SME Initiative
Republic of Malta

UNCAPPED PORTFOLIO GUARANTEE AGREEMENT

BLUEPRINT

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DISCLAIMER

This document is a brief summary of the main provisions of the standard SME Initiative Guarantee Agreement relating to transactions in Malta and does not include the detail of many of the provisions described therein. It is not meant to be an exhaustive enumeration and description of an Intermediary's obligations under an SME Initiative Guarantee Agreement. Therefore this document does not, and is not intended to, replace the need to thoroughly review the terms of the standard SME Initiative Guarantee Agreement (or for that matter, the final form of each SME Initiative Guarantee Agreement entered into with an Intermediary). This document is qualified in its entirety by the detailed terms and conditions contained in the relevant SME Initiative Guarantee Agreement.

This document does not constitute an offer of any nature whatsoever and does not create any binding obligations on the European Investment Fund to enter into a contract with any third party on the terms set out in this document or otherwise.

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I. INTRODUCTION

The purpose of this document is to provide some general information about the standard terms of the guarantee agreement (the "**Guarantee Agreement**") issued by the European Investment Fund (the "**EIF**") in the context of the implementation of the SME Initiative in the Republic of Malta.

Section II of this document contains background information on the purpose of the Guarantee Agreement, while Section III provides information on the key terms and conditions of the Guarantee Agreement.

II. BACKGROUND

The EIB, the EIF and the Commission set-up a joint initiative (the "**SME Initiative**") as an anti-crisis measure with the purpose of supporting the impaired financing of European small and medium size enterprises, by expanding joint risk-sharing financial instruments to leverage private sector and capital markets investments in small and medium size enterprises. The SME Initiative contemplates the combination of different resources, blending European Structural and Investment Funds ("**ESIF**") with EU budget under the programme "Horizon 2020" (the "**EU Contribution**"), EIB resources and the ultimate guaranteeing capacity of the EIF. This combination entails pooling the different financial contributions in financial instruments set up at Union level under Article 39(2) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013.

The SME Initiative is to be implemented in Malta by means of an uncapped portfolio guarantee instrument (the "**SME Initiative Guarantee Facility**") intended to cover part of the portfolio credit risk of newly originated SME loans, leases or guarantees granted to Maltese small and medium size enterprises.

The primary objective of the SME Initiative Guarantee Facility is to incentivise banks and other intermediaries ("**Intermediaries**") to extend debt financing, including loans or finance leases, to small and medium size enterprises in Malta.

In addition, the debt financing which is originated thanks to the SME Initiative, shall be on more favourable terms than would otherwise apply to such debt financing. This is to be achieved by a reduction of the interest rate that the Intermediary charges to the SMEs under the relevant transactions, as further specified in the Guarantee Agreement.

III. THE GUARANTEE AGREEMENT

The terms of the SME Initiative Guarantee Facility are set out in a standard template Guarantee Agreement and divided into two parts:

- the **standard terms** (the "**Standard Terms**"), which contain the general provisions of the SME Initiative Guarantee Facility and which are common to all Intermediaries; and

- the **specific terms** set out in Schedule 1 of the Guarantee Agreement (the "**Specific Terms**"), which contain the terms applicable to the individual transaction with a specific Intermediary (e.g. Intermediary specific information and the particular terms of such transaction).

In broad terms, the Guarantee Agreement provides that the EIF will provide a guarantee (the "**Guarantee**") covering 75% of the losses incurred by the Intermediary in respect of a portfolio of eligible debt finance granted by such Intermediary to SMEs (the "**Portfolio**").

The following are the key terms applicable to each Guarantee Agreement:

1. Eligibility Criteria

Under the Guarantee Agreement, the transactions between an SME and the Intermediary (which are referred to in the Guarantee Agreement as "**SME Transactions**") must comply with certain eligibility criteria as follows:

a. the SME itself must satisfy each of the "SME Eligibility Criteria" set out in section A of Schedule 9 to the Guarantee Agreement (e.g. SME must be established and operating in Malta, SME must not be an undertaking in difficulty, etc.);

b. the SME Transaction, i.e. each loan/lease, must comply with the "SME Transaction Eligibility Criteria" set out in section B of Schedule 9 to the Guarantee Agreement (e.g. purpose of the loan, maximum loan amount, maximum and minimum maturity, transfer of financial benefit (see below), etc.); and

c. the Specific Terms contain "Additional Eligibility Criteria" which can take the form of (i) additional *ad* hoc SME Eligibility Criteria or SME Transaction Eligibility criteria (as described above); or (ii) "Portfolio Eligibility Criteria" which relate to the Portfolio of SME Transactions as a whole (e.g. limitations on rating, industry or obligor concentrations, etc.).

Certain eligibility criteria must be complied with at all times, whilst others must only be complied with at the moment of entering into the relevant SME Transaction, as specified in each case in the Guarantee Agreement.

One specific SME Transaction eligibility criterion to be mentioned here is the obligation for the Intermediary to pass on to the SMEs the financial benefit derived from the Guarantee. In particular, the Intermediary shall reduce the interest rate charged under each SME Transaction through a reduction of the risk spread on 75% of each SME loan, as further set-out in the Specific Terms.

2. Portfolio

The SME Transactions will be covered by the Guarantee upon their inclusion in the Portfolio in accordance with the following principles:

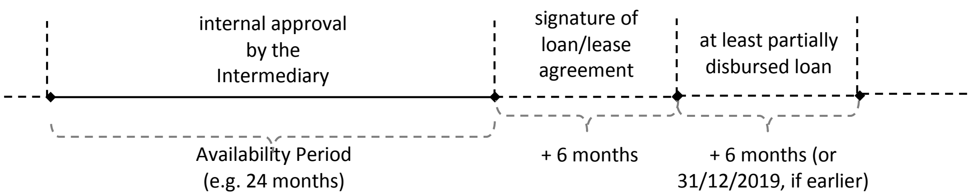
a. *Inclusion process*

In order to be included in the Portfolio, an SME Transaction must:

(i) comply with the eligibility criteria;

(ii) be internally approved by the Intermediary during the "availability period" (typically a period of 24 months starting from the first day of the month following the signature of the Guarantee Agreement) and entered into (i.e. signature of the loan/lease agreement with the relevant SME) by the date which is six months following the end of the availability period; and

(iii) have been at least partially disbursed by a certain date which is earlier of: (x) the date falling one year after the end of the availability period and (y) the 31 December 2019.



The Intermediary must include SME Transactions in the Portfolio by submitting to the EIF an inclusion notice by each "Report Date"[1] in respect of SME Transactions entered into during the two preceding calendar quarters. SME Transactions so included in the Portfolio are covered by the Guarantee as from the date on which they have been entered into.

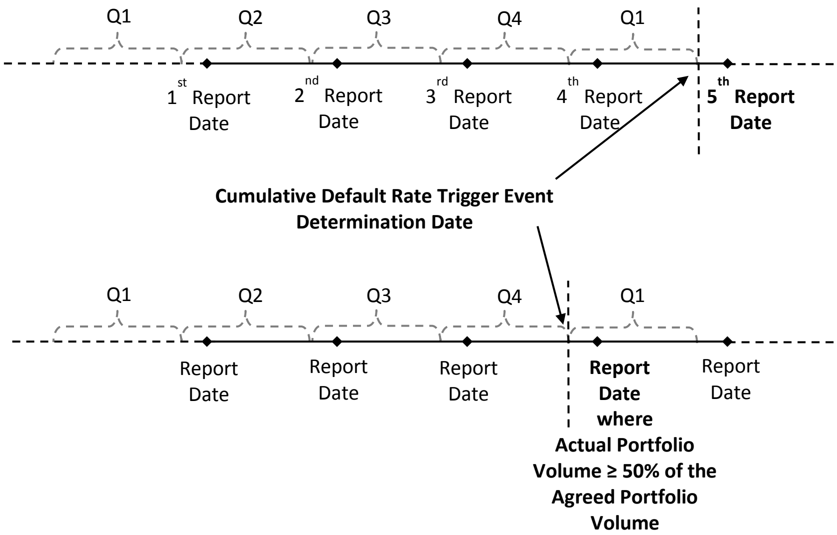
SME Transactions can be included in the Portfolio in accordance with the above procedure until a specific volume (the "Agreed Portfolio Volume") is reached. The EIF has the option (in it absolute discretion) to increase the Agreed Portfolio Volume to a higher amount by sending an extension notice to the Intermediary. In numerical/percentage terms, the Agreed Portfolio Volume will initially be an amount equal to 75% of a maximum volume agreed between the parties (the "Maximum Portfolio Volume") and may be increased up to 100% of the Maximum Portfolio Volume.

[1] "Report Date" means, with respect to the first three calendar quarters of each calendar year, thirty (30) calendar days following the last day of such calendar quarter and, with respect to the last calendar quarter of each calendar year, twenty (20) calendar days following the last day of such calendar quarter; provided that if any such calendar day is not a Business Day, the Report Date shall be on the next calendar day which is a Business Day.

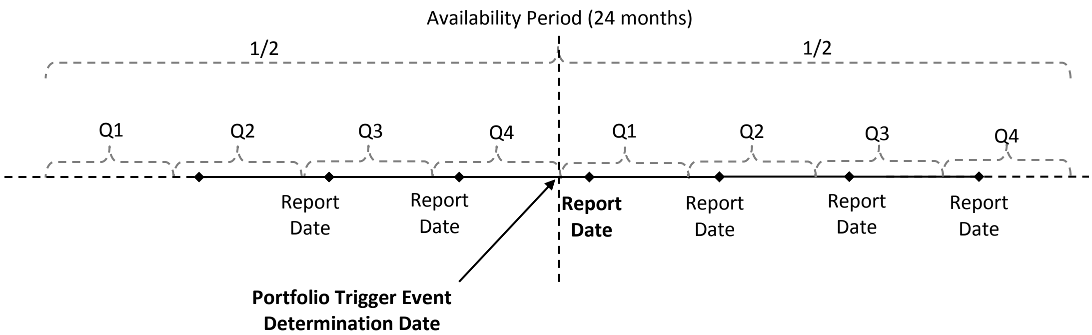
b. *Trigger Events*

Notwithstanding the above, the Availability Period will terminate before this date if a trigger event has occurred on a relevant reporting date and the EIF has delivered a trigger event notice to the Intermediary. A trigger event will occur if:

(i) the cumulative defaults on the SME Transactions in the Portfolio exceed a predetermined threshold on a specific date (the "Cumulative Default Rate Trigger Event Determination Date"), which is the earlier of the following 2 situations:



(ii) the Intermediary has not reached a predetermined volume of SME Transactions (based on commitments) on a specific date (the "Portfolio Trigger Event Determination Date") diagrammatically described as follows:



If such a trigger event occurs, the Intermediary needs to notify EIF thereof. Following such notification EIF can send to the Intermediary a notice informing it that the Availability Period shall early terminate on the date set out in such notice.

c. *Exclusion process*

Under certain circumstances SME Transactions shall or might be excluded from the Portfolio, and hence will no longer be covered by the Guarantee:

(i) If a SME Transaction included in the Portfolio does not comply or no longer complies with the eligibility criteria, i.e. becomes a "Non-Eligible SME Transaction".

If however a SME Transaction included in the Portfolio becomes a Non-Eligible SME Transaction as a result of an event or circumstance which is not within the control of the Intermediary (and before the Intermediary has delivered to EIF a Payment Demand (as further described below) in respect of such SME Transaction), then the Intermediary has the choice to either:

- accelerate the relevant SME Transaction which will in that case continue to be covered by the Guarantee, or

- have it excluded from the Portfolio.

Similarly, if this occurs after the Intermediary has delivered a Payment Demand to EIF, the relevant SME Transaction will remain covered but for the purpose of such Payment Demand only.

(ii) If any of the Portfolio Eligibility Criteria is not or no longer complied with.

Exclusion of an SME Transaction from the Portfolio will result in a reduction of the actual portfolio volume.

d. *Adjustment of the Portfolio volume*

In addition to the reduction of the actual portfolio volume further to an exclusion from the Portfolio, the Guarantee Agreement contains a mechanism whereby the actual portfolio volume will be adjusted in case nominal amounts of SME Transactions included in the Portfolio are only partially disbursed or not disbursed at all. This adjustment is made to ensure that the actual portfolio volume reflects the amounts ultimately disbursed under SME Transactions. This adjustment will be made at the latest 1 year after the end of the Availability Period (or 31/12/2019, if earlier).

e. *Replacement*

If the actual portfolio volume is reduced in accordance with paragraphs c. or d. above, then the Intermediary will be permitted to include further SME Transactions in the Portfolio.

Replacement SME Transactions must, inter alia, (i) comply with the eligibility criteria and the other relevant provisions of the Guarantee Agreement; and (ii) be entered into during a certain replacement period (this period will be different depending on whether the reduction of the actual portfolio volume was made pursuant to paragraph c. or d. above). Any such SME Transactions must be disbursed before 31/12/2019.

3. Target volumes and commitment fees

The Guarantee Agreement contains in the Specific Terms certain portfolio volumes that shall be reached by the Intermediary by a specific date (typically 1 year after the end of the Availability Period (or 31/12/2019, if earlier)). The volumes will be measured against the actual portfolio volume (as adjusted in accordance with the principles set out above).

a. *Minimum Leverage Volume*

The minimum leverage volume will be specified in the relevant Guarantee Agreement and failure by the Intermediary to meet such volumes will result in the obligation for the Intermediary to pay to EIF a leverage commitment fee equal to 0.5% of the amount of the relevant shortfall (as further set out in the Guarantee Agreement).

If the Availability Period is reduced in accordance with the terms of the Guarantee Agreement, the leverage commitment fee will be reduced proportionally.

b. *Horizon 2020 Target Volume*

The Guarantee Agreement imposes on the Intermediary the obligation to create a certain volume of SME Transactions which comply with certain criteria of the Horizon 2020 programme (the "**Horizon 2020 Criteria**") set out in Schedule 10 of the Guarantee Agreement.

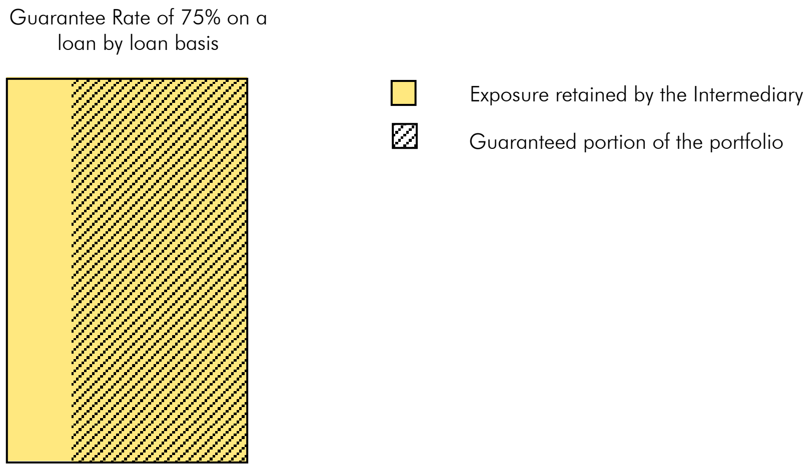
The SME Transactions complying with the Horizon 2020 Criteria form an integral of the Portfolio. The fact that any of these SME Transactions does not or ceases to comply with the Horizon 2020 Criteria does not trigger their exclusion from the Portfolio or affect their coverage by the Guarantee.

If the Intermediary fails to meet the Horizon 2020 target volume by including in the Portfolio a minimum of SME Transaction complying with the Horizon 2020 Criteria, it has to pay to EIF a Horizon 2020 commitment fee, in accordance with the formula set out in the Guarantee Agreement.

If at any time between the moment of determination of the above commitment fees and 31 December 2019, SME Transactions included in the calculations are excluded from the Portfolio and not replaced, the relevant commitment fees might have to be recalculated accordingly on 31 December 2019.

4. Guarantee Rate and extent of guarantee cover

The EIF will pay the Intermediary an amount equal to 75% of certain losses incurred by the Intermediary in connection with SME Transactions included in the portfolio ("**Defaulted Amounts**"), subject to the terms of the Guarantee Agreement.



The losses covered are any amount of principal or interest due, payable and outstanding under the relevant SME Transaction (the "**Defaulted Amounts**") following:

a. a <u>default</u> under the SME Transaction – which is a failure by the SME to meet a payment obligation for at least 90 calendar days, or the Intermediary considering (in accordance with its standard credit and collection policy) that the relevant SME is unlikely to meet its payment obligations;

b. an <u>acceleration</u> of the SME Transaction – which is the exercise by the Intermediary of its acceleration rights under the SME Transaction; or

c. a <u>restructuring</u> of the SME Transaction – which is an agreement by the Intermediary to reduce the interest and/or interest amount due by the relevant SME.

The guarantee does not cover late payment or default interest, capitalised interest, fees, costs or any other expenses, or interest which accrued after a period of 90 calendar days.

5. Payment demand

The Intermediary may claim payment for Defaulted Amounts under the Guarantee by sending a payment demand to the EIF in the form set out in the Guarantee Agreement.

A Payment Demand can be sent any time after the occurrence of the Defaulted Amount (until the termination of the Guarantee Agreement), but the Defaulted Amounts must be reported to EIF (as further specified below) by no later than the third Report Date following the calendar quarter during which they occurred.

Only one payment demand may be made per quarter (during a period of (i) 30 calendar days following the end of each of the first 3 calendar quarters of a year; and (ii) 20 calendar days following the end of the last calendar quarter of a year). The EIF is required to pay any amounts claimed under a payment demand within 60 calendar days after the last day of such payment demand period.

6. Recoveries

The Intermediary shall be required to pay to the EIF 75% of all Recoveries. A "**Recovery**" means any amount, net of recovery and foreclosure costs, recovered or received by the Intermediary in relation to a Defaulted Amount in respect of which the EIF has paid amounts under the Guarantee Agreement, provided that a payment in respect of Defaulted Amounts made to the Intermediary under a guarantee given by a guarantee institution shall not be treated as a "Recovery" unless otherwise specified in the Specific Terms.

If the Intermediary receives a Recovery, it must send to the EIF a recovery notice within 30 calendar days of the end of the calendar quarter in which such Recovery is received and must pay any relevant amount to the EIF within three months of the end of such calendar quarter.

The Intermediary shall always use its best efforts to maximise Recoveries in accordance with its internal guidelines and procedures.

7. Clawback

In addition to Recoveries, the Intermediary shall be required to pay to EIF any amount that has been paid by EIF to an Intermediary in excess of the amount guaranteed, or any amount paid by the EIF in relation to an SME Transaction that has become an excluded SME Transaction.

8. Guarantee Fee

The Intermediary shall pay to the EIF a quarterly guarantee fee (the "**Guarantee Fee**"). For each calendar quarter, the Guarantee Fee will be calculated as the sum of the product for each SME transaction of:

- the guarantee fee percentage of 0.65% p.a.;
- the sum of outstanding principal amounts on each day that the SME Transaction is a performing transaction;
- the Guarantee Rate of 75%; and
- 1/360 (or as specified in the Specific Terms).

The Guarantee Fee amount will not be affected by any adjustment to the actual portfolio volume, except that if the Intermediary excludes a Non-Eligible SME Transaction from the Portfolio by no later than the second Report Date following the calendar quarter in which it has been included, the Intermediary can reclaim any excess of Guarantee Fee paid as a result of the inclusion of such Non-Eligible SME Transaction.

9. Events of default

The Guarantee Agreement contains certain standard events of default, including non-payment, breach of obligations, insolvency, unlawfulness and misrepresentation.

Occurrence of any of the events of default regarding one of the parties to the Guarantee Agreement entitles the other party, after due notification, to suspend its obligations thereunder. If such event of default is not remedied within a certain grace period (if any) or explicitly waived by the other party, the other party will be allowed to terminate the Guarantee Agreement immediately and accelerate payment.

10. Reporting

The Intermediary will be required every calendar quarter to send a report (in the form of a schedule to the Guarantee Agreement) to the EIF containing information about SME Transactions included in the Portfolio. With respect to the first three calendar quarters of each year, the report must be provided within 30 calendar days after the end of such calendar quarter. With respect to the last calendar quarter of each year, the report must be provided within 20 calendar days after the end of such calendar quarter. In addition, an Intermediary will be required to (i) supply information reasonably requested by the EIF to enable the EIF to comply with its own reporting obligations to the EU Commission, the EIB, the national authorities of Malta and otherwise; and (ii) upon request monthly volume information in the form of a schedule to the Guarantee Agreement.

11. Visibility and promotion

It is important that the SME Initiative Guarantee Facility is promoted and that SMEs are made aware of EU support. Therefore, the Intermediary is required to carry out information, marketing and publicity campaigns within Malta, including through its website, aimed at making the SME Initiative known in Malta.

The Intermediary must also ensure that, inter alia, any SME Transaction documentation contain the following wording: "*[SME Transaction] benefits from support from the European Union pursuant to the SME Initiative, with funding by the European Union under the ERDF and Horizon 2020 and by the European Investment Fund and the European Investment Bank*" and that it includes any logos set out in the Specific Terms.

The Intermediary will also identify successful examples of SME Transactions and assist the EIF on a reasonable basis in obtaining information on these.

12. Maintenance of records, monitoring and audit

To enable the monitoring, control and auditing of the correct use of the Guarantee and compliance with the provisions of the Guarantee Agreement, the Intermediary shall agree that each of the EIF, the agents of the EIF, the EIB, the European Commission, the agents of the European Commission (including the European Anti-Fraud Office), the Court of Auditors of the European Union, any other European Union institution or body which is entitled to verify the use of the Guarantee in the context of the SME Initiative

Guarantee Facility, any competent authority of the Republic of Malta and any other duly authorised body under applicable law which is entitled to carry out audit or control activities (collectively, the "**Relevant Parties**") shall have the right to carry out audits and controls and to request information in respect of this Agreement and its execution and implementation.

In addition, the Intermediary must allow each of the Relevant Parties to carry out monitoring visits and inspections at the Intermediary's premises in connection with the monitoring and audit rights set out above.

The Intermediary is required to maintain records relating to the Guarantee Agreement and certain other matters as of the signing date of the Guarantee Agreement until 31 December 2040, unless otherwise stated in the Specific Terms. The Intermediary must also, inter alia, retain documents demonstrating the financial benefit to the SME and records of different sources of EU assistance.

The Intermediary is required to ensure that the Relevant Parties have these same monitoring and audit rights in respect of SMEs receiving financing through the Intermediary. To this end, the Intermediary is required to ensure that each SME undertakes to maintain relevant records for the time period specified above. The Intermediary is required to insert in its agreements documenting SME Transactions a standard paragraph (or a translation thereof) stating that the Relevant Parties are entitled to carry out audits, controls, and inspections.

13. Credit policy

The Intermediary must comply with its credit policy, including when originating and monitoring covered SME Transactions and when consenting to amendments and waivers.

The Intermediary must not make any material amendments to its credit policy, without prior written consent of the EIF.

14. State aid

The Intermediary must ensure that the applicable rules regarding state aid are complied with and any information requested by the EIF or any national and EU body in order to verify compliance is promptly provided.

In particular, the Intermediary shall obtain from each SME a declaration about any other De Minimis aid received by the SME and calculate the gross grant equivalent (GGE) within the meaning of the De Minimis Regulation for each SME Transaction, in accordance with a specific formula set out in the Guarantee Agreement.

The Intermediary shall also ensure that the state aid benefit derived from the Guarantee is fully passed on to the SMEs.

15. Intermediary exposure

For the duration of the Guarantee Agreement, the Intermediary must (i) maintain an economic exposure of at least 20% of the outstanding principal amount of each SME Transaction included in the portfolio; and (ii) not enter into any credit support, guarantee or other transfer of risk arrangements with respect to such portion of each SME Transaction included in the portfolio (provided that any collateral, security or guarantee payable to the Intermediary that qualify as Recoveries, as described above, shall not be taken into account for this purpose).

16. Title, security and negative pledge

On the date on which the Intermediary sends a payment demand, the Intermediary must have good title to the relevant SME Transaction and such transaction must be free and clear of any security. Moreover, the Intermediary undertakes not to create security over the relevant SME Transaction after the date of a payment demand.

17. National employment database

The Intermediary shall seek the consent of each SME for the managing authority of Malta to access the relevant national employment database.

18. Transfer

Neither the Intermediary nor the EIF may assign or transfer any of their respective rights or obligations under the Guarantee Agreement without the prior written consent of the other party, except that the EIF may assign or transfer its rights or obligations to the EIB.

19. Governing law and jurisdiction

The Guarantee Agreement and any non-contractual obligations arising out of or in connection with it are governed by the laws of the England and English courts shall have exclusive jurisdiction for any dispute between the parties thereunder.

20. Service of process

The Intermediary must appoint an agent for service of process in England for the purpose of any proceedings to be brought before English courts in connection with the Guarantee Agreement.