

WARNING

Please note that the ThinCats Group is no longer accepting any new business for lending through the Platform, and will no longer be operating the secondary market facility of the Platform. The ThinCats Group will continue facilitating the repayment of capital and interest from Borrowers to Lenders until all funds have been repaid or recovery action has been completed.

Your capital is at risk and there is no guarantee that your investment will be repaid. Your investment is not covered by the Financial Services Compensation Scheme.

By using the thincats.com website you are agreeing to these terms and conditions (“the terms and conditions”)



Platform use and Lending Terms and Conditions

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ThinCats Platform use and Lending Terms and Conditions

1. Acceptance of the Terms and use of the Platform

- 1.1 Capitalised terms shall have the meanings given to them in the **Definitions** section set out at the end of these Terms.
- 1.2 These Terms outline the agreement between you and the ThinCats Group and (together with the terms of the Loan Documents in respect of which you have successfully bid for a Loan and the Supplemental Terms (if applicable)), shall form the basis on which you have previously agreed to lend money via the Platform to a Borrower. Any document published by a member of the ThinCats Group and that is referred to within these Terms shall also form part of these Terms and shall be deemed to be accepted and agreed to by you. Save with regards to the Loan Documents and the Supplemental Terms (if applicable), any irreconcilable inconsistency between any other document published by the ThinCats Group (including, but not limited to the User Guide), these Terms shall prevail. To the extent of any irreconcilable inconsistency between these Terms and the Loan Documents or any Supplemental Terms, the relevant Loan Documents or Supplemental Terms shall prevail. The Loan Documents will be available for inspection on written request of a Lender at the registered office of BLN.
- 1.3 For clarification, the Supplemental Terms only apply to a small number of Loans Underwritten by the ESO Companies and entered into prior to 27 September 2017 ("**ESO Underwritten Loans**"). The Supplemental Terms are set out in Appendix 1. Any Loans which the ESO Companies participated in following 27 September (whether as an Underwriter or otherwise) will have been as an Institutional Investor.
- 1.4 Your use of the Platform signifies that you have read, understood and agreed to these Terms.
- 1.5 To qualify for use of the Platform you must be a Member. For qualification for Member status see paragraph 8 (Qualifying for Membership).
- 1.6 The rules of interpretation applicable to these Terms are set out in the "Principles of Interpretation" at the end of this document.
- 1.7 Please refer to paragraph 36.11 (General) for information regarding amendments to these Terms from time to time.
- 1.8 Unless specifically stated in these Terms all paragraphs shall apply to both Secured Loans and Unsecured Loans.

2. Risk Warning

The following risk warnings shall apply to all Members who have made a Loan via the Platform. On becoming a Member and making a Loan you represented to us that you accepted these risk warnings and acknowledge that these risk warnings formed the basis of your investment.

- 2.1 *No advice:* You accept that no one in the ThinCats Group is responsible for providing, nor able to provide, you with investment or other advice or a recommendation of any kind whatsoever or give you an opinion on the appropriateness of the investment for your own individual circumstances. If you are a Lender, you will have made your own assessment of, and satisfied yourself regarding, the risks involved with making a Loan to a Borrower via the Platform and will have made your own investment decision. Our acceptance of an application by you for Membership does not infer any statement or opinion by the ThinCats Group as to the suitability or appropriateness for you of an investment in any Loan.
- 2.2 *No Financial Services Compensation Scheme coverage:* **A Loan made by a Member on the Platform is not covered or otherwise insured under the Financial Services Compensation Scheme.** You should be aware that a Borrower to whom you have made a Loan may not be able and/or willing to perform its interest payment and repayment of capital obligations under the Loan terms to you. You should also be aware that, although a Secured Loan will be secured against assets of the Borrower, the proceeds from the sale of the assets as part of an enforcement of Security may not be sufficient to fully cover the capital amount of your Secured Loan or payment of interest or any other amounts that may be due to you. In addition, enforcing on Security may also result in a delay in you receiving any recovery of your investment. Members should be aware that no Security is granted by a Borrower for Unsecured Loans and they will have no recourse to specific assets if the Borrower fails to repay. The ThinCats Group accepts no responsibility (whether as a guarantor or otherwise) for the Borrower's obligations under the Loan. You understand and accept that you may not receive your bargained for returns on time or at all and that you may even lose your investment in its entirety. **There is no guarantee that your investment will be repaid. Your capital is at risk and you may not receive your bargained for returns.** You should only have invested an amount that you were able to financially bear the risk of losing. The performance of your investment will depend largely on the ability and willingness of the Borrower to perform its obligations under the Loan and, in the case of Secured Loans only, on the value of any security and guarantees provided in support of the Borrower's obligations. The ThinCats Group makes no representations or assurances whatsoever as to the quality or likely success of an investment.

3. Legal and Regulatory information

- 3.1 The Platform features various roles and functions performed by the entities within the ThinCats Group as follows:
- 3.1.1. The Platform is owned by BLN (trading as ThinCats.com). BLN is authorised and regulated by the Financial Conduct Authority, and entered on the Financial Services Register with firm registration number 724062. The operation of the Platform and its functions are more particularly described in paragraph 4.5 (Certain features of the Platform).
 - 3.1.2. Lenders' Agent: ThinCats Loan Syndicates Limited or ThinCats Participations Limited as determined by reference to the relevant Loan Documents, whose role, functions and responsibilities are more particularly described in paragraphs 12.1 and 12.2 (Appointment of the Lenders' Agent, Facility Agent and Security Trustee).
 - 3.1.3. Facility Agent: ThinCats Loan Syndicates Limited or ThinCats Participations Limited as determined by reference to the relevant Loan Documents whose role, functions and responsibilities are more particularly described in paragraph 12.3 (Appointment of the Lenders' Agent, Facility Agent and Security Trustee).

3.1.4. Security Trustee: ThinCats Loan Syndicates Limited or ThinCats Participations Limited as determined by reference to the relevant Loan Documents performs certain functions as a security trustee in respect of Secured Loans only. Its role, functions and responsibilities are more particularly described in paragraph 12.4 (Appointment of the Lenders' Agent, Facility Agent and Security Trustee).

3.2 You should note that in relation to the ESO Underwritten Loans the Supplemental Terms set out in Appendix 1 may require that a different party performs all or some of the above functions.

4. Certain features of the Platform

4.1 *Profile of Borrowers:* The lending opportunities which have historically been made available on the Platform are in respect of a wide range of UK businesses. With Secured Loans only, the lending opportunities have been secured against the available assets of the Borrower.

4.2 *Syndicate lending:* The ThinCats peer to peer lending platform which has historically been used as an internet based "platform" to put together individual lenders (called a "syndicate"), each such individual lender contributing a Loan, which together comprise a larger Aggregate Loan to a single Borrower. Due to the number of individual Lenders customarily involved in making Loans to a Borrower, which form the Aggregate Loan, the Lenders' Agent, acts as agent for and on behalf of the individual Lenders in negotiating the final terms of and signing the Loan Documents on behalf of the Lenders.

4.3 *Security Trustee:* The Security Trustee is appointed for Secured Loans only to act as trustee for the individual Lenders and to hold the benefit of the Security provided by the Borrower on trust for the Lenders. In relation to Loans in which an Institutional Investor has participated as a Lender and the ESO Underwritten Loans, the Security Trustee may be obliged pursuant to paragraphs 11.7 or 11.8b below to act in accordance with the instructions of any Instructing Lender.

4.4 *Separate Loans:* When you made a Loan, it has been made directly to one Borrower and your obligations to make that Loan is separate from the obligations of any other Lender who participates in the Syndicate. Each Loan to the Borrower (and, in the case of Secured Loans only, the Security for such Loan) is independent of any other Loan to any other Borrower and none of the Loans are dependent or related to the other. Failure by a Lender to perform its obligations under the Loan Documents does not affect the obligations of any other party under the Loan Documents. No Lender is responsible for the obligations of any other Lender under the Loan Documents.

4.5 *The Platform:* The Platform performs a facilitative and administrative function. The roles of the Lenders' Agent, Facility Agent and Security Trustee (for Secured Loans only) are described throughout these Terms (including in paragraph 12 (Appointment of the Lenders' Agent, Facility Agent and Security Trustee)).

4.5.1. *Facilitation:* The Platform serves as a facilitator between borrowers and lenders. The Platform:

- facilitates the legal documentation for the Loan Documents and the collection of interest payments and capital repayments from the Borrower; and

- facilitates the allocation of the interest payments and capital repayments to the Lenders in accordance with their pro rata (or proportionate) share of the Aggregate Loan.

4.5.2. *Administrative function:* The Loan Agreement provides that the Borrower must pay the Lender a set interest rate and must repay all capital. Your share of any interest and capital will be transferred into the Client Money Account. You will be able to view the status of your Member Account online. More details of how the system works can be found on the Website and in these Terms.

4.6 *Loans in Default:* The Lenders' Agent is appointed by you and the other Lenders to make decisions regarding the Loan Documents. This appointment includes the power to agree amendments to the Loan Agreement with the Borrower without seeking the consent of or entering into consultation with you or the other Lenders. In particular, the Lenders' Agent may take such action in the event that the Borrower commits a Default under its Loan or in other circumstances where amendments to the Loan Documents may be advisable. Unless the Lenders' Agent so decides in its absolute discretion, you will not be entitled to vote on the matter or influence the enforcement process. With Secured Loans in Default, the Lenders' Agent will be empowered to provide instructions to the Security Trustee with regards to the enforcement of the Security. More detail on this matter is set out in paragraphs 12 (Appointment of the Lenders' Agent, Facility Agent and Security Trustee) and 15 (Recovering Loans in Default). In relation to Loans in which an Institutional Investor has participated as a Lender and the ESO Underwritten Loans, the Security Trustee or Lenders' Agent may be obliged pursuant to paragraphs 11.7 or 11.8b below to act in accordance with the instructions of any Instructing Lender.

4.7 *Discussion Forum:* There is a forum for more general discussions. Members are personally responsible for the messages they post on the discussion forum, Q&A Forum and other messaging systems and they are required to behave in a lawful, civil and respectful manner. No member of the ThinCats Group accepts responsibility for any messages posted. In particular, anyone posting libellous or defamatory statements will alone be responsible for them and, without limitation to other redress, we may prevent a Member from using the messaging system or end their Membership.

4.8 *Information Dashboard:* We will provide you with up-to-date information through the Website on the status of your Loans (including capital amounts outstanding and interest accrued, capital and interest received, the amount held in your Member Account and other such related information).

5. Capital repayments and Interest

5.1 The repayments of capital and interest payments due to you on each Loan can be viewed on the Platform. The Loan Agreement governs the payment of these amounts.

5.2 We undertake to you that we or our nominated collections agent and payment service provider from time to time shall:

- 5.2.1. receive repayments and/or payments from the Borrower in respect of capital and/or interest in respect of a Loan;
- 5.2.2. make repayments and/or payments to you of capital and/or interest received on your behalf in respect of a Loan from the Borrower.

- 5.3 We undertake to you that we shall take steps to procure the repayment and/or payment of all sums due to you in respect of a Loan and/or that we shall exercise or enforce rights under the Loan Documents on your behalf.
- 5.4 Subject to these Terms, all repayments of capital and payments of interest collected on your behalf will be paid to your Member Account and you may then request withdrawal of those funds.
- 5.5 Each Loan is for the period specified in the Loan Agreement applicable to it, but such period will be capable of being ended early if there is a Default. Capital will not become repayable until the date (or dates) specified for repayment in the Loan Agreement, but will be capable of being required to be repaid sooner if there is a Default.
- 5.6 If we or our collection agent receives a repayment or payment that is insufficient to discharge all the amounts then due and payable by the Borrower in respect of the Aggregate Loan, that payment shall be applied towards the obligations of the Borrower (or that security or guarantee provider) under the Loan Documents in the following order:
- 5.6.1. to meet any costs incurred or to be incurred in respect of any action relating to such partial payment by the Facility Agent or Security Trustee. Then, if there are sufficient remaining funds to distribute;
 - 5.6.2. each member of the Syndicate will receive (on a pro rata basis) the interest and then the capital they are owed. Then, if there are sufficient remaining funds to distribute;
 - 5.6.3. the remaining funds will be used to meet the payment of any fee due to BLN.

6. Client Money Account

Transfers to the Client Money Account: We no longer accept the transfer of funds into your Member account. All cleared funds can be viewed in the “My Account” section of the Platform.

- 6.1 *Withdrawals from the Client Money Account:* You may withdraw all or part of your uncommitted funds in the Client Money Account at any time by sending an electronic request via the Platform. Upon receiving that request we will instruct a transfer of the funds to your bank account. Requests for the return of funds can only be accepted using the secure Website. Funds can only be returned to the bank account linked to the Member Account, and such bank account can only be changed with the consent of all persons or entities named as the owner of the Member Account. Transfers will be made by BACS (which may take several days to process). For the avoidance of any doubt, where a Member Account is held in the name of the trustees of a pension scheme, funds will only be returned to the pension scheme’s bank account nominated from time to time by the trustees of the pension scheme in whose name the Member Account is held.
- 6.2 *Interest and repayments:* All repayments of capital and payments of interest made by a Borrower will be paid into the Client Money Account. Once paid into the Client Money Account, you may then request withdrawal of those funds.
- 6.3 *Client Money Account:* Any repayments of capital or payments of interest received in respect of a Loan will be held in the Client Money Account until those funds are either applied on your behalf towards a Loan, or they are withdrawn by you. Any sum held in the Client Money Account by us on your behalf may be subject to set-off by us in accordance with clause 26 (Our Rights of Set-off).

- 6.4 *Treatment of Client Money:* Funds in the Client Money Account will be treated as client money in accordance with FCA Client Money rules. Client money held for you will be subject to internal controls and accounting procedures in accordance with the FCA Client Money rules and will be segregated from the money belonging to the ThinCats Group.
- 6.5 In accordance with Rule 7.10.7B of the FCA Client Assets sourcebook, we have elected to hold monies held in relation to investors and prospective investors under non-P2P agreements (corporate bodies and partners in partnerships of four or more partners) in accordance with the FCA Client Money Rules with effect from 30 December 2016.
- 6.6 *No Interest:* No interest will be payable to you in respect of funds in the Client Money Account.
- 6.7 *Pooling:* Your money will be held with other Members money in a pooled account and you hereby consent to such pooling. Because client money will be held on a pooled basis, if Barclays Bank were to fail, your entitlement to your funds will be affected by any shortfall in the funds held in the Client Money Account.
- 6.8 *No Liability by the ThinCats Group:* No member of the ThinCats Group will be responsible for any acts, omissions or default of any bank with which your money is held and in the event of insolvency of Barclays Bank, we will not be liable for any shortfall unless we have failed to comply with any duty of care or obligation to which we are subject.

7. Fees

- 7.1 Any fees charged by BLN to Members and Borrowers will be set out and described in the “Fees” section of the Website. BLN may enter into arrangements with Institutional Investors to share any of the fees paid to it. Such arrangements shall at all times be in compliance with BLN's Conflict of Interest Policy
- 7.2 The fees charged by BLN to Institutional Investors may differ from those charged to other Members.
- 7.3 BLN reserves the right to change its fees and fee policies (though it will not do so with respect to Members with retrospective application).

8. Membership

As a Member you must satisfy all of the following requirements.

- 8.1 You must provide the evidence of identity required from time-to-time by the Platform to comply with anti-money laundering regulations and other requirements imposed by law. As an existing Member if the law requires us to obtain further information about you, you must, on our request, provide such information in a timely manner and if you fail to provide that information we may suspend your Membership until the matter is resolved. Failing satisfactory resolution, we may terminate your Membership.
- 8.2 You must inform us promptly of any changes to your personal information (e.g. postal address, email address, telephone number or tax status). You must also inform us and provide all information in accordance with paragraph 17 (Anti-Money Laundering Provisions and Lender Identification). If you are a company, they you must notify us within 30 days of undergoing a change of Control.

- 8.3 BLN will only accept instructions to transfer funds from the Client Money Account back to the bank account from which your funds were initially transferred.
- 8.4 Even if Members are able to satisfy all the requirements set out in this paragraph 8 the Platform may still withdraw Membership without giving a reason.

9. Representations and Warranties by Members

In accepting and dealing with you as a Member, the ThinCats Group will rely on the accuracy and truth of certain statements and promises made by you to us by way of legal representation and warranty. Therefore, you shall be deemed to have made the following representations and warranties to the ThinCats Group (and on which it relies) as a condition of and at the time of entering into the agreement to become a Member, every time you use the Platform or services offered by any member of the ThinCats Group:

- 9.1 If you are an individual, you are over the age of 18 years of age, have the capacity to enter into this legal agreement and are of sound mind.
- 9.2 If you have registered or accepted these Terms on behalf of a legal entity such as a company, trust, LLP or partnership, you are legally authorised to do so and you accept that we may request evidence of such legal entitlement (e.g. by way of a certified copy of any document which shows the valid and subsisting authorisation).
- 9.3 All information that you provide about yourself is accurate and true and you will promptly update us if any of the information you provide to us changes.
- 9.4 (Unless otherwise specifically agreed with us in advance), you hold a bank account in the UK in your own name and will only use this account to transfer money to the Client Money Account, and any repayment of capital or payment of interest will be transferred to this account.
- 9.5 You have carefully read the “Risk Warning” set out in paragraph 2 (Risk Warning) of these Terms and considered the risks involved with using the Platform and also the risks associated with peer to peer lending, including but not limited to, the possibility of losing the money you invest. **You understand that there is no guarantee that your investment will be repaid. Your capital is at risk and you may not receive your bargained for returns. Your investment is not covered by the Financial Services Compensation Scheme.** In particular, you have the necessary experience and knowledge to understand the risks involved in the transaction and providing a Loan (whether it is a Secured Loan or an Unsecured Loan and specifically that you understand the distinction between the two types of loans) or you have taken advice from an appropriately qualified professional to assist your understanding of the risks involved.
- 9.6 Historically, a Member has only been able to register as a Member once. This has not precluded a Member from holding more than one Member Account. In particular, a Member has been permitted to register in a personal capacity as well as other capacities (e.g. where you were seeking to register as a Member on behalf of a pension fund a joint account or otherwise). If a Member holds more than one Member Account (whether in a personal capacity or otherwise) a Member is not permitted to transfer funds or Loans between Member Accounts.
- 9.7 By accepting these Terms, using the Platform, you are not breaking any laws or regulations that are applicable to you nor is any company, trust or partnership upon whose instructions you are acting.

- 9.8 You have taken all reasonable precautions to ensure that any data you upload or otherwise submit to the Platform is free from viruses and anything else which may have a contaminating or destructive effect on any part of the Platform or any other technology.
- 9.9 You acknowledge and agree that you are responsible for all costs incurred by you in accessing the Platform.
- 9.10 You will not take, purport or threaten to take any action or commence any process against any Borrower in your own name or the name in which the Membership is held (including without limitation if the Borrower has committed a Default under the Loan). Unless the Lenders' Agent chooses in its sole discretion to seek the input from the Syndicate, decisions as regards any such action to be taken will be taken by the Lenders' Agent. This includes the right to make amendments to the Loan Documents with the agreement of the Borrower and without consulting with or obtaining consent from you or the other Lenders. Such amendments could include, without limitation, reducing the amount of capital that the Borrower is required to repay, reducing the interest rate payable by the Borrower, extending the maturity date for repayment of the capital amount of the Loan or, in the case of Secured Loans only, releasing security or guarantees. With Secured Loans, the Lenders' Agent will also instruct the Security Trustee (who shall be entitled to act as provided for in these Terms and the Loan Documents) with regards to matters relating to Security (including but not limited to enforcement of any Security granted in favour of the Lenders).
- 9.11 You acknowledge and agree that no member of the ThinCats Group shall have any obligation (at any time) to enter into any arrangements to buy or sell (or procure the purchase or sale of) all or any part of a Loan.
- 9.12 You acknowledge and agree that no member of the ThinCats Group shall have any obligation to guarantee a Borrower's obligation or to reimburse or indemnify you for any cost, loss or liability which you incur as a result of the failure of any Borrower to perform its obligations (including in respect of a Default) under a Loan.

10. Acknowledgment and acceptance of the risks associated with making a Loan via the Platform and in using the Platform

As a condition of your ongoing Membership, you make the following acknowledgments, agreements and confirmations to us, on which we rely:

- 10.1 You acknowledge and confirm that you have carefully read and understood these Terms (including the "Risk Warning" set out in paragraph 2) and have considered the risks involved in lending your money through the Platform and that your investment in any Loan is entirely at your own risk. **You acknowledge that there is no guarantee that your investment will be repaid. Your capital is at risk and you may not receive your bargained for returns. Your investment is not covered by the Financial Services Compensation Scheme.**
- 10.2 You accept that you risk losing any and all money (including your capital) that you invest by way of a Loan on the Platform. In circumstances where a Borrower defaults on his obligations (including but not limited to repaying capital and paying interest), none of the ThinCats Group shall have any liability to you whatsoever (including without limitation by way of guarantee) for any such loss.

- 10.3 You acknowledge that you have historically engaged in peer to peer lending and that at no time have you, as Lender, been lending money to the Platform or any member of the ThinCats Group. You are lending to the relevant Borrower.
- 10.4 **You understand that your capital is at risk and is not protected by the Financial Services Compensation Scheme (www.fscs.org.uk)** and as such if a Borrower to which you have lent money, fails to make repayments of capital or payments of interest thereon, you will accordingly lose some or all of your money invested.
- 10.5 You accept and understand that, with regards to Secured Loans only, where the Security Trustee holds Security on your behalf, reasonable efforts will be made by it (or by third parties on its behalf), on receiving relevant instructions from the Lenders' Agent, to recover any outstanding monies by enforcing on any Security where necessary and reasonably practicable. Neither the Lenders' Agent nor Security Trustee (in relation to Secured Loans only) can make any guarantee of successfully realising any or all value due to Lenders. The Security Trustee (in relation to Secured Loans only) will only be liable to use reasonable efforts to obtain the market value for the Security at the time of taking the enforcement action. Such action may be undertaken at a time when the relevant market is in a down-turn and values generally deflated. In any instance of enforcement, you are also aware that the recovery process may result in some delays in returning any monies due to you. In relation to Loans in which an Institutional Investor has participated as a Lender and the ESO Underwritten Loans, the Security Trustee or Lenders' Agent may be obliged pursuant to paragraphs 11.7 or 11.8b below to act in accordance with the instructions of any Instructing Lender.
- 10.6 You accept and understand that none of the ThinCats Group provides any investment or other advice or recommendation whatsoever. You have been responsible for your own investment decisions and obtaining your own independent expert advice before making any lending decisions. If you are uncertain whether a particular Loan is suitable to you, you should contact an independent financial adviser authorised and regulated by the FCA.
- 10.7 You agree that no member of the ThinCats Group is giving any undertaking, warranty or representation whatsoever as to the credit-worthiness or ability of a Borrower to pay or repay or otherwise perform its obligations under the Loan Documents or as to the value or sufficiency of any Security, and that no member of the ThinCats Group has any liability for the debts of the Borrower. You have been bidding and lending entirely at your own risk.
- 10.8 You accept and understand that our entire liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you arising as a result of or in connection with your Membership and in respect of any Loans shall be limited as provided in paragraph 24 (Our liability to you) and as otherwise set out in these Terms.
- 10.9 We will not be liable for any delay (or any related consequences) in crediting your Member Account with an amount received under the Loan Documents provided we or our agents have taken all reasonable steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used for that purpose.
- 10.10 The Information Pack that has been provided in the context of a lending opportunity has been based on, information provided by the Borrower and has been approved by the Borrower. Although the Platform has taken reasonable efforts to review each Information Pack prior to its publication, the Platform cannot vouch for its accuracy, the completeness of the information provided or otherwise, and has relied on the information provided to it by the Borrower and their professional advisors regarding the accuracy, fairness, truth, completeness and non-misleading character of the details contained in the Information Pack. Therefore, to the extent permitted by

law, none of the ThinCats Group accepts any responsibility and the ThinCats Group disclaims all liability for any information provided or omitted to be provided in the Information Pack.

- 10.11 Any other information on the Platform does not constitute advice, recommendation or an endorsement of any potential Borrower.
- 10.12 You agree that we are not responsible for content downloaded, uploaded or posted by Lenders or Borrowers on the Platform. Historically, we may have edited certain content downloaded or posted on the Platform in our discretion to clarify content or remove offensive or misleading material but we were not obliged to do so.
- 10.13 You acknowledge that content provided through the Platform is not intended for distribution to or use by any person or entity in any jurisdiction where such distribution or use would be contrary to applicable law or regulation. Although you are permitted to download and print content from the Platform for your own personal use it must not be copied or reproduced or used for any other reason.
- 10.14 We accept no responsibility or liability for your use of content on the Platform and such use is entirely at your own risk. Whilst we take reasonable precautions to prevent the existence of computer viruses or other malicious programs on the platform, we accept no liability for them if they do exist. It is your responsibility to use, update and maintain appropriate antivirus software on your computer.
- 10.15 Information transmitted via our systems will pass over public telecommunications networks. We accept no liability if communications sent via the Platform are intercepted by third parties or incorrectly delivered or not delivered.
- 10.16 The Platform contains links to websites. We accept no responsibility or liability for any material supplied by or contained on any third-party website which is linked from or to the platform, or any use of personal data by such third party.
- 10.17 You should not regard any Loan made by an Institutional Investor or the ESO Companies as a recommendation to you to provide a Loan or infer any warranty from us as to the credit quality of the Borrower or as to the value of its assets. Further you confirm and acknowledge that you have read and understood the Risk Warning Section of these Terms. Any Institutional Investor or the ESO Companies, who is a Lender may sell its entire position in a Loan at any time and shall be under no obligation to hold onto its investment for the duration of the Loan.

11. Syndicates with Institutional Investors/Underwriters

- 11.1 From time to time one or more Institutional Investors may have become Members of the Platform. Any such Institutional Investors may appoint ESF as their agent to operate their Membership on their behalf.
- 11.2 In some cases, Institutional Investors may have entered into an agreement with a potential Borrower to guarantee that an auction will succeed. In such circumstances, it will have done so by Underwriting the Loan on specific terms which may have included a fee payable by the Borrower. The advantage for the Borrower was that they could be sure that their Loan would be funded (subject to the Institutional Investors' underwriting conditions being met). For the avoidance of doubt Institutional Investors may also have taken part as a Lender in a Loan without Underwriting the Loan.

- 11.3 Whenever one or more Institutional Investors participated as an original Lender in a Loan as a Lender (whether as an Underwriter or otherwise) it will have been for not less than 51% of the Aggregate Loan.
- 11.4 You should not draw any inference from the fact that an Institutional Investor may or may not be a Lender to a Borrower or Underwrite a Loan. In particular, you should not regard any Loan made by an Institutional Investor as a recommendation by us, ESF or the Institutional Investor to you to provide a Loan or infer any warranty by us, ESF or the Institutional Investor as to the credit quality of the Borrower or as to the value of its assets.
- 11.5 Any Institutional Investor who is a Lender may sell its entire position in a Loan at any time and shall be under no obligation to hold onto its investment for the duration of the Loan.
- 11.6 In relation to any Loan made to a Borrower in which one or more Institutional Investor(s) participated in as the Lender(s) of not less than 51% of the Aggregate Loan (whether as an Underwriter or otherwise), ESF shall be deemed to have been irrevocably and unconditionally appointed as the Instructing Lender and will act in accordance with the instructions of the Institutional Lender(s).
- 11.7 The Instructing Lender shall have the following authority:
- 11.7.1. It shall at all times have the power and authority on behalf of all Lenders to instruct the Facility Agent, Lenders' Agent and/or Security Trustee as regards any actions to be taken in connection with a Default under a Loan of which it is aware. The circumstances in which the Instructing Lender may exercise its rights include where the Borrower has not made a repayment of interest or payment of capital (within any applicable grace periods), or if the Borrower is otherwise in Default or in other circumstances where the Instructing Lender deems it advisable for the protection of its investment in the Loan. If such a circumstance arises, the Instructing Lender may instruct the Facility Agent, Lenders' Agent or Security Trustee to agree amendments (on behalf of all of the Lenders) to the Loan Documents with the Borrower without consulting with or seeking consent from you or the other Lenders (unless it chooses to do so in its sole discretion and, if it does so, will provide voting instructions at the time). For example, the Instructing Lender may decide that, in the circumstances and given the possible alternatives (including insolvency of the Borrower and the value of the Security at the time) it is in the interests of all Lenders to reduce the interest rate payable by the Borrower, reduce the amount of capital to be repaid, or to extend the term of the Loan.
- 11.7.2. The Instructing Lender may instruct the Facility Agent, Lenders' Agent and/or Security Trustee to take or instruct the taking of such action as it considers in good faith as being appropriate in its sole discretion to protect the interests of the Lenders (including without limitation to amend the terms of the Loan Documents as mentioned in paragraph 11.7.1 above) and may instruct the Facility Agent, Lenders' Agent and/or Security Trustee to take action accordingly. Without limitation to the foregoing, the Instructing Lender has the right to give or withhold instructions to the Facility Agent, Lenders' Agent and/or Security Trustee without consulting with or seeking consent from you or the other Lenders (unless it chooses to do so in its sole discretion) in respect of matters such as the following:
- a. the commencement of any enforcement action or legal process against a Borrower if an Event of Default is outstanding;

- b. the enforcement or release of any Security;
- c. the issue of any waiver letter; and
- d. any restructuring of the Loan, Security or the Borrower (including amending the terms of the Loan Documents to facilitate a restructuring (which could include a reduction in the capital amount of the Loan or the interest rate payable or an extension to the due date for repayment of the capital amount)).

11.8 In relation to any ESO Underwritten Loan:

- a. the Supplemental Terms set out in Appendix 1 shall apply; and
- b. the relevant ESO Company shall be the Instructing Lender for the purposes of the provisions of clause 11.7 above.

11.9 For the avoidance of doubt any Loans which an ESO Company participated in following 27 September 2017 (whether as an Underwriter or otherwise) will be as an Institutional Investor and subject to the provisions of clauses 11.1 to 11.7 (inclusive).

12.10 Where an Instructing Lender has been appointed it shall not be liable for any act (or omission) whatsoever, if it acts, (or refrains from taking any action) in a manner which it considers (in its absolute discretion) to be in the best interests of the Lenders.

12.11 The Instructing Lender shall not be liable (including without limitation for negligence or any other category of liability what so ever) for any action or instruction provided by it under or in connection with any Loan Document, unless directly caused by its gross negligence, willful misconduct or fraud.

12. Appointment of the Lenders' Agent, Facility Agent and Security Trustee

12.1 *General:* Each Syndicate may involve several hundred Members and it is therefore not practical for each member of the Syndicate to sign their own individual Loan Document. It is also not practicable for each member of the Syndicate to make decisions, instruct, vote or otherwise influence in respect of the appropriate action to take if there is a Default by a Borrower. In addition, the specific members of a particular Syndicate may have changed from time to time because of sales on the Secondary Market. This makes it necessary for the members of a Syndicate to appoint the Security Trustee, for Secured Loans only, to hold the security on trust for the Syndicate members from time to time. Therefore, the Lenders' Agent and Security Trustee (for Secured Loans only) will act as your agent or trustee in respect of these matters. This clause 12 and the following clause 13 (Further provisions relating to Lenders' Agent, Facility Agent and Security Trustee) set out the detailed terms on which you agree to appoint the Lenders' Agent, the Facility Agent and the Security Trustee to act on your behalf.

12.2 *Lenders' Agent:* You irrevocably and unconditionally agree that the Lenders' Agent shall be appointed and authorised by you to act as your agent on your behalf in connection with any Loan (and each other Member will appoint the Lenders' Agent as its agent in respect of Loan granted by such Member in the same terms) to enter into negotiations and make agreements on your behalf with the Borrower relating to the specific terms of the Loan Documents and to sign the Loan Documents on your behalf as Lender (subject to the interest rate payable to you being at the rate specified in your winning bid).

12.2.1. The Lenders' Agent may take or instruct the taking of such actions it considers in good faith as being appropriate in its sole discretion to protect the interests of the Lenders. The circumstances in which the Lenders' Agent may exercise its rights include where the Borrower has not made a repayment of interest or payment of capital (within any applicable grace periods), or if the Borrower is otherwise in Default, or in other circumstances where the Lenders' Agent deems it advisable for the protection of the investment in the Loan. If such a circumstance arises, the Lenders' Agent may agree amendments (on behalf of all of the Lenders) to the Loan Documents with the Borrower without consulting with, or seeking consent from, you or the other Lenders. For example, the Lenders' Agent may decide that, in the circumstances and given the possible alternatives (including insolvency of the Borrower and the value of the Security (for Secured Loans only) at the time), it is in the interests of all Lenders to reduce the interest rate payable by the Borrower, reduce the amount of capital to be repaid, or to extend the term of the Loan. You shall not have the right to vote, instruct or otherwise have any influence in respect of any such decision or course of action to be taken by the Lenders' Agent.

12.2.2. For Secured Loans, the Lenders' Agent shall at all times have the power and authority on behalf of all Lenders to instruct the Security Trustee as regards any actions to be taken in connection with a Default under a Loan of which it is aware in relation to the Security granted in favour of the Lenders.

12.2.3. The Lenders' Agent has the right to take any action, or in the case of Secured Loans, give or withhold instructions to the Security Trustee, without consulting with, or seeking consent from, you or the other Lenders (unless it chooses to do so in its sole discretion) in respect of, without limitation, matters such as:

- a. the commencement of any enforcement action or legal process against a Borrower if an Event of Default is outstanding;
- b. in the case of Secured Loans only, the enforcement or release of any Security;
- c. the issue of any waiver letter; and
- d. any restructuring of the Loan, Security (in the case of Secured Loans only) or the Borrower, including amending the terms of the Loan Documents to facilitate a restructuring, which could include a reduction in the capital amount of the Loan or the interest rate payable or extending the date on which capital is required to be repaid.

12.2.4. The Lenders' Agent shall act in accordance with any instructions given by an Instructing Lender pursuant to paragraphs 11.7 or 11.8b above.

12.2.5. Subject to clause 12.2.4, you shall not have the right to vote, instruct or otherwise have any influence in respect of any such decision or course of action to be taken by the Lenders' Agent pursuant to this clause 12.2.

12.3 *Facility Agent:* You agree that the Facility Agent shall be appointed and authorised by you to act as your agent on your behalf for and in connection with the following matters under or in respect of a Loan (and each other Member will appoint the Facility Agent as its agent in respect of Loan granted by such Member in the same terms):

- 12.3.1. to act or refrain from acting without consulting with or seeking consent from you or the other Lenders, including without limitation in respect of:
 - a. day to day management of the Loan including, without limitation, dealing with drawdown notices, certificates of compliance and the provision of financial information from the Borrower;
 - b. answering any questions raised by the Borrower;
 - c. administration relating to late payments due under the Loan Documents by the issuing of standard letters; and/or
- 12.3.2. to exercise the rights, powers, authorities and discretions given to the Facility Agent under or in connection with these Terms and Loan Documents (together with any other incidental rights, powers, authorities and discretions).
- 12.3.3. The Facility Agent shall act in accordance with any instructions given by an Instructing Lender pursuant to paragraphs 11.7 and 11.8b above.
- 12.3.4. Subject to clause 12.3.3, you shall not have the right to vote, instruct or otherwise have any influence in respect of any such decision or course of action to be taken by the Facility Agent pursuant to this clause 12.3.

12.4 *Security Trustee:* You hereby agree that the Security Trustee shall be appointed and authorised by you to act as your trustee and agent in connection with any assets charged or otherwise secured by a Borrower under any Security Documents for or in connection with a Secured Loan. Each other Lender involved in the Syndicate will appoint the Security Trustee as its trustee and agent in respect of a Secured Loan granted by such Lender in the same terms. The Security Trustee will have the following authority, powers and discretions:

- 12.4.1. to hold the benefit of any Security Document created for or in connection with a Secured Loan on trust for the Lenders involved in the related Syndicate;
- 12.4.2. to hold the benefit of any Security Document created for or in connection with a Secured Loan on trust for any Lenders involved in other Syndicates for whom the Security Trustee may hold such benefit on trust for pursuant to these Terms;
- 12.4.3. to exercise the rights, powers, authorities and discretions given to the Security Trustee under or in connection with these Terms and the Loan Documents together with any other incidental rights, powers, authorities and discretions, including to act on the instructions of the Lenders' Agent;
- 12.4.4. all those powers and discretions conferred upon trustees at law; and
- 12.4.5. the Security Trustee may perform from time to time (whether before or after enforcement under the terms of the Security) all obligations, rights and benefits given to the Security Trustee by any Loan Document and therefore Members should also read the terms of the Loan Agreement insofar as it pertains to the role of the Security Trustee for the full terms regarding the powers and responsibility of the Security Trustee.
- 12.4.6. The Security Trustee shall act in accordance with any instructions given by an Instructing Lender pursuant to paragraphs 11.7 or 11.8b above.

12.4.7. Subject to clause 12.4.6, you shall not have the right to vote, instruct or otherwise have any influence in respect of any such decision or course of action to be taken by the Security Trustee pursuant to this clause 12.4.

12.5 *Circumstances where the Security Trustee may hold the benefit of a Security Document for multiple Syndicates:*

12.5.1. You agree that the Security Trustee may at its discretion in the following circumstances hold the benefit of any Security Document on trust for more than one Syndicate.

12.5.2. If, in relation to a Secured Loan opportunity that was presented on the Platform ("**Loan Opportunity**"), it is proposed that the benefit of a Security Document will either:

- a. be held by the Security Trustee for the benefit of the Syndicate which takes part in that Loan Opportunity ("**Preceding Syndicate**") and for any Syndicate which takes part in the making of a later subsequent Secured Loan to the same Borrower ("**Subsequent Syndicate**"); or
- b. be held by the Security Trustee for the benefit of the Syndicate which takes part in that Loan Opportunity ("**Subsequent Syndicate**") and for any Syndicate which has taken part in the making of an earlier preceding Secured Loan to the same Borrower ("**Preceding Syndicate**"),

this will be stated in the Information Pack relating to the Loan Opportunity together with confirmation that any amounts recovered by the Security Trustee under the Security Document will be applied either:

- c. for the benefit of the Preceding Syndicate in priority to the Subsequent Syndicate; or
- d. on a pari passu basis between the Preceding Syndicate and the Subsequent Syndicate.

For the avoidance of any doubt, in the absence of any such proposal and the absence of an agreement which regulates the priority of Security Documents being entered into pursuant to clause 12.6, any amounts recovered on enforcement or otherwise of the Security created by any Security Document shall subject to clause 15 (Recovering Loans in Default) be applied in payment of sums due under the earliest dated Loan Agreement.

12.6 *Circumstances where the Security Trustee may enter into an agreement under which the priority of Security Documents held on trust for different Syndicates is regulated:*

12.6.1. You agree that the Security Trustee may at its discretion in the following circumstances enter into an agreement which regulates the priority of Security Documents held on trust for one or more Syndicates.

12.6.2. If, in relation to a Secured Loan opportunity that is presented on the Platform ("**Loan Opportunity**"), it is proposed that a Security Document will either:

- a. rank in priority to or pari passu with any Security Document entered into by the Borrower to secure any later subsequent Secured Loan by another Syndicate; or

- b. rank behind or pari passu with any Security Document entered into by the Borrower to secure any earlier preceding Secured Loan by another Syndicate,

this will be stated in the Information Pack relating to the Loan Opportunity and you agree that the Security Trustee shall have the power to enter into an agreement regulating, in accordance with such proposal, the priority of the Security Documents held on trust for different Syndicates.

13. Further provisions relating to Lenders' Agent, Facility Agent and Security Trustee

13.1 Duties

13.1.1. Each of the Lenders' Agent, Facility Agent and Security Trustee shall have only those duties, obligations and responsibilities expressly specified in these Terms and the Loan Documents to which it is expressed to be a party (and no others shall be implied).

13.2 No fiduciary duties

13.2.1. Nothing in any Loan Document constitutes

- a. the Lenders' Agent or Facility Agent as a trustee or fiduciary of any other person; or
- b. the Security Trustee as an agent, trustee or fiduciary of the Borrower or any other person providing security or a guarantee under or in connection with a Security Document.

13.2.2. None of the Lenders' Agent, Facility Agent or Security Trustee shall be bound to account to any other Finance Party for any sum or the profit element of any sum received by it for its own account.

13.3 Business with the Borrower

The Lenders' Agent, Facility Agent and Security Trustee may lend money to and generally engage in any kind of business with the Borrower or an Affiliate of the Borrower or any person otherwise connected with the Borrower.

13.4 Rights and discretions

13.4.1. Each of the Lenders' Agent, Facility Agent and Security Trustee may:

- a. rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- b. rely on a certificate from any person:
 - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (ii) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

- (iii) as sufficient evidence that that is the case and, in the case of paragraph (i) above, may assume the truth and accuracy of that certificate.
- 13.4.2. Each of the Lenders' Agent, Facility Agent and Security Trustee may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- 13.4.3. Without prejudice to the generality of paragraph 13.4.2 above or paragraph 13.4.4 below, each of the Lenders' Agent, Facility Agent and Security Trustee may at any time engage and pay for the services of any lawyers to act as independent counsel to the Lenders' Agent, Facility Agent and Security Trustee (as applicable), if the Lenders' Agent, Facility Agent and Security Trustee (as applicable), in its reasonable opinion deems this to be desirable.
- 13.4.4. Each of the Lenders' Agent, Facility Agent and Security Trustee may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Lenders' Agent, Facility Agent and Security Trustee or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- 13.4.5. Each of the Lenders' Agent, Facility Agent and Security Trustee may act in relation to the Loan Documents through its officers, employees and agents and shall not:
- a. be liable for any error of judgment made by any such person; or
 - b. be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part, of any such person,
- unless such error or such loss was directly caused by the gross negligence, willful, misconduct or fraud of the Lenders' Agent, Facility Agent or Security Trustee (as applicable).
- 13.4.6. Unless a Loan Document expressly provides otherwise each of the Lenders' Agent, Facility Agent and Security Trustee may disclose to any other party any information it reasonably believes it has received as Lenders' Agent, Facility Agent and Security Trustee under the Loan Documents.
- 13.4.7. Notwithstanding any other provision of any Loan Document to the contrary, none of the Lenders' Agent, Facility Agent and Security Trustee is obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- 13.4.8. Notwithstanding any provision of any Loan Document to the contrary, neither the Lenders' Agent, Facility Agent and Security Trustee is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

13.5 Responsibility for documentation

None of the Lenders' Agent, Facility Agent and Security Trustee is responsible or liable for the adequacy, accuracy or completeness of any information supplied by the Lenders' Agent, Facility Agent, Security Trustee, Borrower, Sponsor or any other person in or in connection with the Information Pack, any Loan Document or the transactions contemplated in the Loan Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

13.6 Resignation of the Lenders' Agent, Facility Agent and Security Trustee

13.6.1. Each of the Lenders' Agent, Facility Agent or the Security Trustee may resign by giving 30 days' notice to the Lenders and the Borrower, in which case the Lenders' Agent may appoint one of its Affiliates as successor Lenders' Agent, Facility Agent or Security Trustee (as applicable) within a period of 15 days after notice of resignation was given.

13.6.2. The resignation notice of the Lenders' Agent, Facility Agent or Security Trustee (as applicable) shall only take effect upon:

- a. the appointment of a successor; and
- b. (in the case of the Security Trustee) the transfer of the relevant Security to that successor.

13.7 Reliance and engagement letters

You confirm that each of the Lenders' Agent, Facility Agent and Security Trustee has authority to accept on your behalf (and you ratify the acceptance on your behalf of any letters or reports already accepted by the Lenders' Agent, Facility Agent or Security Trustee) the terms of any reliance letter or engagement letters relating to any reports or letters provided by accountants, auditors or providers of due diligence reports in connection with the Loan Documents or the transactions contemplated in the Loan Documents and to bind you in respect of those reports or letters and to sign such letters on your behalf and you further confirm that you accept the terms and qualifications set out in such letters.

13.8 Insurance by Lenders' Agent, Facility Agent and Security Trustee

13.8.1. The Lenders' Agent, Facility Agent and Security Trustee shall not be obliged:

- a. to insure any of the Borrower's (or other security provider's) assets;
- b. to require any other person to maintain any insurance; or
- c. to verify any obligation to arrange or maintain insurance contained in any Loan Document,

and the Lenders' Agent, Facility Agent and Security Trustee shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

13.8.2. Where the Lenders' Agent, Facility Agent or Security Trustee is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any

as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind.

13.9 Acceptance of title

The Lenders' Agent, Facility Agent and Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that the Borrower or other person may have to any of the assets which are, or are expressed to be, the subject of Security created by a Security Document and shall not be liable for, or bound to require the Borrower to remedy, any defect in its right or title.

13.10 Winding up of trust

If the Security Trustee determines that all of the liabilities and all other obligations secured by the Security Documents have been fully and finally discharged then the relevant trusts set out in these terms and any Security Document shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Security and the rights of the Security Trustee under each of the Security Documents.

13.11 Powers supplemental to Trustee Acts

The rights, powers, authorities and discretions given to the Security Trustee under or in connection with the Loan Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Trustee by law or regulation or otherwise.

13.12 Disapplication of Trustee Acts

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by these Terms or any Security Document. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of these Terms or any Security Document, the provisions of these Terms or any Security Document shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of these Terms or any Security Document shall constitute a restriction or exclusion for the purposes of that Act.

13.13 Permitted Deductions

13.13.1. The Security Trustee shall be entitled, in its discretion:

- a. to set aside by way of reserve amounts required to meet, and to make and pay, any deductions and withholdings (on account of taxes or otherwise) which it is or may be required by any applicable law to make from any distribution or payment made by it under these Terms or any Security Document; and
- b. to pay all Tax which may be assessed against it in respect of any of the assets which are, or are expressed to be, the subject of Security Document, or as a consequence of performing its duties, or by virtue of its capacity as Security Trustee under any of the Loan Documents or otherwise (other than in connection with its remuneration for performing its duties under these Terms or any Security Document).

14. Limitation of liability of Lenders' Agent, Facility Agent and Security Trustee

14.1 You agree as follows:

- 14.1.1. The Lenders' Agent, Facility Agent and Security Trustee (for Secured Loans only) may rely on any representation, notice or document believed by it to be genuine, correct and appropriately authorised and any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.
- 14.1.2. The Lenders' Agent, Facility Agent and Security Trustee (for Secured Loans only) may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts, providing it has the means to pay for such services.
- 14.1.3. The Lenders' Agent, Facility Agent and Security Trustee (for Secured Loans only) may act in relation to the Loan Documents through its personnel and agents and may enter into sub-contracting arrangements.
- 14.1.4. Each of the Lenders' Agent, Facility Agent and Security Trustee (for Secured Loans only) shall have power and authority and absolute discretion in the exercise of any right, power or authority vested in it as Lenders' Agent, Facility Agent and Security Trustee (for Secured Loans only) respectively in accordance with the terms of the Loan Documents in addition to the matters expressly referred to in these Terms.
- 14.1.5. None of the Lenders' Agent, the Facility Agent or Security Trustee (for Secured Loans only) will be liable for any act (or omission) whatsoever if it acts, (or refrains from taking any action) in a manner which it considers (in its absolute discretion) to be in the best interests of the Lenders.
- 14.1.6. None of the Lenders' Agent, Facility Agent or Security Trustee (for Secured Loans only) is responsible for the adequacy, accuracy and/or completeness of the Information Pack or any other information (whether oral or written) supplied to, or by, it in connection with any Loan Documents and is not responsible for the legality, validity, effectiveness, adequacy or enforceability of any Loan Document or any other agreement, arrangement or document entered into made or executed in anticipation of or in connection with any Loan Documents. This responsibility lies solely with the Borrower.
- 14.1.7. None of the Lenders' Agent, Facility Agent or Security Trustee (for Secured Loans only) will be liable (including without limitation for negligence or any other category of liability whatsoever) for any action taken by it under or in connection with any Loan Document, unless directly caused by its gross negligence, wilful misconduct or fraud.
- 14.1.8. Knowledge of a Default will not be imputed to the Lenders' Agent, Facility Agent or Security Trustee (for Secured Loans only); they will be deemed to have knowledge of a Default only if they have actual knowledge.
- 14.1.9. The Facility Agent's duties under the Loan Documents are solely administrative in nature.

15. Recovering Loans in Default

- 15.1 You acknowledge and confirm that when you provided a Loan through the Platform you were not lending to any member of the ThinCats Group or the Platform but rather, you were lending to a Borrower via a peer to peer lending platform. This means that only the Borrower (and not the Platform or any member of the ThinCats Group) is liable in respect of the Loan.
- 15.2 The process for Secured Loans shall be as follows:
- 15.2.1. If the Security Trustee takes steps to enforce any Security for a Loan, the proceeds of recovery resulting therefrom may be insufficient to discharge all obligations owed by the Borrower to Lenders in respect of that Loan. In such circumstances, Lenders will only be entitled to recover their proportionate share of such recoveries. In addition, it is possible that there may be other creditors of the Borrower (including Lenders in other Syndicates) that have claims that may be recovered in priority to the Lenders or other creditors whose claims against the Borrower rank equally with the Lenders claims and who will share in the Borrower's unsecured estate and there is no certainty that the distributions out of the estate will be sufficient to satisfy such creditors and the Lenders in full or at all. Therefore, **the existence of Security should not be considered a guarantee of repayment in the event of failure by the Borrower** in meeting its payments under the Loan.
- 15.2.2. You agree that the Security Trustee shall be entitled to be repaid and reimbursed from the proceeds of any recovery under the Security all reasonable costs incurred by or on behalf of the Security Trustee in enforcing the Security or in complying with any instructions from the Lenders' Agent or Facility Agent on your behalf in connection with any enforcement of Security. You will be responsible for payment of such costs out of the proceeds of any recovery to the extent that such costs cannot be recovered by the Security Trustee from the Borrower.
- 15.2.3. We will update you periodically as to the progress of efforts to recover a Loan in Default, by way of a syndicate update. These updates are strictly private and confidential (and the provisions of paragraph 18 (Confidentiality and Communications) of these Terms will apply to such updates) and will be made available to the members of the Syndicate only.
- 15.2.4. You will not threaten to take or purport to take any action or commence any process against any Borrower in your own name or in the name of any other Lender or Lenders. Such action will be decided by the Lenders' Agent and taken by the Security Trustee, who shall be entitled to act as provided for in these Terms and the Loan Documents.
- 15.2.5. Subject to any arrangements made pursuant to paragraphs:
- a. 12.5 (Circumstances where the Security Trustee may hold the benefit of a Security Document for multiple Syndicates:) and
 - b. 12.6 (Circumstances where the Security Trustee may enter into an agreement under which the priority of Security Documents held on trust for different Syndicates is regulated:),

all monies arising from the enforcement of any Security Documents (the “**Recovered Amount**”) will be applied in the following order:

- c. in reimbursing to the Facility Agent, Lenders’ Agent, Security Trustee (or any manager, receiver or administrator appointed by any of them or on their behalf) any professional costs and expenses incurred in respect of any enforcement action taken;
- d. then, if there are remaining funds to distribute, in paying to the Facility Agent (for the account of BLN) the outstanding balance of any Default Administration Fee payable by the Borrower under the Loan Agreement;
- e. then, if there are remaining funds to distribute (“**Remaining Funds**”) and:
 - (i) such Remaining Funds are sufficient to:
 - a. repay the outstanding Aggregate Loans in full (“**Unpaid Aggregate Loans**”);
 - b. pay all outstanding interest accrued on the Aggregate Loans in full (“**Unpaid Interest**”);
 - c. pay to the Facility Agent (for the account of BLN) the Recovery Administration Fee payable by the Borrower under the Loan Agreement in full;

in repaying/paying the same in full; or

- (ii) such Remaining Funds are insufficient to repay/pay the items listed in (i) (above) in full then they shall be applied (as and when received) as follows:

Remaining Funds	Percentage of Remaining Funds to be applied in part payment of Recovery Administration Fee	Percentage of Remaining Funds to be applied in part repayment of Unpaid Aggregate Loans and payment of Unpaid Interest
Remaining Funds up to 50% of the Unpaid Aggregate Loans, Unpaid Interest and Recovery Administration Fee	5%	95%
Remaining Funds between 50.01% and 75% of Unpaid Aggregate Loans, Unpaid Interest and Recovery Administration Fee	7.5%	92.5%
Remaining Funds between 75.01% and 99.9% of the Unpaid Aggregate Loans, Unpaid Interest and Recovery Administration Fee	10%	90%

- f. then, if there are sufficient remaining funds to distribute, they will be used to meet the payment of any other fees due to the Facility Agent, Lenders' Agent, Security Trustee (or any manager, receiver or administrator appointed by any of them or on their behalf) for the period of the Loan;
- g. then, if there are sufficient remaining funds to distribute, subject to the rights of any other party which take precedence over such a distribution, any remaining funds will be returned to the Borrower's estate for distribution in accordance with applicable law.

15.3 The process for Unsecured Loans shall be as follows:

- 15.3.1. The Lenders' Agent shall act as the Syndicate's agent when liaising with the Borrower or any professionals of the Borrower (including but not limited to any insolvency officer appointed) regarding a Default.
- 15.3.2. The Lenders' Agent shall be permitted to take all steps necessary to protect the interest of the Syndicate as a whole and not an individual Lender's interest, needs or requirements.
- 15.3.3. As described in paragraphs 4.6 and 12.2, the Lenders' Agent has the power to agree amendments to the Loan Agreement with the Borrower without seeking the consent of or entering into consultation with you or the other Lenders. In particular, the Lenders' Agent may take such action in the event that the Borrower commits a Default under its Loan or in other circumstances where amendments to the Loan Documents may be advisable.
- 15.3.4. Without prejudice to a Lender's right of enforcement, if the Borrower enters into an insolvency proceeding (either formal proceedings or an informal agreement with its creditors), each Lender irrevocably and unconditionally authorises the Lenders' Agent, on its behalf, to:
 - a. take any enforcement action against the Borrower as is required;
 - b. demand, sue, prove and give receipt for any or all of the Borrower's liabilities under the Unsecured Loan;
 - c. collect and receive all distributions on, or on account of, any or all of the Borrower's liabilities under the Unsecured Loan; and
 - d. file claims, take proceedings and do all other things the Lenders' Agent considers reasonably necessary to recover the Borrower's liabilities under the Unsecured Loan in favour of the Lenders.

15.4 For the avoidance of any doubt, subject to an Instructing Lenders' rights under clauses 11.7, 12.2.4, 12.3.3, and 12.4.6, you shall not have the right to vote, instruct or otherwise have any influence in respect of any such decision or course of action to be taken by any of the Facility Agent, Lenders' Agent or Security Trustee pursuant to this clause 15.

16. Secondary Market

16.1 The Secondary Market was closed with effect from 9 December 2019.

17. Anti-Money Laundering Provisions and Lender identification

- 17.1 We may be required to undertake additional identification and anti-money laundering checks as necessary on Members.
- 17.2 Except by special prior arrangement and with the approval of the Platform, Member's funds can only be returned to the bank account of the Member from which the Member's funds were sent.
- 17.3 You agree that we may share your personal information with our service providers and, for the purposes of verifying your identity and fraud prevention, with any entity involved with the collection or enforcement process associated with a Default.

18. Confidentiality and Communications

- 18.1 You acknowledge and agree that the Loan Documents, the Information Pack and any other information provided by or on behalf of a potential or actual Borrower (including the identity of a potential or actual Borrower) and/or a seller on the Secondary Market is **STRICTLY PRIVATE AND CONFIDENTIAL** and you may not disclose such information to anyone (subject as otherwise required by law or regulation). Without limitation, this means that such information may not be reported or discussed on any discussion forum or Q&A Forum on the Platform.
- 18.2 You acknowledge and agree that the Loan Documents are only made available to registered Members for the purposes of deciding whether to make an offer of a Loan. They are not intended for any other purpose and their contents may not be disclosed or copied to any third party or used for any other purpose without the Borrower's written authority.
- 18.3 We may use "cookies" and similar technologies to gather information about you and the way you use our Website in order to improve your experience of the Platform. We will never use that information to try to sell you a product or service and we will not disclose any information about you unless we are required to do so by law or as provided in these Terms.
- 18.4 We might use cookies to:
- a. learn about how our service is being used so that we can improve it,
 - b. enable the Platform to remember your preferences,
 - c. allow us to customise the Platform to match your usage,
 - d. provide you with relevant information about ThinCats services you may not be aware of.
- 18.5 For more information about cookies, please visit www.allaboutcookies.org if you do not wish us to use cookies when you access the Platform please adjust your internet browser settings to decline cookies. If you choose to decline cookies, it is possible that some features of the Platform may not work properly (and we cannot be held responsible for any consequences).
- 18.6 Any phone call that you make to us or we make to you may be recorded for quality management and/or regulatory compliance reasons.

19. Privacy Notice

- 19.1 BLN is registered under the Data Protection Act 1998. For the purposes of the DPA the data controller is BLN.
- 19.2 BLN will comply with the data protection and operational management rules imposed from time to time by the DPA, the FCA and the P2PFA.
- 19.3 Subject as otherwise provided in these Terms, BLN will keep Members personal data confidential and will not use them for any other purpose except as required by law or regulation (including in circumstances where a Member is making what in (in our sole discretion) are defamatory comments on the Q&A Forum).
- 19.4 In order to fulfil our regulatory and legal responsibilities in connection with money laundering we may gather information about you from other agencies (including for example credit reference agencies).
- 19.5 We may come under a legal duty to share your personal data with law enforcement and fraud protection agencies, credit reference bureaus or credit risk reduction service providers if we suspect you of acting fraudulently or otherwise contrary to law and you hereby consent to us doing so.
- 19.6 We may use the information held about you in the following ways:
- a. to fulfil our legal and regulatory obligations to verify your identity as a customer;
 - b. to carry out any obligations we may have arising from any contracts you have entered into as a result of using the Platform;
 - c. to allow us to provide you with the information and services you request from us;
 - d. to notify you about changes to our service;
 - e. to improve and ensure our website is presented in the most effective manner for you;
 - f. to allow you to participate in interactive features of our services when you choose to do so; and/or
 - g. as part of our efforts to keep our website safe and secure.
- 19.7 If you have made a Loan that qualifies for Social Investment Tax Relief or Community Investment Tax Relief then you consent to us disclosing your name and address to the relevant Borrower for the purposes of that Borrower including your name and address relevant returns submitted to HM Revenue & Customs, and issuing you with a compliance certificate in relation to any such Loan.
- 19.8 We may combine any information about you which we receive from other services with the information you give to us.
- 19.9 It may be necessary for us to share your information with relevant third parties (including but not limited to other companies in our group of companies) that assist us in providing our services to

you (including provision of software, database storage, communication services, identification check and credit search software) and will do so on a confidential basis.

- 19.10 We may contact you by telephone, email or mail for operational and regulatory purposes relating to your Member Account.
- 19.11 Any changes we may make to our privacy policy in the future will be posted on the Platform and where appropriate, notified to you by e-mail.

20. Website Security

- 20.1 Your use of the Website is at all times subject to our Website terms of use.
- 20.2 BLN has the right to suspend client account(s) and / or client withdrawals if we consider this course of action appropriate.
- 20.3 Although we will use software encryption to communicate with you through a secure website, and thereby take measures to protect your personal data, we cannot guarantee the security of your data transmitted to the Website. Therefore, you accept that any transmission is at your own risk. However, we use sophisticated website encryption technology to protect sensitive data that you submit to us online. We use this technology to reduce the risk of your data being intercepted by unauthorised persons during transmission. We also require that users of the Website pass through an authentication process which requires you to enter your unique username and password.
- 20.4 As a Member will have a unique Username and password and will keep this name for as long as you continue to be a Member unless there is a technical or security reason why it needs to be changed.
- 20.5 Members accept sole responsibility for all use of and for keeping secret any password that may have been given to them or chosen by them for use on the Website. To reduce the risk of fraudulent access to the Website you agree to keep your username password secure at all times, not to store them on a device or computer that would permit someone else to impersonate you and not to provide them to any third party or allow others to access your personal account. If you breach this provision you acknowledge and agree that you alone will be responsible for any actions performed on your account by a third party and you will be liable to us for or in respect of any loss, we may suffer or costs we may incur as a direct or indirect consequence.
- 20.6 You agree to notify us promptly if you know or suspect that your secure access to the Platform has been compromised in any way (e.g. if there is or you suspect there might be any unauthorised use of your password or username or any other security breach).
- 20.7 You agree to use the Platform only for the purposes set out in these Terms. You will not attempt to gain unauthorised access to the secure areas of the Website or Platform.
- 20.8 You agree to use the Platform only for lawful purposes and in a way which does not infringe the rights of anyone else or restrict or inhibit anyone else's use and enjoyment of the Platform.
- 20.9 You agree not to adapt or circumvent the systems in place in connection with the Platform, nor access our systems other than by using the credentials assigned to you and by following the instructions that we have provided for that type of connection.

- 20.10 We reserve the right not to act on your instructions where we suspect that the person logged into your My Account section is not you or we suspect illegal or fraudulent activity or unauthorised use.
- 20.11 You must not misuse our site by knowingly introducing viruses, trojan, worms, logic bombs or other material that is malicious or technologically harmful. You must not attempt to gain unauthorised access to our site, the server on which our site is stored or any server, computer or database connected to our site. You must not attack our site via a denial-of-service attack or a distributed denial-of service attack. In the event of such a breach, your right to use our site stops immediately.
- 20.12 We will endeavour to allow uninterrupted access to the Platform but access may be suspended for essential maintenance and system failures beyond our control.

21. Access to Information

The DPA gives you the right to access information held about you. Under the DPA, you may request that we send a copy of the information that we hold to you for a small processing fee (to meet our costs in providing you with the information as provided for under the DPA). Should you wish to make such a request please write us as using the following contact information:

FAO: Data Protection Officer, Business Loan Network Limited, 2-3 Charter Point Way, Ashby-De-La-Zouch, Leicestershire, England, LE65 1NF

22. Intellectual property rights

- 22.1 Subject to paragraph 22.3 (Intellectual property rights) below, as between you and us, we own all present and future copyright, registered and unregistered trade marks (including the goodwill thereon), design rights, unregistered designs, database rights and all other present and future intellectual property rights and rights in the nature of intellectual property rights existing in or in relation to the Platform.
- 22.2 If and to the extent that any such intellectual property rights vest in you by operation of law or otherwise, you agree to do any and all such acts and execute any and all such documents as we may reasonably request in order to assign such intellectual property rights (and associated goodwill) back to us.
- 22.3 You shall retain ownership of all copyright in data you upload or submit to the platform. You grant us a world-wide exclusive, royalty-free, perpetual, irrevocable licence to use, copy, distribute, publish and transmit such data in any manner.
- 22.4 We do not warrant or represent that the content of the Platform does not infringe the rights of any third party.

23. Your liability to us

- 23.1 You agree to indemnify and hold harmless each member of the ThinCats Group and their Connected Parties (as well as each of such person's employees, service providers, agents and sub-contractors), the Lenders and Borrowers, against any fraud or illegal activity that you conduct using the Platform or its services or the Website.

23.2 You agree to indemnify and hold harmless each member of the ThinCats Group and their Connected Parties (as well as their employees, service providers and other agents and sub-contractors), the Lenders and Borrowers (in each case other than by reason of their gross negligence or wilful misconduct):

- 23.2.1. against any losses or liabilities incurred as a result of any inaccurate information that you have knowingly provided to us;
- 23.2.2. against any losses or liabilities incurred as a result of allowing any other person to access your Member Account either with your permission or as a result of your failure to keep your username and password private;
- 23.2.3. against any losses or liabilities incurred as a result of any service that you have offered, whether with our permission or without out, to another third party using our Platform, services or Website;
- 23.2.4. against any risk to which you are exposed by way of moratorium, rescheduling, refinancing, suspension of payments or similar arrangement or circumstances affecting repayment under the Loan Documents; and
- 23.2.5. any damage or loss to which you are exposed under or in connection with a Borrower's obligations and liabilities under the Loan.

23.3 You agree to indemnify each member of the ThinCats Group and their Connected Parties against all liability, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest penalties and legal and other reasonable professional costs and expenses) suffered or incurred by any of them arising out of or in connection with:

- 23.3.1. any claim made against you for actual or alleged infringement of our intellectual property rights or any actual alleged infringement of a third party's intellectual property rights arising out of or in connection with your use of the Platform or the related services;
- 23.3.2. any claim made against you for actual or alleged infringement of our information technology or any actual alleged infringement of a third party's information technology arising out of or in connection with your use of the Platform or the related services,

nothing in this paragraph 23 shall restrict or limit any party's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this paragraph 23.

24. Our liability to you

24.1 No member of the ThinCats Group, their Connected Parties, nor any of such person's advisors, agents or service providers shall be liable to you for any loss, damage, cost or otherwise which you may suffer or incur as a result of being a member of Platform or using the services provided via the Platform including without limitation any of the following:

- 24.1.1. The occurrence of a Default;
- 24.1.2. Any Platform downtime or system outage;

- 24.1.3. Computer viruses, malware or errors received through the Platform provided that we have made reasonable efforts to protect the Members from such issues;
 - 24.1.4. For any actions or inactions made by or on behalf of any member of the ThinCats Group in connection with its rights under these Terms;
 - 24.1.5. Any adverse tax implications suffered by a Member as a result of using the Platform, information obtained from it or its services or granting a Loan;
 - 24.1.6. Unauthorised access of the Platform by a third party using your username and passwords as a result of your failure to keep such credentials private and safe or otherwise;
 - 24.1.7. Access to the Platform by a third party granted by you using your username and password;
 - 24.1.8. The purpose for which any Loan is used by a Borrower (as described in the Information Pack) resulting in you being in breach of any regulatory obligations or other obligations by which you are bound including but not limited to any such regulations or obligations relating to the administration of Small Self Administered Pension Schemes, Self Invested Personal Pension Plans or any other pension related regulatory obligations (“**Pension Regulations**”) and you acknowledge that it is your responsibility to ensure that any Loan that is made is in accordance with all such regulatory obligations
 - 24.1.9. The enforcement of any Security (as described in the Information Pack) and the consequences of such enforcement including but not limited to the Security Trustee taking possession of any asset that is the subject of the Security resulting in you being in breach of any Pension Regulations, other regulatory obligations or other obligations by which you are bound.
 - 24.1.10. A Loan being made to any person or entity whom you are prohibited by Pension Regulations, other regulatory obligations or other obligations from making a loan to.
- 24.2 Nothing in these Terms shall operate to limit or exclude any duty or liability we may have to you under FSMA or the FCA Rules, or any liability for fraud.

25. Force Majeure Event

No member of the ThinCats Group shall be in breach of these Terms nor liable for delay in performing or failure to perform any of its obligations under these Terms if such delay or failure results from a Force Majeure event.

26. Our Rights of Set-off

- 26.1 We have the right to immediately and without notice to you, to reduce or extinguish any liability owed by a member of the ThinCats Group to you against any liability or debt that is owed by you to any member of the ThinCats Group.
- 26.2 We have the right to immediately and without notice to you, to apply any credit balance which is at any time held by us on your behalf in the Client Money Account in or towards satisfaction of any sum then due and payable by you to us.

26.3 We are not obliged to exercise any of our rights under this clause, which shall be without prejudice and in addition to any rights under the general law.

26.4 In this clause “rights under the general law” means any rights of set-off, combination or consolidation of accounts, lien or similar right which we have under any applicable law.

27. Competition

27.1 Members must not attempt to bypass BLN or the Platform by using the information supplied on or by it for other purposes. This includes but is not limited to making an offer of any type of funding directly to the Borrower or passing confidential information to non-members (e.g. so that they can make their own direct offer of financing).

27.2 Members must keep the internal operating methods and procedures used by the Platform and/or BLN confidential and not use such information gained to assist any person seeking to establish a similar service.

27.3 You agree not to use the Platform or any information accessible on or obtained from it for the purpose of canvassing or soliciting any person or enticing any person away from the Platform.

28. Conflicts of Interest

28.1 This section relates to possible conflicts of interest for the ThinCats Group, the Borrower or their respective Connected Parties.

28.2 BLN is obliged to maintain and operate arrangements to prevent any conflict from giving rise to a material damage to the interests of Platform Members. We are committed to taking measures to recognise, manage and resolve conflicts of interest. We recognise that it is not possible to eliminate all sources of conflict of interest; however, safeguarding clients' welfare remains our primary objective. BLN has established and implemented an effective conflicts of interest policy. You may request a copy of our conflicts of interest policy at any time.

29. Transfer of Membership

You may not assign or transfer your Membership to a third person, nor any interest in these Terms, without our prior written consent (which we may grant or withhold in our sole discretion).

30. Termination of Membership

30.1 You may terminate your Membership of the Platform at any time with immediate effect. You may do so by sending a written notice to admin@thincats.com. If the Platform receives such notice it may seek additional information to confirm that the origin of the request is genuine. Once the Platform is satisfied of the authenticity of the request, it will arrange to transfer the balance of your funds held in the Client Money Account to your linked bank account.

30.2 We may terminate your membership of the Platform at any time and for any reason, including but not limited to the following circumstances:

- a. you breach any of these Terms or are in breach of any regulatory requirements relating to your activity as a Lender on the Platform;

- b. you breach any Loan Document;
- c. we suspect that you have committed fraud, been involved in money laundering or other criminal activities;
- d. you use the Platform or any information accessible on or obtained from it for the purpose of canvassing or soliciting any person or enticing any person away from the Platform; or
- e. you use the Platform in any of the following ways:
 - (i) in any way that causes, or is likely to cause, the Platform or access to it to be interrupted or damaged in any way;
 - (ii) for fraudulent purposes, or in connection with a criminal offence;
 - (iii) to send, use or reuse any material that is illegal, offensive, abusive, indecent, defamatory, obscene or menacing; or in breach of copyright, trademark, confidence, privacy or any other right; or is otherwise injurious to third parties; or objectionable; or which consists of or contains software viruses, political campaigning, commercial solicitation, chain letters, mass mailings or any spam”;
 - (iv) to cause annoyance, inconvenience or needless anxiety or in a way that restricts or inhibits anyone else’s use and enjoyment of the Platform; and/or
 - (v) for a purpose for which the Platform is not intended or other than as a marketplace for lending to UK businesses.

30.3 Termination does not affect a Member’s rights in respect of any outstanding Loans it may have.

31. Tax and HMRC Reporting

31.1 No member of the ThinCats Group provides any advice or guidance in relation to tax (or otherwise). If you are unsure as to the tax implications of lending via the Platform or if you are unclear as to your tax obligations, you should seek independent advice.

31.2 Currently, all interest paid by a Borrower in respect of a Loan granted by you will be credited to your Member Account without deduction for income tax. It is your responsibility to ensure that any tax liability which you incur (whether through interest earned on a Loan or otherwise) is paid in accordance with applicable law. No member of the ThinCats Group has or accepts liability for tax liabilities incurred by Lenders.

31.3 The Platform is required to notify HMRC of its Members identity and report on interest earned. HMRC may require us in the future to pass information to them about you and your Member Account or deduct income tax or other withholding taxes on interest or other income that we pay or pass on to you and we reserve the right to comply with HMRC’s requirements.

31.4 If the Platform comes under an obligation to deduct tax or when it reports on interest earned to the tax authorities, it will use the information you have provided and you are responsible for its accuracy and keeping it up to date. If you fail to update your information by the time that the Platform sends its report to HMRC you are responsible for any consequences.

32. Complaints Procedure

- 32.1 We treat a complaint made against the Platform or a service provided by the ThinCats Group very seriously.
- 32.2 If you want to make a complaint about the Platform or its services, you can email complaints@thincats.com with brief details of your complaint and your account reference. ThinCats will ordinarily acknowledge your complaint within one business day. Neither the Q&A Forum or discussion forum is the appropriate place for making a formal complaint, and any comments placed thereon will not be treated as complaints.
- 32.3 ThinCats will then investigate and send you an initial response. This should ordinarily take no longer than five business days.
- 32.4 Within four weeks after receiving a complaint we will send you either a final response which explains why we are not in a position to resolve the complaint and/or indicates when we will make further contact. Complaints that cannot be settled within eight weeks of the date of the complaint or in respect of which you are dissatisfied with the response given by us, may be referred to the Financial Ombudsman Service. If you meet the definition of eligible complainant, you have the right to make a complaint directly to the Financial Ombudsman Service. Information on how to complain can be found at www.financial-ombudsman.org.uk.
- 32.5 The ThinCats Group are not responsible for comments made by users on the various forums or in the discussion forum or Q&A Forum. We have the right to remove or redact any comments made by users using the forum facility.

33. Documentation for Loans

- 33.1 The Platform maintains a file of original documents relating to each Loan and prepares a comprehensive set of Loan Documents relating to the loan referred to as the Bible of Documents.
- 33.2 The Bible of Documents will be available on written request by a Lender for inspection at BLN's registered address on a strictly confidential basis free of charge.

34. Back-up Servicer Arrangements

- 34.1 If the Platform were to fail or BLN were to become insolvent, lose its FCA authorisation or otherwise cease to operate, we have made arrangements with a view to ensuring that your Loans will be unaffected by managing the orderly run-down of the Platform. Collections and distributions of all payments from Borrowers would continue in accordance with the terms of the Loan Documents. The responsibility for representing the Syndicate will remain with the Facility Agent or its nominee and we have entered into arrangements to transfer the servicing functions to a third-party back-up servicer, Baker Tilly Creditor Services LLP with whom we have entered into a back-up servicing arrangement. We reserve the right to use a back-up servicer prior to insolvency where such action is in the best interests of all of the Lenders.
- 34.2 If this happens:
- a. you will continue to receive distributions in respect of Loans to the Client Money Account;
 - b. the Platform may not be available for access by you; and

- c. you will receive quarterly statements of repayments and continue to receive annual statements (for tax purposes).

34.3 Our outsourced servicer would continue to collect a servicing or monitoring fee as prescribed from time to time on the Website. The arrangements in place provide for the service to be provided at no cost to Members but we reserve the right to change this if the current provisions prove inadequate or if the outsourced servicer charges an additional special situation fee. In such circumstances, a fee may be required to be borne by the Members as prescribed from time to time on the Website.

35. Death or loss of capacity

35.1 If a Member dies or loses capacity our policy entitled 'Death and loss of capacity' in force from time to time shall apply. A copy of this policy is available on our website.

36. General

36.1 Any notice or other document in respect of your Membership or application for Membership will be transmitted electronically via the Platform. Documents will not ordinarily be sent by post.

36.2 The email address and postal address that we use for you will be as provided by you in your Membership application.

36.3 Any notice or other document shall be deemed to have been received by the addressee on the day of dispatch if sent by email or other electronic means providing the sender can show satisfactory transmission, and two working days following the date of dispatch if the notice or other document is sent by registered post.

36.4 These Terms, the User Guide and the relevant Loan Documents set out the entire agreement between you and us with respect to your use of the Platform and related services, and supersede any and all representations, communications or prior agreements (whether in writing or orally) made by you or us.

36.5 A waiver or release by us of a breach of any provision of these Terms shall not be deemed a waiver or release of any subsequent or other breach of the same or any other provision. Failure or delay by us in exercising any rights under these Terms shall not prevent the exercise of that or any other right.

36.6 Except in respect of each member of the ThinCats Group, ESF, each Instructing Lender and ESO in cases where these Terms or the Supplemental Terms apply for the benefit of such party, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms. However, no consent of any member of the ThinCats Group (apart from BLN); an Instructing Lender, or the ESO Companies shall be required for any amendment or waiver to these Terms to be effective. This means that each above specified entity will be entitled to benefit from these Terms insofar as they are expressed to apply for its benefit (notwithstanding that such entity may not be a party to the Terms). However, except as stated in this clause the consent of any such entity will not be required to amend or waive any of the terms.

36.7 These Terms shall be governed by English law and, for our benefit, you submit to the exclusive jurisdiction of the English courts.

36.8 BLN shall be entitled to take any action necessary to fully comply with the law and any notices received from government agencies including but not limited to any request to provide

information under financial crime, fraud or anti-terrorism regulations. In all cases BLN, will strive to operate systems designed to minimise the chances of illegal activities.

- 36.9 If any of these Terms is found to be illegal, invalid or unenforceable by any court of competent jurisdiction, the remainder shall continue in full force and effect.
- 36.10 All disclaimers, indemnities and exclusions of liability in these Terms shall survive termination of the agreement between us for any reason.
- 36.11 BLN reserves the right to make any amendments to these Terms it thinks fit without the need to obtain the approval of Members and will communicate any such changes to Members as soon as reasonably practicable in the usual way as set out in these Terms but any variation shall not be applied retrospectively (unless required by law) without holding a poll of Members. By continuing to use the Platform or our services you agree to be bound by the terms of any updates and amendments implemented in accordance with this paragraph 36.11.
- 36.12 The Platform may exercise any of its rights under these Terms by itself or any of its Affiliates.

37. Contacting Us

Any correspondence should be addressed to admin@thincats.com.

38. Definitions of Terms

Term	Means
“Affiliate”	in respect of any person means any other person that is controlled by, or is under common control with, such person.
“Aggregate Loan”	each of the Loans that comprises the entirety of the amount lent to a Borrower as a result of a successful auction on the Platform.
“Alias”	the code word(s) chosen by a Member which may be used by the Member as a way of keeping its identity confidential during and after an auction.
“BLN”	Business Loan Network Limited (company number 07248014) whose registered office is at 2-3 Charter Point Way, Ashby-De-La-Zouch, Leicestershire, England, LE65 1NF (trading as “ThinCats”).
“Borrower”	a UK limited company or limited liability partnership to whom monies are lent via the Platform under the terms of the Loan Agreement.
“Control”	means as defined in the Corporation Tax Act 2010 and the expression “change of Control” shall be construed accordingly.
“Client Money Account”	a pooled client money bank account with Barclays Bank Plc held in the name of BLN.
“Connected Party”	in respect of any person means a director, shareholder or employee of such person.
“CVA”	means in respect of the Borrower the entry into of any voluntary arrangement or any composition or other arrangement for the benefit of its creditors generally pursuant to Part 1 of the Insolvency Act 1986.
“Default”	an Event of Default or Potential Event of Default as provided under the Loan Agreement.

<p>“Default Administration Fee”</p>	<p>A fee payable by a Borrower to the Facility Agent for the account of BLN pursuant to the Loan Agreement. Such fee to be payable by the Borrower from the date of any Default to the date that is the earlier of the Default is remedied; the Lenders’ Agent demands immediate repayment of each relevant Loan; the Borrower enters into an Insolvency Process or a Recovery Administration Fee becomes payable; and to be charged on a daily basis at the rate of 3% per annum on the outstanding balance of each Loan.</p>
<p>“DPA”</p>	<p>the Data Protection Act 1998.</p>
<p>“Electronic Messaging”</p>	<p>email, SMS Text messaging or any internal messaging service provided by the Platform.</p>
<p>“ESF”</p>	<p>ESF Capital Limited a company registered in England & Wales with company number 09707863.</p>
<p>“ESO Companies”</p>	<p>means:</p> <ul style="list-style-type: none"> - ESF Investco VI S.a.r.l. a société à responsabilité limitée (private limited liability company) duly incorporated and validly existing under the law of the Grand-Duchy of Luxembourg with registered office at 412F, route d’Esch, L-2086 Luxembourg, registered with Luxembourg Register of Commerce and Companies (R.C.S. Luxembourg) under number B203231; and - ESF SME Finance S.a.r.l. a société à responsabilité limitée (private limited liability company) duly incorporated and validly existing under the law of the Grand-Duchy of Luxembourg with registered office at 412F, route d’Esch, L-2086 Luxembourg, registered with Luxembourg Register of Commerce and Companies (R.C.S. Luxembourg) under number B209172, and “ESO Company” shall be construed accordingly.
<p>“Event of Default”</p>	<p>an “Event of Default” as set out in the Loan Agreement. (Typical events of default include non-payment of interest or principal, insolvency, misrepresentation or failure to perform any obligation under the Loan Documents. However, the list is often extensive and will be set out in the Loan Agreement.)</p>
<p>“Facility Agent”</p>	<p>as defined in paragraph 3.1.3 (Legal and Regulatory information) above.</p>
<p>“FCA”</p>	<p>The Financial Conduct Authority which regulates the activities of BLN as from 1st April 2014.</p>
<p>“FCA Client Money rules”</p>	<p>the FCA requirements for firms handling client money as set out in chapter 7 of the FCA’ s client assets sourcebook.</p>
<p>“FCA Rules”</p>	<p>means the rules, guidance, principles and codes comprised in the Handbook of Rules and Guidance issued by the FCA.</p>
<p>“Force Majeure”</p>	<p>any circumstances outside the ThinCats Group’ s control including but not limited to any interruptions or failures relating to internet service providers, internet signal, connections, electricity providers, configurations of the ThinCats Group’s lenders and borrowers’ computers, any acts of god, flood, drought, earthquake or other natural disaster, any collapse of buildings, fire, explosion or accident, any act of terrorism, civil war or commotion, riots or any law or any action taken by a government or public authority, including without limitation imposing failing to grant a necessary licence or consent.</p>
<p>“FSMA”</p>	<p>Financial Services and Markets Act 2000.</p>

“HMRC”	Her Majesty’s Revenue & Customs.
“Information Pack”	a document or documents describing the details of the lending opportunity and the potential Borrower, as approved by the Borrower.
“Insolvency Process”	means in respect of a Borrower: (a) an order is made by a competent court for the appointment of an administrator of that Borrower; or (b) an order is made by a competent court or any resolution is passed by that Borrower for its winding up or dissolution, or for the appointment of a liquidator of that Borrower.
“Institutional Investor”	an organisation whose business is to pool money to purchase securities, real property, and other investment assets or invest in loans.
“Instructing Lender”	An Instructing Lender appointed pursuant to paragraphs 11.6 or 11.8b.
“Lender”	a Member who has granted a Loan under a Loan Agreement.
“Lenders’ Agent”	as defined in paragraph 3.1.2 (Legal and Regulatory information) above
“LLP”	a limited liability partnership registered at Companies House in the UK and incorporated pursuant to the terms of the Limited Liability Partnerships Act 2000
“Loan Agreement”	the agreement between the Borrower, Lenders’ Agent (acting as agent for the Lenders), Facility Agent and the Security Trustee (in relation to Secured Loans only) setting out the terms of each of the individual Loans that comprise the Aggregate Loan to the Borrower.
“Loan Documents”	the Loan Agreement, the Security Documents (in relation to Secured Loans only) and any ancillary documents thereto executed at or about the time a Loan is granted to the Borrower.
“Loan”	any Secured Loan or Unsecured Loan made by a Member to a Borrower in accordance with these Terms or, where the context requires, an Aggregate Loan.
“Member”	an individual, firm, partnership, company, trust, investment club or other organisation or entity that has Membership.
“Membership”	access to the Platform with the ability to make bids in auctions for Loans.
“Member Account”	a designated account in which we record any funds received from you and any funds payable to you (such as interest and capital repayments received from the Borrower).
“Platform”	the peer to peer lending platform operated by BLN through its Website www.thincats.com .
“Potential Event of Default”	any event, act or condition which, with the giving of notice and/or lapse of time will or is likely to constitute an Event of Default.
“P2PFA”	the Peer to Peer Finance Association; the trade association established to promote standards and good practice within the loan-based crowdfunding market.
“Recovery Administration Fee”	A fee payable by a Borrower to the Facility Agent for the account of BLN pursuant to the Loan Agreement. Such fee to be payable by a Borrower that is the subject of an Event of Default and where the Lenders’ Agent demands immediate repayment of each Loan or the Borrower enters into an Insolvency

	Process; and to be a sum equal to 15% of the outstanding balance of each Loan.
“Secondary Market”	the facility previously provided on the Platform to allow the trading of Loan parts between Members.
“Secured Loan”	a loan made by a Member to a Borrower where the Borrower will grant Security over certain of its assets for the repayment of the loan if the Borrower fails to meet its repayment obligations.
“Security”	a mortgage, charge, pledge, lien, guarantee or other security interest securing any obligation of the Borrower or any other agreement or arrangement having similar effect.
“Security Documents”	each security document entered into by a Borrower and any security documents created by any person guaranteeing or creating security for the liabilities of a Borrower in relation to its obligations under the Loan Documents.
“Security Trustee”	as defined in paragraph 3.1.4 (Legal and Regulatory information) above.
“Supplemental Terms”	the Supplemental Terms set out in Appendix 1.
“Syndicate”	the group of Lenders that together provide individual Loans to a Borrower under the Loan Agreement (with each such Loan when taken together comprising an Aggregate Loan).
“Terms”	these Terms and Conditions (as amended in accordance with its terms by BLN from time to time).
“ThinCats”	the trading name of BLN and owner and operator of the Platform.
“ThinCats Loan Syndicates Limited”	a company Limited by guarantee (company number 07341131) whose registered office is at 2-3 Charter Point Way, Ashby-De-La-Zouch, Leicestershire, England, LE65 1NF.
“ThinCats Participations Limited”	a company Limited by guarantee (company number 09510880) whose registered office is at 2-3 Charter Point Way, Ashby-De-La-Zouch, Leicestershire, England, LE65 1NF.
“ThinCats Group”	the group of companies including and under the control of ESF Capital Limited (being a company registered in England and Wales with Company Number 09707863 and whose registered office address is at 2 nd Floor Newlands House, 40 Berners Street, London, W1T 3NA.
“UK”	means the United Kingdom of Great Britain and Northern Ireland.
“Underwrite”	<p>where a third party enters into an agreement with a prospective Borrower in advance of an auction to the effect that, if a Loan is not fully subscribed by Members at the end of the auction thereby leaving a shortfall of funds required by the Borrower in order to complete the Loan, such third party will use its own money to fully fund the unsubscribed portion of the Loan. In such capacity, the third party is an ‘Underwriter’.</p> <p>The terms ‘Underwritten’, ‘Underwriting Commitment’ and ‘Underwriting Services’ bear a similar meaning.</p>
“Underwriter”	means one or more Institutional Investors (acting by their agent ESF) who have agreed with a prospective Borrower in advance of an auction to the effect that, if a Loan is not fully subscribed by Members at the end of the auction thereby leaving a shortfall of funds required by the Borrower in order to complete the Loan, the Underwriter will fully fund the unsubscribed portion of the Loan.

“Unsecured Loan”	a loan made by a Member to a Borrower where the Borrower has not granted Security and the Member will have no recourse to specific assets if the Borrower fails to repay.
“Username”	a code name used by a Member to preserve their security and keep their identity confidential (if they wish) from other Members, Borrowers and Sponsors during and after the auction process.
“User Guide”	The ThinCats’ User Guide as amended from time to time and posted on the Platform.
“Website”	www.thincats.com and any other internet address used to conduct the business activities of BLN and to which the Members have access.

39. Principles of Interpretation

39.1 The following rules of interpretation shall apply to these Terms:

- 39.1.1. paragraph headings shall not affect the meaning of a paragraph;
- 39.1.2. a reference to a paragraph is to a paragraph of these Terms;
- 39.1.3. unless the context otherwise requires, a reference to a person shall include a reference to an individual, firm, company, corporation, partnership, unincorporated body of persons, government, state or agency of a state or any association, trust, joint venture or consortium (whether or not having separate legal personality) and that person’s personal representatives, successors, permitted assigns and permitted transferees;
- 39.1.4. unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular;
- 39.1.5. unless the context otherwise requires, a reference to one gender shall include a reference to the other gender;
- 39.1.6. references to “you” and “your” mean any person or other legal entity entering into an agreement with us subject to these Terms;
- 39.1.7. references to “we”, “us” and “our” means the members of the ThinCats Group. References to “you” and “your” mean a Member;
- 39.1.8. references to a statute or regulatory instrument are to the statute or regulatory instrument as amended or re-enacted from time to time; and
- 39.1.9. references to “these Terms” are to these Terms as may be amended from time to time in accordance with paragraph 36.11 (General).

Appendix 1 - Supplemental Terms Applying to Loans Underwritten by the ESO Companies

