6.3 of certain of its TFSME Advances.

7. Maintenance of Collateral

- 7.1 The Participant undertakes to ensure that the Adjusted Value of Available Collateral will at all times equal or exceed the TFSME Exposure.

- 7.2 If at any time the Adjusted Value of Available Collateral is less than the TFSME Exposure (a *Collateral Shortfall*) by an amount which is equal to or greater than the Call Trigger Amount, the Bank may by notice to the Participant require the Participant to transfer to the Bank Eligible Collateral having an Adjusted Value at least equal to the Collateral Shortfall.

- 7.3 If at any time the Adjusted Value of Available Collateral exceeds the TFSME Exposure (a *Collateral Excess*) by an amount which is equal to or greater than the Return Trigger Amount, the Participant may by notice to the Bank require the Bank to transfer to it Equivalent Collateral having an Adjusted Value at least equal to the Collateral Excess or such lower amount as may be specified in the Operating Procedures.

- 7.4 *TFSME Exposure* is an amount equal to:

$$(A + I + O)$$

where:

A = the aggregate amount of all outstanding TFSME Advances that the Bank has made to the Participant which have not been repaid by the Participant

I = the amount (estimated by the Bank) of TFSME Interest which is payable on the next TFSME Interest Payment Date

O = any other amounts payable by the Participant or which have accrued to the Bank under clause 14.

- 7.5 For the purpose of clause 7.4:

- (a) any amounts not denominated in sterling shall be converted into sterling at the Spot Rate as determined by the Bank as applying at the relevant time; and
- (b) if any Collateral in respect of which Equivalent Collateral has not been transferred ceases to be Eligible Collateral, the Value of that Collateral shall be zero.

- 7.6 This clause 7.6 applies if, at any time before Equivalent Collateral Securities have been delivered:

- (a) any Collateral Securities are to be redeemed in whole or in part or a repayment or prepayment of principal is to be made in respect of those Collateral Securities; and
- (b) the Bank becomes entitled to a payment from the issuer of those Collateral Securities in respect of that redemption, repayment or prepayment.

Where this clause 7.6 applies, for the purposes of determining the Adjusted Value of those securities, from the end of the tenth Business Day prior to the scheduled payment date (or, if later, the day on which the Bank became aware of the payment date), the Adjusted Value shall be zero.

7.7 Notice of any requirement to transfer Collateral Securities or Equivalent Collateral under this clause 7 shall be given, and any such Collateral Securities or Equivalent Collateral shall be transferred, at the time and in the manner provided by, and generally in accordance with, the Operating Procedures.

7.8 Any transfer by the Bank under clause 7.3 above shall take place on the date and in the manner specified in the Operating Procedures.

7.9 This clause 7.9 applies where:

- (a) the Bank has served notice under clause 7.2 requiring the Participant to transfer Collateral and the Participant has not transferred Collateral by the time required by the Operating Procedures; and
- (b) securities are standing to the credit of a securities account, or a sum is standing to the credit of any cash account, or in either case to the credit of any other account or record maintained by the Bank in the name of, or otherwise sufficient to identify, the Participant for the purposes of recording the Participant's right, title and interest in and to such securities, or, as the case may be, to such sum (an *Eligible Account*).

Where this clause 7.9 applies, and without prejudice to clause 10, the Participant irrevocably authorises and instructs the Bank to transfer or pay from an Eligible Account or Eligible Accounts to the Bank:

- (i) such securities as the Bank may select with an Adjusted Value up to an amount equal to the amount of the shortfall; or
- (ii) cash up to an amount equal to the shortfall; or
- (iii) a combination of securities and cash,

in satisfaction of the relevant obligation of the Participant.

If the Participant subsequently seeks to deliver Collateral in satisfaction of its original obligation referred to in paragraph (a) above, the Bank may accept such delivery and if it does, the Bank shall in respect of any securities transferred or cash paid to the Bank under any of sub-paragraphs (i), (ii) or (iii) above respectively, transfer to the Participant equivalent securities and/or repay an equivalent amount.

8. Loan Collateral

Assignment and transfer of Loan Collateral for TFSME

8.1 For the purpose of the Documentation:

- (a) the Scheme shall be deemed to be an “Applicable Facility” for the purposes of each Annex executed by the Participant and the Bank and any other Annex to any other Applicable Terms and Conditions which has been executed by the Participant and the Bank; and
- (b) each Annex to any other Applicable Terms and Conditions which has been executed by the Participant and the Bank shall (unless otherwise agreed in writing between the Participant and the Bank) apply to TFSME Advances,

where the Participant has transferred, or intends to transfer, Loan Collateral to the Bank as set out in this clause 8.

8.2 The Bank may agree that Collateral shall comprise or include Eligible Loans that are to be provided to the Bank by way of assignment or, in the case of Eligible Loans that are Scottish Loans or where there is a restriction on assignment with respect to such Eligible Loans and the Bank has agreed to transfer by way of a declaration of trust, by assignation and transfer by way of declaration of trust to the Bank. Such assignment, assignation or transfer may be effected in accordance with an Annex.

8.3 In the applicable Annex references to a “Loan Transaction” are deemed to be references to a TFSME Advance.

8.4 The ongoing representations and warranties given by the Participant pursuant to the applicable Annex shall be made by the Participant on a continuing basis with respect to any transactions entered into pursuant to clause 8.2 with effect from the first Transfer Date to occur following the date of the Scheme Letter.

8.5 The representations and warranties given by the Participant pursuant to the applicable Annex that relate to each Eligible Loan and its Related Security shall be deemed to be made on the Transfer Date on which the Loan Portfolio which includes such Eligible Loan is assigned, or transferred by way of declaration of trust, to the Bank.

9. Income payments

9.1 Where Income is paid in respect of any Collateral Securities or Loan Collateral which have been transferred to the Bank in respect of which Equivalent Collateral has not been transferred, the Bank shall, normally on the date it receives such Income from the issuer or Borrower (or would have received such income if the Bank continued to hold the securities or loan in question), pay to the Participant an amount equal to and in the same currency as the net amount received (or which would have been received), after any withholding or deduction for or an account of taxes or duties.

10. Events of Default

10.1 For the purposes of these Terms and Conditions, each of the following shall constitute an *Event of Default* if the Bank serves a Default Notice:

- (a) the Participant fails to maintain sufficient Eligible Collateral in accordance with clause 7.1 or to comply with clause 7.2 (by the time specified in the notice or in the Operating Procedures where a time is so specified);
- (b) in respect of any TFSME Advance, the Participant fails to make any payment when due;
- (c) any representation or warranty made or deemed to be made or repeated by the Participant under these Terms and Conditions or any TFSME Advance and any certification made to the Bank (whether made by the Participant or by another member of its Group) relating to lending by a member of the Participant's TFSME Group was or is incorrect in any material respect when made or deemed to be made;
- (d) the Participant defaults in the due and punctual performance of any other of its obligations under these Terms and Conditions or with respect to any TFSME Advance or, where applicable, the Guarantor defaults in the due and punctual performance of any other of its obligations under the Guarantee and, in either case, (if capable of remedy) fails to remedy such default within three Business Days after receipt of notice from the Bank requiring such default to be remedied;
- (e) the Participant or, where applicable, the Guarantor admits to the Bank its inability to, or its intention not to, perform any of its obligations under these Terms and Conditions or in relation to any TFSME Advance or under the Guarantee or if the Guarantor revokes or otherwise terminates the Guarantee;
- (f) the Participant has any permission under Part 4A of FSMA varied or cancelled or authorisation as a credit institution (as defined in Regulation (EU) No 575/2013) or any licence or authorisation which is required to perform any of its obligations under these Terms and Conditions or in relation to any TFSME Advance suspended or revoked or is declared in default or suspended or expelled from membership of, or participation in, any payment system, securities exchange or association or other self-regulating organisation, or is suspended or prohibited from dealing in securities by any government or regulatory agency or authority, or any of its assets or the assets of investors held by it or to its order shall be transferred or ordered to be transferred to a trustee or any other person, or its powers of management are suspended, removed or otherwise divested, or any of its obligations under these Terms and Conditions are altered, suspended or extinguished in any way (other than pursuant to these Terms and Conditions) by any government or regulatory agency or authority;

- (g) the Participant ceases or threatens to cease to carry on its business or any part thereof (including if all or a part of its business is transferred to another entity) or compounds, or makes a general assignment for the benefit of, or enters into any reorganisation or other special arrangement with, its creditors or any class thereof or becomes insolvent or becomes unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or fails or admits in writing its inability generally to pay its debts as they become due;
- (h) a secured party takes possession of, or carries out other enforcement measures in relation to, all or substantially all assets of the Participant, provided the relevant process is not dismissed, discharged, stayed or restrained within 15 days;
- (i) the court makes a winding-up order in respect of the Participant under Chapter VI of Part IV or Part V of the Insolvency Act 1986;
- (j) a liquidator is appointed in respect of the Participant or over all or any material part of the Participant's property;
- (k) a petition or application is filed or presented or made or any other proceeding is commenced in respect of the Participant (other than by the Bank) in respect of any obligation under these Terms and Conditions in any court or before any agency or out of court or otherwise alleging or for the bankruptcy, winding-up or other insolvency of the Participant or seeking any reorganisation, arrangement, moratorium, composition, readjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition, application or proceeding not having been stayed or dismissed within 15 days of its filing or commencement (other than a petition, application or proceeding for the winding up of the Participant or the appointment of an administrator, whether out of court or otherwise in relation to the Participant or any analogous proceeding in which case no such 15 day period shall apply);
- (l) notice is given of a proposal to appoint, or any step is taken with a view to appointing, or there is appointed a receiver, trustee, conservator, custodian or administrator (whether out of court or otherwise) or analogous officer in respect of the Participant or over all or any material part of the Participant's property;
- (m) there is convened any meeting of creditors of the Participant for the purpose of considering a voluntary arrangement as referred to in section 3 of the Insolvency Act 1986;
- (n) the court makes a winding-up order in respect of any Subsidiary or Parent of the Participant under Chapter VI of Part IV or Part V of the Insolvency Act 1986;
- (o) a liquidator, trustee or an administrator (whether out of court or otherwise) is appointed in respect of, where applicable, the Guarantor

or Parent of the Participant, or over all or any material part of the property of, where applicable, the Guarantor or Parent of the Participant;

- (p) (otherwise than in the case of a members' voluntary winding up) a liquidator, trustee or an administrator (whether out of court or otherwise) is appointed in respect of any Subsidiary of the Participant, or over all or any material part of the property, of any Subsidiary of the Participant;
- (q) any event analogous to any of the foregoing occurs in any jurisdiction in relation, where applicable, to the Guarantor or to the Participant or any Subsidiary or Parent of the Participant;
- (r) the Participant's membership of CREST or any other Securities Settlement System through which securities may be delivered (as specified from time to time in the Operating Procedures) is suspended or terminated;
- (s) an event of default or termination or repayment event howsoever described occurs under a Covered Agreement;
- (t) the Participant ceases to meet the criteria for the time being specified by the Bank for access to the Scheme;
- (u) a Designated Event occurs with respect to the Participant or, where applicable, its Guarantor (in each case X), and the Bank determines in its sole and absolute discretion that the creditworthiness of X, or, if applicable, the successor, surviving or transferee entity, is materially weaker immediately after the occurrence of such Designated Event.

For the purpose of this clause (u), a *Designated Event* with respect to X means that:

- (i) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the date of the Scheme Letter) to, or reorganises, reincorporates or reconstitutes into or as, another entity;
- (ii) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or
- (iii) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest.

- 10.2 Without prejudice to clause 10.1(u), if the Participant is a building society within the meaning of the Building Societies Act 1986, none of:
- (a) an amalgamation of the Participant with another building society under section 93 of that Act;
 - (b) a transfer of the engagements of the Participant to another building society under section 94 of that Act;
 - (c) a transfer of the whole of the business of the Participant to a successor under section 97 of that Act;
 - (d) the dissolution of the Participant under section 93(5), 94(10) or 97(9) or (10) of that Act; or
 - (e) anything done by the Participant for the purposes of any such amalgamation, transfer or dissolution,

shall entitle the Bank to serve a Default Notice on the Participant.

- 10.3 The Participant shall immediately notify the Bank if a Potential Event of Default occurs.

11. Close-out and liquidation of obligations on the occurrence of an Event of Default

- 11.1 If an Event of Default occurs in relation to the Participant, the provisions of this clause 11 shall apply to all outstanding TFSME Advances (provided however that, save where to do so would be inconsistent with applicable law, the Bank may exclude any TFSME Advance from this clause).

- 11.2 At any time following an Event of Default the Bank may by notice in writing to the Participant, specify one or more Early Repayment Dates for any outstanding TFSME Advances. The Bank may specify the same or different Early Repayment Dates for each TFSME Advance and may amend any Early Repayment Date so specified at any time prior to that Early Repayment Date.

- 11.3 Upon the Early Repayment Date in respect of a TFSME Advance:

- (a) the Repayment Date for that TFSME Advance shall be deemed to occur and TFSME Interest and any other amount outstanding in respect of that TFSME Advance shall be payable;
- (b) the Bank may, by written notice to the Participant, identify Collateral in respect of which the Bank wishes to accelerate its obligation to transfer Equivalent Collateral and such Equivalent Collateral shall be transferable,

so that performance of the respective obligations of the Parties with respect to the repayment of the TFSME Advance, the transfer of Equivalent Collateral and the payment of any cash amount shall be effected only in accordance with the provisions of this clause 11.3.

- 11.4 The Bank shall establish either prior to or on the Early Repayment Date, the Default Market Value of the Equivalent Collateral to be transferred in respect of the relevant TFSME Advances.
- 11.5 On the basis of the sums established in accordance with clauses 11.3 and 11.4, an account shall be taken (as at the relevant Early Repayment Date) of what is due from each Party to the other in respect of:
- (a) the relevant TFSME Advances including any amounts payable in respect of TFSME Interest and Income or otherwise under clauses 11.11, 13.2, 13.3 and 14 (and on the basis that Participant's claim against the Bank in respect of the transfer to it of Equivalent Collateral equals the Default Market Value thereof); and
 - (b) the sums due from one Party shall be set off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing).
- 11.6 The balance determined by carrying out the calculations under clause 11.5 shall be due and payable on such date as the Bank shall determine and notify the Participant in writing. The Bank may specify an account into which sums are required to be paid.
- 11.7 For the purposes of the calculation carried out under clause 11.5, all sums not denominated in sterling shall be converted into sterling on the relevant date at the Spot Rate prevailing at such dates and times determined by the Bank.
- 11.8 If the balance under clause 11.5, is payable by the Bank, the Bank may, in lieu of paying such balance or part thereof, transfer to the Participant Equivalent Collateral having a Value at least equal to the amount V where $V = B - C$ and where:
- B = the amount of such balance or the relevant part thereof
 - C = the settlement or other transfer costs incurred by the Bank
- and such transfer shall discharge the Bank's obligation to make the payment (or the relevant part thereof) under clause 11.5.
- 11.9 When establishing the Default Market Value under clause 11.4, the Bank shall have regard to such of the factors set out in this clause, and such other factors, as it thinks appropriate (and the order in which the factors are listed is not significant; they are to be taken into account as appropriate in each case) and may have regard to different factors for different securities or loans:
- (a) if the Bank has sold Receivable Securities or Loans, the net proceeds of such sale after deducting all reasonable costs, commissions, fees and expenses incurred in connection with such sale;
 - (b) observable market prices or such pricing sources (including trading prices) as the Bank considers appropriate;

- (c) offer or bid quotations from market makers or dealers in the market which is the most appropriate market for Receivable Securities of that description, or offer or bid quotations received as part of an auction or sale process for Receivable Securities or Loans as determined by the Bank;
- (d) other methods (which may include, without limitation, the Bank's internal modelling methodologies, such as those used by the Bank to determine the Adjusted Value) as the Bank considers appropriate;
- (e) to the extent not included in the determination of the Default Market Value, Income which has accrued but not yet been paid; and/or
- (f) TFSME Advance Costs.

11.10 For the purposes of clause 11.9:

- (a) **Receivable Securities** means Equivalent Collateral Securities to be delivered to the Participant; and
- (b) **TFSME Advance Costs** in relation to any sale contemplated in clause 11.9 means the costs, commissions, fees and expenses (including any mark-up or mark-down or premium paid for guaranteed delivery) that would be incurred or reasonably anticipated in connection with the sale of Receivable Securities, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to make the advance.

11.11 The Participant shall be liable to the Bank for the amount of all legal and other professional expenses incurred by the Bank in connection with or as a consequence of an Event of Default, (including without limitation arranger's fees, broker's fees and any costs incurred in valuing or servicing any securities or loans) together with interest thereon at the Overdraft Rate or such lower rate as the Bank may in its discretion decide.

12. Cross default and set-off on Default Termination

12.1 If a Default Termination occurs in relation to these Terms and Conditions, the Bank may at any time by notice to the Participant declare that a Default Termination shall occur under such Covered Agreements and on such date as may be specified in the notice (each a **Designated Agreement**). To the extent that any Designated Agreement does not include provisions to the same effect as a Default Termination or this clause 12, the terms of each Designated Agreement are hereby modified so as to incorporate the provisions set out in this clause 12.

12.2 The Bank shall determine in accordance with the provisions of the relevant Designated Agreement the Net Default Amount payable by one Party to the other under each Designated Agreement.

12.3 This clause 12.3 applies if the Bank so notifies the Participant (and the Bank may serve one or more notices under this clause 12.3) and following a Default Termination sums are owing among the Parties in respect of:

- (a) the Net Default Amount payable under clause 11 of these Terms and Conditions (but without prejudice to the Bank's right under clause 11.8 to deliver securities);
- (b) the Net Default Amount payable under such Designated Agreement as the Bank may specify; and
- (c) any other amount payable by one Party to another under or in respect of these Terms and Conditions or any Designated Agreement.

Where this clause applies, an account shall be taken of the amounts payable by one Party to the other in respect of such sums, in each case as the Bank may determine, and those sums shall be set off against each other; such calculations to be carried out by the Bank. Only the balance of the account shall be payable by the Party owing the greater of those sums and such balance shall be due and payable within two Business Days after the date on which the Bank notifies the Participant of the amount due.

13. Costs and expenses

- 13.1 The Participant agrees to pay and bear its own costs and expenses incurred in connection with the preparation and execution of the Documentation and the making of each TFSME Advance.
- 13.2 The Participant agrees to pay or reimburse to the Bank all of its costs and expenses (including legal expenses) together with any value added tax thereon, incurred in connection with the enforcement of any of their rights under the Documentation or any TFSME Advance.
- 13.3 The Participant agrees on demand to pay the Bank's charges and reimburse the Bank for all fees, costs, charges and other expenses (including, without limitation, any third party custody or settlement or clearing system or depository charges for any Transferred Collateral, costs incurred in connection with checking that collateral is Eligible Collateral and valuing collateral, internal costs and expenses (including staff salary costs), legal expenses, transfer taxes, value added tax, registration charges and other similar taxes and charges) incurred by the Bank in connection with the Scheme and any TFSME Advance hereunder, and as may be more particularly set out in the Operating Procedures.

14. Default interest and charges

- 14.1 If the Participant fails to pay any amount under these Terms and Conditions when due it shall pay interest on the amount of such balance from the time of default up to the time of actual payment (as well after as before judgment) at the Overdraft Rate or at such other rate as the Bank may in its discretion decide.
- 14.2 If the Participant fails to make any transfer of securities to the Bank under these Terms and Conditions when due, then without prejudice to clause 10, the Participant shall:

- (a) pay a late transfer charge from the time of default up to the time of actual transfer (as well after as before judgment) determined by applying the Overdraft Rate to the Value of such securities; and
 - (b) on demand indemnify the Bank and keep the Bank indemnified against any Loss suffered or incurred by the Bank as a result of any such failure.
- 14.3 Interest and charges under this clause 14 shall accrue daily on the basis of a year of 365 days from and including the first day to the last day of each period of one month beginning from the day on which the relevant amount or transfer was due and shall be due and payable at the end of each such period. So long as the default continues, interest and charges shall be calculated on a similar basis at the end of each such period and any amount payable under this clause 14 which is unpaid at the end of each such period shall thereafter itself bear interest at the Overdraft Rate.

15. Representations, warranties and undertakings

15.1 The Participant represents and warrants to the Bank that:

- (a) any certifications or statements made or information provided to the Bank in connection with participation in the Scheme including without limitation any such certifications or statements or information relating to lending by the Participant are in all material respects accurate and complete;
- (b) it is duly incorporated and validly existing under the laws of its incorporation and has full power and authority to enter into the Documentation and to enter into and perform the TFSME Advances and its other obligations contemplated hereby;
- (c) it complies with the Eligibility Criteria;
- (d) the person entering into these Terms and Conditions and entering into any TFSME Advance on its behalf is or will, at the time such TFSME Advance is entered into, be duly authorised so to act;
- (e) it has obtained all authorisations of any governmental authority or regulatory body and taken all other steps required by it in connection with the Documentation and the TFSME Advance to be effected under them and such authorisations remain in full force and effect;
- (f) all the obligations of the Participant under the Documentation are valid, binding and enforceable and the execution, delivery and performance of the Documentation and the TFSME Advance to be effected under it will not violate any law, regulation, by-law or rule applicable to the Participant;
- (g) it is entering into, and will duly perform its obligations under, the Documentation and all TFSME Advances as principal; and

- (h) no transfer taxes, value added tax, registration charges or other similar taxes or charges have arisen or will arise in respect of any transfer in connection with any TFSME Advance of (i) any securities or loans by the Participant to the Bank or (ii) any transfer of securities equivalent to any such securities referred to in (i) or of Equivalent Loan Collateral by the Bank to the Participant other than, in the case of Equivalent Loan Collateral, registration charges in respect of the legal transfer of any Mortgage.
- 15.2 The Bank represents and warrants to the Participant that at the time of sale or transfer to the Participant of any securities, or payment or transfer to the Participant of any cash, it will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Participant will receive the same free and clear of any lien (other than a lien granted to the operator of the clearance system through which the securities are transferred), claim, charge or encumbrance.
- 15.3 In respect of the provision of any Eligible Collateral and of any TFSME Advance:
 - (a) the Participant represents and warrants to the Bank that:
 - (i) at the time of sale or transfer to the Bank of any securities or payment or transfer to the Bank of any cash it will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Bank will receive the same free and clear of any lien (other than a lien granted to the operator of the clearance system through which the securities are transferred), claim, charge or encumbrance; and
 - (ii) at the time of any transfer to the Participant of any securities it will have the full and unqualified right to make such purchase, acquire or receive such securities.
 - (b) The Bank represents and warrants to the Participant that at the time of sale or transfer to the Participant of any securities, or payment or transfer to the Participant of any cash, the Bank will have the full and unqualified right to make such sale, payment or transfer and that upon such sale, payment or transfer the Participant will receive the same free and clear of any lien (other than a lien granted to the operator of the clearance system through which the securities are transferred), claim, charge or encumbrance.
- 15.4 All representations and warranties made and given under these Terms and Conditions shall be deemed to be made upon the signature and return to the Bank by the Participant of its copy of the Scheme Letter and repeated on each occasion on which a TFSME Advance is made.
- 15.5 The Participant undertakes to the Bank that:
 - (a) it will, to the extent permitted by applicable law, inform the Bank in advance of any proposed major organisational and business change

relating to it, including but not limited to major changes of control or ownership, and it will inform the Bank without delay of any material changes to the matters in the information provided by the Participant prior to entering into these Terms and Conditions;

- (b) it will comply with the provisions of the Documentation;
- (c) it will promptly take all such steps and execute all such documents (and in such form as the Bank may require) required to give effect to any provision of the Documentation or a TFSME Advance;
- (d) where the Participant has provided a legal opinion or opinions pursuant to clause 3, the Participant shall notify the Bank without delay of any developments which could cast material doubts on any of the details in any such opinion and shall arrange for the opinion to be updated upon request by the Bank, stating whether the points in the original opinion are still valid and noting any material changes;
- (e) it will comply in all respects with all laws and regulations to which it may be subject, if failure so to comply would impair its ability to perform its obligations under these Terms and Conditions;
- (f) (without prejudice to (e) above) it will comply at all times with and perform any measures, directions or other requirements (including any variations or waivers) imposed on it by or agreed by it with the Bank (including in its capacity as the Prudential Regulation Authority) or Financial Conduct Authority under FSMA or otherwise, and any similar measures, directions or other requirements imposed on it by any regulatory or supervisory authority whether in the United Kingdom or elsewhere where any failure to comply could reasonably be expected to have a material adverse effect on the business of the Participant or on its ability to comply with its obligations under these Terms and Conditions; and
- (g) on request from the Bank, it will promptly provide any and all information that may help the Bank to assess the ability of the Participant to fulfil its obligations under the Documentation and any information, document, agreement or notice that the Bank may require in connection with the Scheme, any TFSME Advance or Collateral.

16. Payments and deliveries

16.1 Save as otherwise provided in the Documentation all payments under or in connection with these Terms and Conditions shall be made in the manner specified by the Bank in immediately available freely convertible funds and for value on the due date for payment thereof free from set-off or counterclaim and without deduction or withholding for or on account of any taxes of whatsoever nature imposed, levied, collected, withheld or assessed, unless such a deduction or withholding is required by law.

16.2 In the event of such a deduction or withholding, the amount of any payment due from the Participant shall be increased to an amount which (after making

any such deduction or withholding) leaves the Bank with a net amount equal to the amount which would have been due if no such deduction or withholding had been required to be made.

- 16.3 The Participant shall (within three Business Days of demand by the Bank) indemnify the Bank against any Loss which the Bank determines has been or will be suffered by the Bank for or on account of tax in relation to a payment received or receivable (or any payment deemed to be received or receivable) under or in connection with these Terms and Conditions, except to the extent that the Loss has been compensated for by an increased payment under clause 16.2.
- 16.4 Save as otherwise provided in these Terms and Conditions, if any amount payable or any securities, loans, Assigned Rights, Trust Asset Designations, Trust Asset Re-Acquisition Notices or any deed of release or termination deliverable under these Terms and Conditions would, but for this clause, be payable or deliverable on a day which is not a Business Day, then such payment or delivery shall be made on the next following Business Day.
- 16.5 All right, title and interest in any securities transferred under these Terms and Conditions shall pass from one Party to the other on transfer in accordance with the terms of these Terms and Conditions free from all liens (other than a lien granted to the operator of the clearance system through which the securities are transferred), claims, charges and encumbrances. The Parties shall execute and deliver all documents, give all instructions and do all things necessary to ensure that title passes in accordance with this clause.
- 16.6 All right, title and interest in and to securities and money transferred or paid under these Terms and Conditions shall pass to the transferee upon transfer or payment, the obligation of the Party receiving such securities being an obligation to transfer equivalent securities.
- 16.7 Subject to clause 11, the Bank may and, with the prior approval of the Bank, the Participant may combine in a single calculation of a net sum payable by one Party to the other all amounts in the same currency payable by each Party to the other under any TFSME Advance or otherwise under these Terms and Conditions or under any Covered Agreement on the same date and the obligation to pay that net sum shall be the only obligation of either Party in respect of those amounts.
- 16.8 Subject to clause 11, the Bank may and, with the prior approval of the Bank, the Participant may combine in a single calculation of a net quantity of securities transferable by one Party to the other all securities of the same issue, denomination, currency and series transferable by each Party to the other under these Terms and Conditions or under any Covered Agreement on the same date and the obligation to transfer the net quantity of securities shall be the only obligation of either Party in respect of the securities so transferable and receivable.
- 16.9 The Bank shall create and maintain in its books and records or other systems, such accounts, sub-accounts or other entries (a *Collateral Account*) in which the Bank shall record Collateral transferred by the Participant to the Bank.

The Collateral Account and any credits thereto shall be governed by, and construed in accordance with, English law. The Participant has no legal or beneficial interest in Collateral Securities or otherwise represented by corresponding credits to the Collateral Account. The Participant's right in respect of Collateral Securities transferred to the Bank is a contractual right to receive Equivalent Collateral Securities upon the terms and subject to the conditions set out in the Documentation.

- 16.10 Where any voting rights become exercisable in relation to any Transferred Collateral, the Bank shall have no obligation to arrange for the exercise of any voting rights of that kind in accordance with the instructions of the Participant in relation to any such Transferred Collateral.
- 16.11 The Bank and its representatives and agents shall not be liable, save in the case of fraud, for any Loss that may arise in connection the exercise or non-exercise of voting rights by the Bank.
- 16.12 If at any time after a payment has been made by the Bank to the Participant under these Terms and Conditions which relates to a payment to the Bank by an issuer of securities (including a payment by the issuer of Income or of capital), the issuer or any clearance system or depository reclaims or reverses any such payment to the Bank, the Participant undertakes to repay the payment received from the Bank and any associated costs incurred by the Bank.

17. Lien and set-off

- 17.1 In addition to any general lien or other rights to which the Bank may be entitled under any applicable law, and to the greatest extent permitted by applicable law and regulation, the Bank shall have a general lien on and right to retain, and (without notice to the Participant) a right to realise and apply (irrespective of maturity or currency of denomination, place of payment or booking office) or otherwise to sell or dispose of, the Participant's securities held with the Bank in satisfaction of all liabilities and obligations (whether at such time or in the future or upon the occurrence of a contingency and in whatever currency) of the Participant to the Bank under or in connection with these Terms and Conditions or any other advance, transaction or dealing or arrangement from time to time entered into or concluded between the Bank and the Participant, and in exercising its rights under this clause the Bank is hereby authorised to effect any necessary conversion at the Spot Rate.
- 17.2 Without prejudice to any other rights, powers or remedies (whether provided by contract, law or otherwise), the Bank may without prior notice to the Participant set off any monies due and payable (but not paid) from the Participant and any other obligation against any obligation owed by the Bank to the Participant (whether at such time or in the future or upon the occurrence of a contingency and whether or not arising under these Terms and Conditions), regardless of the place of payment, booking office or currency of either obligation. If the obligations are in different currencies, the Bank may convert either obligation at the Spot Rate for the purpose of the set-off.
- 17.3 For the purposes of clauses 17.1 and 17.2, where a liability or an obligation is unascertained, or is an obligation other than an obligation to pay money, the

Bank may in good faith estimate the value of that liability or obligation and set off in respect of the estimate.

18. Confidentiality

18.1 Each Party (the *Recipient*) undertakes to keep confidential all information given to it by the other Party (the *Disclosing Party*) or otherwise in the possession of the Recipient relating to or otherwise concerning the Disclosing Party or the Scheme.

18.2 The undertakings in clause 18.1 will not apply to information which:

- (a) is disclosed with the prior written consent of the Disclosing Party;
- (b) at the time of supply is in the public domain;
- (c) subsequently comes into the public domain, except through breach of the undertakings set out in clause 18.1;
- (d) is already in the lawful possession of the Recipient;
- (e) subsequently comes lawfully into the possession of the Recipient from a third party who does not owe the Disclosing Party an obligation of confidence in relation to it;
- (f) is disclosed in confidence to the Recipient's professional advisers or auditors where such disclosure is considered necessary by the Recipient, acting reasonably, and provided that, where reasonably practicable, where the Participant proposes to make such disclosure it shall have notified the Bank in advance of the proposed form, timing, nature and purpose of the disclosure;
- (g) is disclosed in confidence to a member of the same Group as the Recipient and provided that, where reasonably practicable, the Recipient making such disclosure has notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure; or
- (h) is required to be disclosed by law, regulation or any governmental or competent regulatory authority, whether in the United Kingdom or elsewhere, provided that, save in the case of a disclosure made by the Bank which falls within clause 18.3, the Recipient making such disclosure has promptly notified the Disclosing Party in advance of the proposed form, timing, nature and purpose of the disclosure.

18.3 Nothing in clause 18.1 shall preclude the disclosure of information in any case in which disclosure is made by the Bank (including in its capacity as the Prudential Regulation Authority) or any of its officers or employees:

- (a) to BEAPFF, BEALF, HM Treasury, the Financial Conduct Authority, HM Revenue & Customs or any other governmental body or competent regulatory authority or the operator of any deposit guarantee or investor protection scheme, whether in the United Kingdom or elsewhere;

- (b) 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; or
 - (c) for the purpose of enabling or assisting the Bank to discharge its functions as a monetary authority.
- 18.4 Notwithstanding clause 18.1, the Participant acknowledges and agrees to the publication by the Bank, in accordance with the Operating Procedures, of details of the Participant's participation in the Scheme including TFSME Advances made to the Participant and the amount of lending undertaken by the Participant and other members of the Participant's TFSME Group.
- 18.5 Nothing in clause 18.1 shall preclude the disclosure by the Participant of its participation in the Scheme or receipt of any TFSME Advance.
- 18.6 The Parties agree that damages may not be an adequate remedy for any breach of this clause 18 by any Party or any of its directors, officers, employees, agents, sub-contractors, affiliates, professional advisers or auditors and the Parties shall be entitled to seek any legal or equitable relief, including injunction, in the event of any breach of the provisions of this clause 18.

19. Amendments

- 19.1 The Bank may amend these Terms and Conditions and any other part of the Documentation either generally or in particular circumstances, from time to time. Any such amendment shall apply with effect from such time as may be specified by the Bank and shall, unless otherwise specified, apply to any TFSME Advance which is outstanding at the time at which such amendment is made. The Bank may also vary the operational timetable or vary or omit any of the procedures described on any particular day. The Bank will endeavour to give reasonable notice of any amendment, but reserves the right to introduce any amendment with immediate effect, if the Bank considers it necessary to do so.

20. Time of the essence

- 20.1 Time shall be of the essence in these Terms and Conditions.

21. Commencement, suspension and termination

- 21.1 These Terms and Conditions commence on the date notified to the Participant by the Bank in accordance with the Scheme Letter.
- 21.2 Subject to clause 11, a Participant may terminate its access to the TFSME at any time by giving to the Bank not less than ten Business Days' prior notice in writing (such termination becoming effective upon expiry of such notice).
- 21.3 Without prejudice to the Bank's rights under clause 11, the Bank may suspend for such period as the Bank thinks fit or terminate the Participant's access to the TFSME at any time.

- 21.4 Any termination or suspension under clause 21.2 or clause 21.3 shall not affect any TFSME Advance which is then outstanding, and the provisions of the Documentation shall continue to apply to each such TFSME Advance until all the obligations of each Party to the other under the Documentation and each such TFSME Advance have been fully performed.
- 21.5 Any suspension or termination in relation to the TFSME will have effect without prejudice to the Participant's access to any other facility provided by the Bank to the Participant on the terms and subject to the conditions applicable to that facility.

22. No waivers

No waiver, indulgence or concession granted by the Bank (including, without limitation, the making of any TFSME Advance or any other business at any time when an Event of Default has occurred and is continuing) shall operate as a waiver or variation in any other instance or of any other rights and no omission or delay on the part of the Bank in exercising any right, power or privilege under the Documentation or under any TFSME Advance shall act as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Bank provided in these Terms and Conditions, the remainder of the Documentation and any TFSME Advance are cumulative with and not exclusive of any rights of lien, sale, set-off or retention or other rights or remedies which the Bank may have at common law, by statute or otherwise howsoever.

23. Single agreement; entire agreement; assignment

- 23.1 The Parties acknowledge that, and have entered into these Terms and Conditions and will enter into each TFSME Advance in consideration of and in reliance on the fact that, all TFSME Advance constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each of the Parties agrees that payments, deliveries and other transfers made by either of them in respect of any TFSME Advance shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other TFSME Advances.
- 23.2 The Documentation sets out the entire terms and conditions and understanding between the Parties in respect of the subject matter thereof. It is agreed that:
- (a) the Participant has not entered into the Documentation or any TFSME Advance in reliance upon any representation, warranty or undertaking of the Bank which is not expressly set out or referred to in the Documentation;
 - (b) the Participant shall not have any remedy in respect of misrepresentation or untrue statement made by the Bank which is not contained in the Documentation nor for any breach of warranty which is not contained in the Documentation; and

- (c) this clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.
- 23.3 The provisions of these Terms and Conditions and of each TFSME Advance shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in title and permitted assigns.
- 23.4 The rights and obligations of the Parties under these Terms and Conditions and under each TFSME Advance shall not be capable of assignment by any Party without the prior written consent of the other.

24. Communications

- 24.1 Communications shall be made by any method that the Bank may specify, through the Operating Procedures or otherwise.
- 24.2 The Bank shall be entitled without further enquiry to accept and act on any request, instruction or other communication or purported request, instruction or other communication received by the Bank notwithstanding that it may afterwards be discovered that that request, instruction or other communication was made in error, was not genuine or was not authorised by the Participant or (if sent electronically) was not initiated through the terminal and associated equipment from which it was purported to have been sent. Any such request, instruction or other communication on which the Bank so acts shall for all purposes of the Documentation be treated as effective and binding on the Participant in accordance with its terms and, accordingly, neither the Bank nor any of its servants or agents shall incur any liability or be responsible for any Loss whatsoever by reason of so acting except to the extent that such Loss is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its servants or agents. Neither the Bank nor any of its servants or agents shall be liable for any loss of business, loss of profit or consequential damage of any kind whatsoever.
- 24.3 The Participant understands that email (whether encrypted or unencrypted) is not a secure method of communication and that messages so delivered may be intercepted, lost, destroyed, corrupted or delayed in transmission.
- 24.4 The Participant hereby agrees that:
 - (a) neither the Bank nor any of its servants or agents shall incur any liability or be responsible for any Loss, that may arise in connection with the Bank sending or receiving any email (encrypted or unencrypted), except to the extent that such Loss is shown to be attributable to wilful default or reckless disregard of the Bank's obligations on the part of the Bank or its servants and agents; and
 - (b) it shall on demand indemnify the Bank and keep the Bank indemnified against any Loss suffered or incurred by the Bank as a result of any email (encrypted or unencrypted) which is intercepted, lost, destroyed, corrupted or delayed or otherwise distorted or altered during the course of transmission except to the extent that such Loss is shown to be

attributable to wilful default or reckless disregard of the Bank, or its servants and agents.

24.5 The Participant undertakes at all times:

- (a) to procure that all requests, instructions and other communications are made or given by persons who are duly authorised to make or give them on its behalf and are within the scope of the authority of the person making or giving them;
- (b) to provide the Bank upon request with a list of all persons who are for the time being authorised to send requests, instructions and other communications or email or facsimile transmissions relating to TFSME Advances or otherwise relating to the matters to which the Documentation relates and with such particulars with respect to such persons as may from time to time be specified in the Operating Procedures;
- (c) promptly to provide the Bank with particulars of any change in the persons and particulars referred to in clause 24.5(b);
- (d) to comply with any procedures set out in the Operating Procedures or otherwise agreed between the Participant and the Bank with respect to the identification, confirmation or authentication of requests, instructions or other communications by the Participant or with the maintenance of security with respect to or in connection with such requests, instructions or other communications;
- (e) to ensure that all passwords and other activation data relating to the Collateral Management Portal are not easily guessed or predictable and are kept confidential and secure in order to prevent their unauthorised use;
- (f) not to use the Collateral Management Portal upon and after becoming aware of the occurrence of any significant breach by the Participant of its obligations, or of any warranty or representation, under these Terms and Conditions unless and until the Bank has expressly consented to the Participant so doing;
- (g) to be responsible for the maintenance of security over the SWIFT Equipment acquired or used by the Participant for the purposes of sending and receiving SWIFT messages to and from the Collateral Management Portal and, in the case of any such equipment used or available for use by the Participant and any other participant, to be jointly and severally responsible with such other participant for the maintenance of security over all such equipment;
- (h) to keep its SWIFT Keys secure and protect them against loss, damage, modification and unauthorised use; and
- (i) to comply in all respects with the Collateral Management Portal user guide in so far as its provisions are applicable to the Participant.

- 24.6 The Bank reserves the right to suspend the operation of the Collateral Management Portal, wholly or partially, or to vary the operational timetable, by reason of any circumstances whatever beyond the Bank's reasonable control, including without limitation partial or total failure, malfunction or overload of the Collateral Management Portal, or any other emergency.
- 24.7 The Participant acknowledges and agrees that:
- (a) data displayed on the Collateral Management Portal are updated regularly, are subject to change at short notice and should not be relied on as accurate and up to date figures;
 - (b) any valuations of Collateral provided through the Collateral Management Portal are indicative only, are provided for information purposes and are subject to change at any time, without notice and at the sole determination of the Bank. The Default Market Value of Transferred Collateral following the occurrence of an Event of Default will be determined in accordance with clause 12;
 - (c) the Bank reserves the right to reject any collateral for any reason at any time, notwithstanding that it might be specified as Eligible Collateral on the Collateral Management Portal.
- 24.8 The Bank and its representatives and agents shall not be liable, save in the case of wilful default or reckless disregard of the Bank's obligations, for Loss arising from the operation by the Bank of the Collateral Management Portal or any part thereof or any inadequacy thereof for any purposes or any deficiency or defect therein or any delay in providing or failure to provide the Collateral Management Portal or any interruption or loss of the Collateral Management Portal or loss of business, loss of profit or other consequential damage or any damage whatsoever and howsoever caused (including but without prejudice to the foregoing by reason of machine or computer malfunction or error and also any suspension or variation pursuant to clause 24.6).
- 24.9 Where the Participant has opted to use the Collateral Management Portal, it agrees to pay the Bank's fees and charges in respect of the Collateral Management Portal in accordance with the Operating Procedures.

25. Notices

- 25.1 Subject to clause 25.4, any notice required to be given under the Documentation shall be deemed to be duly served if left at or sent by email or other electronic means, in the case of a notice to the Bank, in accordance with the Operating Procedures, at Bank of England, Threadneedle Street, London EC2R 8AH, email address TFSME-transactions@bankofengland.co.uk marked for the attention of the Head of Sterling Markets Division, or to such other address as the Bank may notify to the Participant in writing, and in the case of notice to the Participant left at the address or sent to the email address notified by the Participant to the Bank in writing from time to time.
- 25.2 Any such notice shall be deemed to be duly served:

- (a) if left at the address of the Party to be served, at the time when it is so left (or, if it is left on a day that is not a Business Day, at 8.15 a.m. on the next following Business Day); and
 - (b) if sent by email, when the message is received.
- 25.3 In proving the giving of a notice under this clause 25.3 it shall be sufficient to prove that the notice was delivered at the address for service.
- 25.4 The Operating Procedures may provide for any notice to be given orally, including by telephone; any such notice shall be deemed to be served when it is actually given.
- 25.5 Where in these Terms and Conditions any matter may be specified or prescribed by the Bank, then the Bank may (but shall not be obliged to) do so by way of a Market Notice.

26. Operating Procedures, Market Notices and Annexes

- 26.1 These Terms and Conditions are supplemented by Operating Procedures which set out further terms governing each type of TFSME Advance and explain the operational procedures involved and may also be supplemented by Market Notices.
- 26.2 In the event of any conflict between the terms of these Terms and Conditions and the terms of the Operating Procedures, Scheme Letter or Annexes, these Terms and Conditions shall prevail.
- 26.3 In the event of any conflict between the terms of the Operating Procedures, Scheme Letter, Annexes or these Terms and Conditions and any Market Notice, the Market Notice shall prevail.

27. Legal relationship

No provision of these Terms and Conditions shall be deemed to create or evidence a partnership between any of the Parties or make any Party the agent of another Party for any purpose.

28. The Bank's discretions

Subject to the express terms thereof, any liberty or power which may be exercised or any determination which may be made under the Documentation by the Bank (including without limitation, any act, matter or thing as agreed, specified, determined, decided or notified by the Bank to the Participant) may be exercised or made generally or in relation to one or more Participants and in the absolute and unfettered discretion of the Bank from time to time, which shall not be under any obligation to give reasons therefor.

29. Limitation of liability; position of the Bank

- 29.1 Without prejudice to any other provision of the Documentation, neither the Bank or its representatives and agents shall be liable, save in the case of wilful default or reckless disregard of their obligations, for any Loss suffered by the

Participant or any other person in the course of the Bank carrying out its functions under the Documentation and in no event shall the Bank be liable for any loss of profits or consequential or special loss or damages, howsoever arising, whether or not the Bank knew or ought to have known that such loss of profits or consequential or special loss or damages would be likely to be suffered or incurred.

- 29.2 Neither the Bank nor its representatives and agents shall be liable for any Loss resulting from any event of force majeure or other event beyond the Bank's reasonable control, including but not limited to nationalisation, expropriation, currency restrictions, acts of state, acts of war, terrorist attacks, labour disturbances among staff of the Bank or of its nominees or agents (or of any third parties instructed by or through it or any such nominees or agents), power failures or breakdowns in communications linked to equipment of the Bank or of their nominees or agents (or of any third parties as aforesaid), or the failure or disruption of any relevant stock exchange, clearing house, settlement system or market.
- 29.3 The Participant shall indemnify the Bank and its representatives and agents against all Loss arising from any action or omission of the Participant or the Participant's representatives and agents (whether or not authorised by the Participant) and any failure of the Participant to comply with the Documentation. The Participant agrees that this indemnity shall survive any termination of the Participant's participation in the TFSME.
- 29.4 Subject to the express terms thereof, any liberty or power which may be exercised or any determination which may be made under the Documentation by the Bank (including without limitation, any act, matter or thing as agreed, specified, determined, decided or notified by the Bank to the Participant) may be exercised or made generally or in relation to one or more Participants and in the absolute and unfettered discretion of the Bank from time to time, which shall not be under any obligation to give reasons therefor.

30. Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Documentation shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

31. Governing law

The Documentation and each TFSME Advance and any non-contractual obligations arising out of or in relation to the Documentation and any TFSME Advance shall, unless otherwise stated, be governed by and interpreted in accordance with English law provided that terms particular to Scots law shall be governed by and interpreted in accordance with Scots law.

32. Jurisdiction

- 32.1 The English courts shall (subject to clauses 32.2 and 32.3 below) have exclusive jurisdiction in relation to all disputes (including claims for set-off and counterclaims) arising out of or in connection with (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal

relationships established by the Documentation or any TFSME Advance; and (ii) any non-contractual obligations arising out of or in connection with the Documentation or any TFSME Advance. For such purposes the Bank and the Participant irrevocably submit to the jurisdiction of the English courts and waive any objection to the exercise of such jurisdiction.

- 32.2 The provision contained in clause 32.1 above is included for the benefit of the Bank. Accordingly, notwithstanding the exclusive agreement in clause 32.1 above the Bank shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of Council Regulation EC No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the Convention on Jurisdiction and the Enforcement of Judgments signed on 27 October 1968, or the Convention on Jurisdiction and Enforcement of Judgments signed on 16 October 1988.
- 32.3 The Bank may in its absolute discretion take proceedings in the courts of any other country which may have jurisdiction, to whose jurisdiction the Participant irrevocably submits.
- 32.4 The Participant irrevocably waives any objections to the jurisdiction of any court referred to in this clause 32.
- 32.5 The Participant irrevocably agrees that a judgment or order of any court referred to in this clause 32 in connection with the Documentation or any TFSME Advance is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

33. Agent for service of process

If the Participant has no registered office or place of business in England, it shall appoint and maintain to act as its agent for service of process a person with an address for service in England and shall notify the Bank of the name and address of such person. If the agent at any time ceases to act as such, the Participant shall appoint a replacement agent having an address for service in England and shall notify the Bank of the name and address of the replacement agent. In the absence of such appointment and notification, the Bank shall be entitled to appoint a replacement agent on the Participant's behalf and at the Participant's expense and shall, thereafter, notify the Participant of such appointment.

Schedule 1 Glossary

1. In the Documentation:

- (a) capitalised terms not otherwise defined in the Documentation shall have the same meanings given to them in the SMF Terms and Conditions; and
- (b) the following words and expressions shall have the following meanings:

Adjusted Value means,

- (a) in respect of any securities, the value of those securities determined in accordance with the following formula:

$$AV = V (100 - H)/100$$

Where:

AV = Adjusted Value

V = the Value of the relevant securities

H = the Haircut;

- (b) with respect to any Loan Collateral, the Value of the relevant loan adjusted by such Haircut as the Bank may determine from time to time;

Annex means an Annex to these Terms and Conditions including, without limitation, the documents entitled “Loan Transactions: Assignment” and “Loan Transactions: Trust”;

Applicable Terms and Conditions means any terms and conditions of any facility or scheme which the Bank has made available to the Participant pursuant to which the Bank has agreed that the Participant may provide loan collateral for the purposes of that facility or scheme;

Assigned Rights means with respect to any Loan Collateral, all estates, rights, title, interest and benefit of the Bank in and to the relevant Loan and any Related Security, which have been assigned to the Bank under or pursuant to these Terms and Conditions;

Available Collateral means all Collateral Securities and Loan Collateral provided to the Bank under clause 7 in each case in respect of which Equivalent Collateral has not been transferred by the Bank;

Bank means The Governor and Company of the Bank of England;

Bank Rate means the official Bank Rate as determined by the Bank’s Monetary Policy Committee and published by the Bank from time to time;

BEALF means the Bank of England Alternative Liquidity Facility Limited;

BEAPFF means the Bank of England Asset Purchase Facility Fund Limited;

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for business in London and, in respect of an obligation of the Bank to deliver securities, a day on which the relevant settlement system is also open for business or, in the case of settlement or delivery otherwise than through a settlement system, a day on which banks are also open for business in the place where the relevant securities are to be delivered and, if different, the place in which the relevant payment is to be made;

Call Trigger Amount means the amount for the time being prescribed by the Operating Procedures or as otherwise prescribed by the Bank as the call trigger amount for the purposes of clause 7.2;

Collateral means Collateral Securities or Loan Collateral;

Collateral Excess has the meaning given in clause 7.3;

Collateral Management Portal means the Bank's web-based collateral management portal for Participants;

Collateral Securities means Eligible Collateral in the form of securities;

Collateral Shortfall has the meaning given in clause 7.2;

Covered Agreement means any agreement, deposit made by the Participant with the Bank, payment arrangement or obligation (other than these Terms and Conditions or a TFSME Advance) between the Bank and the Participant;

CREST means the computer based system and associated clerical procedures operated by Euroclear UK & Ireland Limited to facilitate the transfer of gilt edged securities and other uncertificated securities or any other system which may replace that system;

Cut-Off Time means such time on any Business Day as the Bank may specify in the Operating Procedures;

Default Market Value has the meaning given in clause 11.4;

Default Notice means a written notice served by the Bank on the Participant under clause 10.1 stating that an event shall be treated as an Event of Default for the purposes of these Terms and Conditions;

Default Termination means, in respect of these Terms and Conditions or a Covered Agreement, the termination of all outstanding transactions or acceleration of all outstanding deposits (other than any transaction or deposit which the Bank has excluded from such termination or acceleration in accordance with these Terms and Conditions or any Designated Agreement) following the occurrence of an Event of Default or an event of default howsoever described under that Covered Agreement;

Designated Agreement has the meaning given in clause 12.1;

Disclosing Party has the meaning given in clause 18.1;

Documentation means these Terms and Conditions, the Operating Procedures, any Market Notice, the Scheme Letter and the Annexes;

Early Repayment Date means the date designated as such:

- (a) by the Bank in accordance with clause 6.7 or in a Default Notice;
- (b) by the Participant in accordance with clause 6.8; or
- (c) otherwise in accordance with the Documentation;

Eligibility Criteria means the criteria specified by the Bank from time to time for participation in the SMF;

Eligible Account has the meaning given in clause 7.9;

Eligible Collateral means Eligible Loans or Eligible Securities;

Eligible Loans means loans of a type that are for the time being specified in the Operating Procedures or otherwise specified by the Bank as eligible for transfer as Loan Collateral in accordance with any TFSME Advance and which are otherwise acceptable to the Bank;

Eligible Securities means securities of a type that are for the time being specified in the Operating Procedures or otherwise specified by the Bank as eligible for transfer as Collateral Securities under the Scheme and which are otherwise acceptable to the Bank;

Equivalent Collateral means Equivalent Collateral Securities or Equivalent Loan Collateral and references to the delivery of Equivalent Collateral with respect to any Loans shall be construed as the re-assignment of Assigned Rights in respect of those Loans or the transfer of such Loans;

Equivalent Collateral Securities means securities equivalent to Collateral Securities;

Equivalent Loan Collateral means loans equivalent to Loans;

Event of Default has the meaning given in clause 10.1;

FSMA means the Financial Services and Markets Act 2000;

Group means a group as defined in section 421 of the Financial Services and Markets Act 2000 (s421) provided that the Bank may determine from time to time (i) whether or not a Participant and another person (“P”) are members of the same Group under s421 (ii) that the Participant and P are not in the same Group notwithstanding that they may be persons who would otherwise be in the same group under s421;

Guarantee has the meaning given in clause 3.1(c);

Guarantor has the meaning given in clause 3.1(c);

Haircut means the “haircut” for the time being prescribed in the Operating Procedures or otherwise prescribed by the Bank (and so that different haircuts may be so specified in respect of securities or loans of different descriptions);

Income means, with respect to any Collateral, at any time, any interest, dividend or other distribution on such securities (but excluding distributions

which are a payment or repayment of capital in respect of such securities) and with respect to any Loan Collateral any interest and principal paid, repaid or prepaid and any other sums received by the Participant including without limitation any sums received from any Borrower or any insurer or guarantor under any Insurance Contract or Loan Guarantee;

Loans means, with respect to any Loan Collateral, the loans that form part of the Loan Portfolio and are or are to be beneficially assigned to the Bank (or in the case of any Scottish Loans, a trust has or will be declared over such Scottish Loans) or transferred to the Bank in such other manner as the Bank may agree, which have been selected from the Provisional Portfolio, a list of which will be provided by the Participant and, where the context permits, includes the Related Security (each a **Loan**);

Loan Collateral means Eligible Loans assigned by the Participant to the Bank as Collateral under these Terms and Conditions;

Loan Guarantee means each guarantee in support of the obligations of a Borrower under an Eligible Loan;

Loan Portfolio means the portfolio of Eligible Loans and Related Security selected from the Provisional Portfolio and beneficially assigned (or in the case of any Scottish Loans, a trust has been declared over such Scottish Loans) to the Bank;

Loss means any liability, loss, damage, claim, cost, charge or expense of any nature whatsoever, whether direct or indirect;

Market Notice means a notice published by the Bank;

Mortgage has the meaning given in the Glossary to the SMF Terms and Conditions;

Net Default Amount means the net amount payable by one Party to the other upon a Default Termination;

Open Market Operations means the Bank's open market operations as described in the Operating Procedures;

Operating Procedures means the procedures published by the Bank relating to the Scheme (including, without limitation and where applicable, the procedures established by the Bank relating to the SMF);

Overdraft Rate means the rate for the time being applying to RTGS overdrafts;

Parent means a parent undertaking within the meaning of section 1162 of the Companies Act 2006;

Participant means a person to whom the Bank has agreed to make available the Scheme;

Party means each of the Bank and the Participant;

Potential Event of Default means any event or circumstance specified in clause 10 which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing) be an Event of Default;

Provisional Portfolio means a portfolio of Eligible Loans and Related Security from which a Loan Portfolio will be selected;

Receivable Securities has the meaning given in clause 11.10(a);

Recipient has the meaning given in clause 18.1;

Related Security has the meaning given to such term in the relevant Annex;

Repayment Date in respect of any TFSME Advance, means the date on which the TFSME Advance is to be repaid in accordance with clause 4.3(b);

Return Trigger Amount means the amount for the time being prescribed by the Operating Procedures or as otherwise prescribed by the Bank as the return trigger amount for the purposes of clause 7.3;

Scheduled Repayment Date means:

- (a) the day of the fourth anniversary of the TFSME Drawdown Date (or if such day is not a Business Day, the immediately preceding Business Day);
- (b) where the Bank has agreed to extend the Scheduled Repayment Date of certain TFSME Advances in accordance with the Operating Procedures, the date notified by the Bank to the Participant; or
- (c) otherwise in accordance with the Documentation.

Scheme means the Term Funding Scheme with additional incentives for SMEs made available by the Bank;

Scheme Letter means the letter from the Bank to the Participant and acknowledged by the Participant by which the Bank agrees to make the Scheme available to the Participant;

Securities Settlement System means each of CREST, operated by Euroclear UK and Ireland Ltd., the settlement system of Clearstream Banking S.A., Luxembourg, the Euroclear settlement system operated by Euroclear Bank S.A./N.V. and any other securities settlement system as may be specified in the Operating Procedures from time to time;

SMEs has the meaning given in the Operating Procedures, each an **SME**;

SMF means the Bank's Sterling Monetary Framework;

SMF Terms and Conditions means the "Terms and Conditions for Participation in the Bank's Sterling Monetary Framework" as published by the Bank from time to time;

Spot Rate means, where an amount in a currency other than sterling is to be converted into sterling at any time, the rate of exchange determined by the Bank;

sterling means the lawful currency for the time being of the United Kingdom;

Subsidiary means a subsidiary within the meaning of section 1159 of the Companies Act 2006 and, in relation to financial statements of a Group, a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006 and, in relation to a building society, any undertaking which is an associated undertaking as defined in section 119(1) of the Building Societies Act 1986;

SWIFT Equipment means equipment and software used by the Participant for the purposes of sending and receiving SWIFT messages;

SWIFT Keys means the secret cryptographic information which controls the operation of the SWIFT cryptographic algorithms, used by SWIFT Equipment for sending and receiving SWIFT messages;

Terms and Conditions means these Terms and Conditions for participation in the Bank of England's Term Funding Scheme with additional incentives for SMEs;

TFSME means Term Funding Scheme with additional incentives for SMEs;

TFSME Advance has the meaning given in clause 4.1;

TFSME Advance Costs has the meaning given in clause 11.10(b);

TFSME Drawdown Date means the date specified as such in relation to a TFSME Advance by the Bank on which the relevant TFSME Advance was made or is to be made to the Participant;

TFSME Drawdown Period means the period specified by the Bank during which a Participant may submit a TFSME Drawdown Request to the Bank, from no later than 27 April 2020 up to and including 30 April 2021;

TFSME Drawdown Request means a notice sent by the Participant to the Bank requesting the Bank to make a TFSME Advance in accordance with the Operating Procedures;

TFSME Exposure has the meaning given in clause 7.4;

TFSME Fee means the fee specified in the Operating Procedures, Market Notice or as otherwise specified by the Bank;

TFSME Group with respect to the Participant, means the Participant and other members of the Participant's Group that are:

- (i) monetary financial institutions and specialist mortgage lenders that are required to report statistical lending data to the Bank, as notified to the Participant by the Bank from time to time and as defined in the Operating Procedures; and

- (ii) non-bank credit providers, as determined by the Bank and as defined in the Operating Procedures,

provided that:

- (i) if a Participant is a “ring-fenced body” as defined in Part 9B of FSMA, any other member of the Participant’s TFSME Group must also be a ring-fenced body; or
- (ii) if the Participant is not a ring-fenced body, but is part of a Group containing ring-fenced bodies, then any other member of its TFSME Group must also not be a ring-fenced body.

TFSME Interest means interest calculated by reference to the Bank Rate plus a TFSME Fee as specified by the Bank from time to time;

TFSME Interest Payment Date means the first Business Day of each calendar quarter or such other time as the Bank may specify;

Transfer Date has the meaning given in the relevant Annex;

Transferred Collateral means Collateral transferred to the Bank in respect of which Equivalent Collateral has not been transferred;

Trust Asset Designations has the meaning given in the relevant Annex;

Trust Asset Re-Acquisition Notices has the meaning given in the relevant Annex;

Value means:

- (a) in relation to an amount of cash its nominal amount;
- (b) in relation to any securities, the fair value of the securities as determined by the Bank, using observed market prices or reference prices published by the UK Debt Management Office or having regard to such pricing sources and methods (which may include, without limitation, available prices for securities with similar maturities, terms and credit characteristics as the securities) as the Bank considers appropriate, plus the aggregate amount of Income which, as of the relevant date, has accrued but not yet been paid in respect of the securities (other than in the case of securities which are ex dividend) to the extent not included in such determination; and
- (c) in relation to any Eligible Loan at any time, the value of that Eligible Loan as determined by the Bank having regard to such pricing sources and methods as the Bank considers appropriate.

The Operating Procedures may also make further provisions in relation to valuation. The Value of any cash, securities or loan shall be stated in sterling and any amounts which would otherwise be expressed in another currency shall for this purpose be converted into sterling at the Spot Rate as determined by the Bank as applying at the relevant time.

2. In these Terms and Conditions any reference to:

- (a) securities being *equivalent to* other securities is to securities of the same issuer, part of the same issue and of an identical type, nominal value, description and amount as those other securities. If and to the extent that such securities consist of securities that are partly paid or have been converted, subdivided, consolidated, made the subject of a takeover, rights of pre-emption, rights to receive securities or a certificate which may at a future date be exchanged for securities, the expression shall include such securities or other assets to which the Bank or the Participant as the case may be, is entitled following the occurrence of the relevant event, and provided that the Participant or the Bank, as the case may be, has paid to the other Party all and any sums due in respect thereof. In the event that any securities have been redeemed, are partly paid, are the subject of a capitalisation issue or are subject to an event similar to any of the foregoing events described in this clause, the expression shall have the following meanings:
- (i) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
 - (ii) in the case of a call on partly paid securities, securities equivalent to the relevant partly paid securities, provided that the Participant shall have paid the Bank an amount of money equal to the sum due in respect of the call;
 - (iii) in the case of a capitalisation issue, securities equivalent to the relevant securities together with the securities allotted by way of bonus thereon;
 - (iv) in the case of any event similar to any of the foregoing events described in this clause, securities equivalent to the original securities together with or replaced by a sum of money or securities or other property equivalent to that received in respect of such securities resulting from such event;
- (b) a liquidator or administrator includes a bank liquidator and a bank administrator appointed under the Banking Act 2009 and an investment bank special administrator appointed under the Investment Bank Special Administration Regulations 2011, as the context may require;
- (c) an enactment or statutory provision or a Council Directive or Regulation or international convention or any other legislative provision is a reference to it as it may have been, or may from time to time be, amended, modified, replaced, extended, consolidated or re-enacted, and any subordinate legislation made or other thing done under the statutory provision, whether before or after the date of the Scheme Letter in respect of any Participant. For the avoidance of doubt, a reference to EU legislation is a reference to that legislation as in force in the United Kingdom;
- (d) the Documentation or any Covered Agreement is a reference to it as it may from time to time be amended, supplemented, novated or replaced; and

(e) time is to London time.