

## **Declarations for Application Form in relation to the MDB Working Capital Scheme**

Reference is made to the application (the "Application") by (Insert name of Company) Ltd ("the Applicant) to BNF Bank plc. (the "Bank") for a credit facility of at least € \_\_\_\_\_ (the "Credit Facility").

Pursuant to the Application, *(Insert name of Company) Ltd* hereby declares and confirms that:

- i. the Applicant is duly established and operates within the territory of the Republic of Malta;
- ii. on the date signing this declaration, the Applicant is not in any of the following Exclusion Situations:
  - (i) it is unable to pay its debts on 31 December 2019 (the "relevant date"), bankrupt or being wound up,
  - (ii) was considered as an 'undertaking in difficulty' on 31 December 2019. 'Undertaking in difficulty' is within the meaning of the General Block Exemption Regulation or the Agricultural Block Exemption Regulation or the Fisheries Block Exemption Regulation
  - (iii) is at the relevant date having its affairs administered by the courts, or any liquidator, receiver, administrator or special controller,
  - (iv) has during the last five (5) years (calculated as from 31 December 2019) from the relevant date been the subject of any company reconstruction (by way of a compromise or arrangement with its creditors, or any class of them or its members or any class of them) or company recovery procedure, in terms of the Companies Act (Cap. 386 of the laws of Malta),
  - (v) has suspended business activities as at the relevant date,
  - (vi) is at the relevant date the subject of proceedings concerning any of the aforementioned matters,
  - (vii) is at the relevant date in a situation analogous to any of the situations mentioned in paragraphs (i) to (v) above, arising in any jurisdiction, including but not limited to, any action taken by the competent authorities in Malta,
  - (viii) during the last five (5) years (calculated as from 31 December 2019) from the relevant date it or persons having, or powers of representation, decision-making or control over it have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*, which would affect their ability to implement this Agreement (in case of the Bank) or the Final Beneficiary Transaction (in case of the Final Beneficiary).
- iii. no event has occurred which constitutes, or which with the giving of notice and/or the lapse of time and/or a relevant determination would constitute, a contravention of, or default under, any agreement or instrument by which the Applicant and any guarantor it is proposing to guarantee the performance of its obligations under the Credit Agreement (each a "Guarantor") or any of their assets are bound or affected which might either have a material adverse effect on the business, assets or condition of the Applicant or such Guarantor/s or materially and adversely affect its liability to observe or perform its obligations hereunder;
- iv. the Applicant and any Guarantor are not entitled to claim immunity from suit, execution, attachment, or other legal process;

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

For the purposes of this clause "Material Adverse Effect" shall mean a material adverse effect on or a material adverse change in:

- (i) The financial condition, assets, prospects, business, operations, property or condition (financial or otherwise) of the Applicant or any Guarantor; or
  - (ii) The ability of the Applicant and/or any Guarantor (as the case may be) to perform or comply with any of its obligations in connection with the Credit Facility;
- vi. neither the Applicant nor any Guarantor *has* taken any action nor have any other steps been taken or legal proceedings started or threatened against them for their winding up, dissolution or reorganisation or for the appointment of a receiver, administrator, trustee, or similar officer to the Applicant or the Guarantor or any or all of their assets and undertakings;
  - vii. the Applicant have disclosed fully in writing to the Bank all facts relating to it and any Guarantor, which it knows or should reasonably know and which are material for disclosure to the Bank in the context of the request for the Credit Facility;
  - viii. the Applicant is a micro, small or medium-sized enterprise as defined in Annex 1 of the Commission Regulation (EU) (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 26.6.2014, p. 1) as amended, restated, supplemented and/or substituted from time to time.
  - ix. the Applicant is not an "undertaking in difficulty" (within the meaning of Article 2 point 18 of the Commission Regulation (EU) No 651/2014 (Block Exemption Regulations) of the 17<sup>th</sup> June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union);
  - x. the requested amount does not exceed:
    - (i) double of the annual wage bill of the Applicant (including social charges as well as the cost of personnel working on the undertakings site but formally in the payroll of subcontractors) for 2019. In the case of undertaking created on or after 1 January 2019, the maximum requested amount must not exceed the estimated annual wage bill must not exceed the estimated annual wage bill for the first two years in operation; or
    - (ii) 25% of total turnover of the Applicant in 2019; or
    - (iii) With appropriate justification and based on self-certification by the Applicant of its liquidity needs, the amount of the loan may be increased to cover liquidity needs from the moment of granting for the coming 18 months for SMEs and for the coming 12 months for large enterprises.
  - xi. The Credit Facility is being requested to cover working capital requirements and shortfall in cashflow resulting from the adverse business conditions following the COVID-19 outbreak. Eligible costs include, but not limited to:
    - (i) Salary of employees, including social and health security payments;
    - (ii) Lease of establishment, including rental costs, energy and water bills, fuel etc.
    - (iii) Unpaid invoices due to a decrease in business revenues in respect of working capital and other similar commitments and in respect of investment expenditures provided that investment expenditures only qualify under the

- Scheme if they were contracted for prior to the approval of this Scheme by the Commission and are not covered by existing Bank loan facilities.
- (iv) Acquisition of material and stock for continuation of business
  - (v) Expenses directly related to contracts which were cancelled or postponed because of the present situation
  - (vi) Maintenance costs
- xii. the Applicant does not focus on one or more of the restricted sectors as listed hereunder (which determination shall be made by the Bank in its discretion based, without limitation, on the proportionate importance of such sector on revenues, turnover or client base of the Applicant);
- (i) Illegal Economic Activities
    - Any production, trade or other activity, which is illegal under the laws or regulations applicable to the Final Beneficiary ("Illegal Economic Activity").
    - Human cloning for reproduction purposes is considered an Illegal Economic Activity.
  - (ii) Production of and Trade in Weapons and Ammunition

The financing of the production of and trade in weapons and ammunition of any kind or military operations of any kind.
  - (iii) Pornography and prostitution
  - (iv) Nuclear Energy
  - (v) IT Sector Restrictions

Research, development or technical applications relating to electronic data programs or solutions, which:

    - aim specifically at supporting any activity included in the Restricted Sectors referred to under 1. to 7. (inclusive) above; or
    - are intended to enable to illegally:
      - (a) enter into electronic data networks; or
      - (b) download electronic data.
  - (vi) Life Science Sector Restrictions

When providing support to the financing of the research, development or technical applications relating to :

    - human cloning for research or therapeutic purposes; and
    - Genetically Modified Organisms ("GMOs"),
  - (vii) Activities Involving Live Animals

Activities involving live animals for experimental and scientific purposes insofar as compliance with the "Council of Europe's Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes" cannot be guaranteed.
  - (viii) Activities which give rise to significant negative environmental impacts
  - (ix) Activities constituting loans and advances between credit institutions
- xiii. the Applicant shall comply in all respects with all laws and regulations (whether national laws and regulations or laws and regulations of the European Union), including but not limited, to state aid and procurement rules, to which it may be subject and the breach of which may adversely impact the performance of any agreement governing the Credit Facility or any part thereof;

For the avoidance of doubt, the Applicant further declares that it acknowledges that the Bank reserves the right to ask for further information and to impose additional conditions (including but

not limited to additional representations and warranties) in any credit agreement it may offer to the Applicant in connection with the Credit Facility or before any agreement may be offered.

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For and on behalf of  
Insert Company Name  
Co. Reg. No: (Cxxxxx)