

Guarantee Agreement

between

The Secretary of State for Business and Trade
as Guarantor

and

[•]
as Lender

relating to

The Recovery Loan Scheme Phase 3

[This form of Agreement has not been executed by the Secretary of State for Business and Trade or any other person. The British Business Bank will contact lenders separately regarding accreditation under the Recovery Loan Scheme Phase 3.]

This document is for information purposes only and is not intended to create legal relations between the parties.]

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THIS AGREEMENT is dated _____ and made

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR BUSINESS AND TRADE**, (the “**Guarantor**”); and
- (2) **[●]**, (the “**Lender**”), registered in **[●]** as company number **[●]** and having its registered office at **[●]**.

BACKGROUND:

- (A) The Guarantor and the Lender have entered into this Agreement and any Related Agreement for the purpose of the Guarantor providing guarantees to the Lender in order to partially cover the credit risk of the Lender relating to Scheme Facilities (each guarantee in respect of a Scheme Facility, a “**Scheme Guarantee**”).
- (B) Subject to the terms of this Agreement and any Related Agreement, the Lender can make available such Scheme Facilities as it in its sole discretion decides (including, but not limited to, making available more than one Scheme Facility to a Borrower).

This Agreement uses a combination of definitive text and italicised signposting. In the event of any inconsistency between the definitive text and the signposting, the definitive text will take precedence.

1. **Definitions, interpretation and Effective Date of this Agreement**

1.1 **Definitions**

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

1.2 **Interpretation**

This Agreement will be construed in accordance with Part 2 (*Interpretation*) of Schedule 1 (*Definitions and interpretation*).

1.3 **Effective Date of this Agreement**

This Agreement comes into effect on the Effective Date.

1.4 **Form of this Agreement**

The terms on which a Scheme Facility can be offered by the Lender and certain provisions relating to a Scheme Facility will depend on the Scheme Facility Type. Each Scheme Facility Type Schedule sets out certain additional terms to this Agreement that apply for the relevant Scheme Facility Type.

Each Scheme Facility Type Schedule supplements, forms part of and is subject to this Agreement. If the Lender proposes to make available to an Applicant a Scheme Facility, this Agreement should be read in conjunction with the Scheme Facility Type Schedule relating to the relevant Scheme Facility Type only and each other Scheme Facility Type Schedule will be disapplied for the purposes of such Scheme Facility only.

1.5 Precedence of this Agreement, the Scheme Guidance and the Scheme Portal

The Lender is required to comply with the terms of this Agreement, the relevant sections of the Scheme Guidance and the Scheme Portal. In interpreting the terms of this Agreement, the Lender should refer to the Scheme Guidance.

Subject to Clause 1.2, in the event of any inconsistency between the terms of:

- (A) the Scheme Guidance, the Scheme Portal and this Agreement, this Agreement takes precedence; and
- (B) the Scheme Guidance and the Scheme Portal, the Scheme Guidance takes precedence.

2. Guarantee

2.1 Guarantee

The Guarantor guarantees to the Lender the due and punctual payment of the Applicable Guaranteed Percentage of the Outstanding Guaranteed Balance of each Scheme Facility as at the date of any Guaranteed Amount Payment Claim made in respect of such Scheme Facility, such amount, the “**Guaranteed Amount**” in respect of such Scheme Facility,

[REDACTED]

[REDACTED]

2.2 Conditions to Scheme Guarantee becoming effective

The Scheme Guarantee entered into in connection with a Scheme Facility will take effect from the Initial Drawdown Date in respect of that Scheme Facility, without the need for any further request, authorisation or consent from the Guarantor.

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. **Offer of a Scheme Facility**

A Lender may only offer Scheme Facilities of a Scheme Facility Type for which it is Accredited, and no Scheme Guarantee will apply to any facility offered by a Lender if the Lender is not Accredited for the Scheme Facility Type of such facility at the time of such offer.

4.1 **Conditions to making a Scheme Facility available to an Applicant**

(A) The Lender will only offer a Proposed Scheme Facility to an Applicant:

- (1) if the Lender is Accredited for the Scheme Facility Type of such Proposed Scheme Facility;

[REDACTED]

[REDACTED]

- (4) if the Applicant has commenced the Lender's Application Process on or before the Application Deadline Date;

- (5) if the Lender has determined whether or not the Applicant is an NI Applicant in accordance with Clause 4.2 (*NI Applicants*);

- (6) if the Proposed Scheme Facility is an Eligible Facility on the Offer Date of such Proposed Scheme Facility. A Proposed Scheme Facility shall be an “**Eligible Facility**” if it complies with each of:

- (a) the General Eligibility Criteria applicable to such Proposed Scheme Facility; and

The General Eligibility Criteria apply to all Proposed Scheme Facilities and are set out in Schedule 2 to this Agreement. The applicable General Eligibility Criteria depend on whether or not the Applicant is an NI Applicant.

- (b) the Type Specific Eligibility Criteria applicable to the relevant Proposed Scheme Facility,

The Type Specific Eligibility Criteria differ for each Scheme Facility Type. The Type Specific Eligibility Criteria relating to each Scheme Facility are set out in the Scheme Facility Type Schedule for the relevant Scheme Facility Type.

(together, the “**Eligibility Criteria**”).

■

[REDACTED]

[REDACTED]

- (8) the Offer Date of such Proposed Scheme Facility is a date falling on or prior to the Offer Deadline Date; and
- (9) if the Lender has complied with each Additional Condition to Offer set out in any Related Agreement (if any), to the extent such Additional Condition to Offer is required to be performed prior to the Lender offering a Scheme Facility to an Applicant.

Example wording that a Lender may use in connection with this Clause is set out in the Lender Manual.

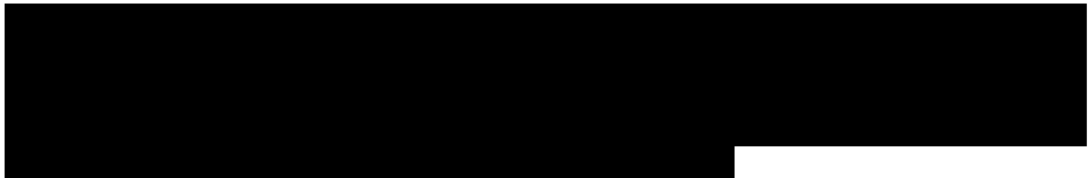
- (B) In making a Proposed Scheme Facility available to an Applicant, the Lender will:

- (1) not accept any security over any Principal Private Residence;
- (2) require the Initial Drawdown under such Proposed Scheme Facility to occur before the Initial Drawdown Deadline;
- (3) comply with Clause 5 (*Pricing of Scheme Facilities*) and [REDACTED] and [REDACTED];
- (4) ensure that if the amount of a Proposed Scheme Facility changes prior to the Scheme Facility being agreed between the Lender and the Borrower, then the

requirements of this Agreement are complied with based on the Proposed Scheme Facility Amount of such Proposed Scheme Facility being equal to such changed amount, and the Lender shall update the Proposed Scheme Facility Amount in the Scheme Portal accordingly.

4.2 NI Applicants

- (A) A Lender must record whether an Applicant is an NI Applicant.



4.3 Offer process in respect of new Scheme Facilities

- (A) The Lender may, in accordance with this Agreement and any Related Agreement, offer a Proposed Scheme Facility to the relevant Applicant on the terms of a Scheme Facility Letter entered into by the Lender and an Applicant for a Scheme Facility, provided that the requirements in Clause 4.1 (*Conditions to making a Scheme Facility available to an Applicant*) have been met and the Lender has:

- (1) requested and received in writing from the Applicant a confirmation of the aggregate amount of Relevant Support previously received by the Applicant (or if there has been none, that there has been none) and that the total value of the Relevant Support granted to the relevant Applicant and, if it is part of a Group, its Group, by the UK Government or any other state, supranational or public body over the previous three fiscal years, including that arising from the Proposed Scheme Facility, does not exceed the Relevant Threshold applicable to that Applicant;

- (2) provided, prior to or at the same time as such offer:
- (a) a Data Protection and Disclosure Declaration in respect of an Applicant and, if relevant, each Personal Guarantor in respect of such Applicant, in the form available on the Scheme Portal (substantially in the form set out in Schedule 3 (*Form of Data Protection and Disclosure Declaration*));
 - (b) a letter in respect of an Applicant (which may be in the form available on the Scheme Portal (substantially in the form set out in Schedule 11 (*Form of Subsidy Control Letter*)) making the Applicant aware that it will be receiving a Relevant Subsidy and the amount of the Relevant Subsidy; and
 - (c) a written confirmation of such offer which is capable of being accepted by the Applicant and which may be contained within the Scheme Facility Letter or may be a separate written confirmation,

in each case, as the same may be supplemented or amended from time to time by the Guarantor; and

- (3) obtained any other permissions or approvals from the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant necessary or desirable to enable each Guarantor Related Party to exercise its rights, or perform its obligations, under this Agreement and any Related Agreement (including, but not limited to, its rights under Clause 13.3 (*Monitoring and audit*), Clause 20 (*Data and data protection*) and Clause 21 (*Confidentiality and Disclosure*)).

A Lender may produce its own Subsidy Control Letter and data protection and disclosure declaration on its own systems, provided it replicates the Subsidy Control Letter and Data Protection and Disclosure Declaration available through the Scheme Portal. It may change references to the Guarantor, the Lender, the Borrower to match the language in the offer letter for such Scheme Facility and reflect any electronic or other signing requirements which are accepted as good practice by the Lender.

(B) The Scheme Facility Letter must (among other things):

- (1) set out the terms of the relevant Scheme Facility relating to the completion by the Applicant of such terms as the Lender considers appropriate given the nature of that Scheme Facility and the relevant Applicant;
- (2) provide that the Applicant will not be permitted to make any drawdown pursuant to the Scheme Facility Letter until the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant, returns the required Data Protection and Disclosure Declaration(s) to the Lender, each duly signed, dated and completed;
- (3) include any language that is required to be included in the Scheme Facility Letter pursuant to the applicable Scheme Facility Type Schedule (including, in respect of Proposed Scheme Facilities that are Term Loan Scheme Facilities, RCF Scheme Facilities, Invoice Finance Scheme Facilities and Asset Finance Scheme Facilities, the language set out in paragraph 5 of the relevant Scheme Facility Type Schedule); and

- (4) include such other information as may be notified to the Lender by the Guarantor (acting reasonably) from time to time on not less than 30 calendar days' notice. Any such notice shall not have retroactive effect.
- (C) If the Lender makes an offer of a Scheme Facility to an Applicant in accordance with Clause 4.3(A), it will send to the Applicant the following documents as soon as reasonably practicable thereafter:
 - (1) the Scheme Facility Letter;
 - (2) any other documents to be issued by the Lender in connection with that offer; and
 - (3) any other documents required to be issued in connection with such offer in accordance with any applicable law or regulation as may from time to time be notified in writing by the Guarantor to the Lender.
- (D) The Lender must ensure it obtains a duly signed, dated and completed Data Protection and Disclosure Declaration from the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant, as soon as reasonably practicable after sending the documents referred to in Clause 4.3(C) and in any event no later than the earlier of the date falling three months after the Offer Date and Initial Drawdown Date of the Scheme Facility.

5. **Pricing of Scheme Facilities**

5.1 **Economic benefit**

The Lender agrees that the full net economic benefit that the Scheme Guarantee provides to the Lender (including but not limited to any reduction in risk and capital requirements) shall be reflected in the pricing of the corresponding Scheme Facility provided to the Borrower (by way of a reduction in the pricing of such Scheme Facility).

5.2 **Pricing restrictions**

The Lender agrees that in respect of any Scheme Facility:

- (A) at the time that the pricing of the Scheme Facility is agreed between the Lender and the Borrower, and at any time when any aspect of the pricing of the Scheme Facility is amended, the Annual Effective Rate of the Scheme Facility shall not be greater than 14.99% (or such other percentage as the Guarantor may from time to time notify for such purpose to the Lender, in the case of any reduction to such percentage, on not less than 60 calendar days' notice, with any such reduced maximum percentage to only apply in respect of Scheme Facilities with an Offer Date falling after the expiry of such notice period);
- (B) without prejudice to Clause 5.2(A) and save where otherwise agreed with the Guarantor, if default interest or default fees have been charged to the Borrower, the Borrower Costs shall be no greater than 14.99% (or such other percentage as the Guarantor may from time to time notify for such purpose to the Lender, in the case of any reduction to such percentage, on not less than 60 calendar days' notice, with any such reduced maximum percentage to only apply in respect of Scheme Facilities with an Offer Date falling after the expiry of such notice period) of the average

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. **Scheme Lender Fee**

7.1 **Lender to pay**

The Lender agrees to pay to the Guarantor a fee (the “**Scheme Lender Fee**”) on each Scheme Lender Fee Payment Date equal to the aggregate of the RL Scheme Facility Lender Fees in respect of all Scheme Facilities accruing during the RL Scheme Lender Fee Calculation Period that ended immediately prior to such Scheme Lender Fee Payment Date.

7.2 **RL Scheme Facility Lender Fee**

The “**RL Scheme Facility Lender Fee**” in respect of a Scheme Facility and a RL Scheme Lender Fee Calculation Period, shall be:

- (A) if such RL Scheme Lender Fee Calculation Period begins prior to the Calculation Effective Date, the aggregate of the following for each monthly or part monthly period comprised in such RL Scheme Lender Fee Calculation Period and falling on or prior to the Calculation Effective Date:
- (1) the Relevant Balance of such Scheme Facility on the date designated by the Guarantor (as more particularly set out in the Scheme Guidance on or prior to the Calculation Effective Date); multiplied by
 - (2) the Applicable Margin; multiplied by
 - (3) the number of days in the relevant monthly period divided by 365; and
- (B) in respect of each other RL Scheme Lender Fee Calculation Period, an amount equal to the product of the following:
- (1) the Relevant Balance of such Scheme Facility on the RL Scheme Lender Fee Calculation Period End Date falling at the end of such RL Scheme Lender Fee Calculation Period;
 - (2) the Applicable Margin; and
 - (3) the number of days in the relevant RL Scheme Lender Fee Calculation Period divided by 365.

7.3 Definitions

For the purposes of this Clause 7, the following terms shall have the meanings set out below:

“Applicable Margin” means:

- (A) 1.00% in respect of Invoice Finance Scheme Facilities;
- (B) 1.00% in respect of Scheme Facilities to be provided by Specified Lenders; or
- (C) 1.50% in all other cases,

as may be modified in each case by the Guarantor on reasonable notice to the Lender, provided that if the Guarantor changes the Applicable Margin by notice then any such change (i) shall not have retroactive effect and (ii) shall apply only to Scheme Facilities in respect of which the Borrower commenced the Lender’s Application Process on or after the date on which the change specified in such notice is effective.

“Calculation Effective Date” means the date designated as such by the Guarantor by not less than 10 Business Days’ notice from the Guarantor to the Lender in writing in accordance with Clause 22 (*Notices*).

“Relevant Balance” means:

For RCF Scheme Facilities:	The RCF Scheme Facility Limit
For Invoice Finance Scheme Facilities:	The Maximum Guaranteed Amount

For Asset Finance Scheme Facilities:	The Outstanding Guaranteed Balance
For Term Loan Scheme Facilities:	The Outstanding Guaranteed Balance

“RL Scheme Lender Fee Calculation Period” means, in respect of a Scheme Facility, the period from and including one RL Scheme Lender Fee Calculation Period End Date to, but excluding, the next following RL Scheme Lender Fee Calculation Period End Date, provided that the first RL Scheme Lender Fee Calculation Period in respect of a Scheme Facility shall begin on and include the Initial Drawdown Date in respect of such Scheme Facility and end on, but exclude, the next following RL Scheme Lender Fee Calculation Period End Date, and the final RL Scheme Lender Fee Calculation Period shall end on the RL Scheme Lender Fee Calculation Period End Date immediately following the earlier of (A) the date on which the Outstanding Guaranteed Balance of the Scheme Facility has been irrevocably reduced to zero and cannot be increased further; or (B) if the Lender makes a Repayment Demand in respect of the relevant Scheme Facility, the date of the Repayment Demand in respect of such Scheme Facility.

“RL Scheme Lender Fee Calculation Period End Date” means:

- (A) in respect of any RL Scheme Lender Fee Calculation Period which begins prior to the Calculation Effective Date, the Calculation Effective Date; and
- (B) for each other RL Scheme Lender Fee Calculation Period, the date in each calendar month to be designated by the Guarantor in Scheme Guidance on or prior to the Calculation Effective Date,

in each case, as amended on not less than 30 days’ notice from the Guarantor to the Lender in writing in accordance with Clause 22 (*Notices*).

“Scheme Lender Fee Payment Date” means, in respect of each RL Scheme Lender Fee Calculation Period, fifteen (15) Business Days following the RL Scheme Lender Fee Calculation Period End Date falling at the end of such RL Scheme Lender Fee Calculation Period, or such other dates that may be notified on not less than 30 days’ notice by the Guarantor to the Lender in writing in accordance with Clause 22 (*Notices*).

“Specified Lenders” means an entity confirmed as such by the Guarantor in writing and accredited by the Department for Business and Trade for the purposes of the Community Investment Tax Relief scheme or the Social Investment Tax Relief scheme.

■ [REDACTED]

■ [REDACTED]

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13. **Reporting, monitoring, audit and maintenance of records**

13.1 **Administration**

(A) **Administration by the Lender of Scheme Facilities**

- (1) The Lender will establish and maintain effective internal processes for the entering into and administration of each Scheme Facility in accordance with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(B) Administration by the Guarantor of this Agreement

The Lender hereby acknowledges and agrees that:

- (1) the Guarantor may from time to time appoint third party service providers to assist in the operation and administration of this Agreement (each such person, a “**Service Provider**”), including the Scheme Lender Fee and the processing of Payment Claims;
- (2) each Service Provider shall be a Guarantor Related Party for the purposes of this Agreement;
- (3) subject to the provisions of Clause 20 (*Data and data protection*) and Clause 21 (*Confidentiality and disclosure*), the Guarantor shall be entitled to make available to the relevant Service Provider such information that is received or generated pursuant to this Agreement or otherwise in connection with the Scheme Guarantees that is necessary or desirable for the relevant Service Provider to operate and administer this Agreement on the Guarantor’s behalf;
- (4) each such Service Provider is a third party sub-contractor of the Guarantor and the Lender shall have no direct relationship with or recourse to such Service Provider under this Agreement or any Scheme Guarantee; and

- (5) the Guarantor may enter into appropriate service level agreements with third party providers in connection with the operation of the Scheme.

[REDACTED]

[REDACTED]

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13.3 Monitoring and audit

- (A) The Guarantor is not responsible for monitoring or verifying the use of any money advanced by the Lender to Borrowers or utilised from time to time by a Borrower, in each case, under the Scheme Facilities. Notwithstanding this, the Guarantor may, at any time, request information from the Lender to enable the Guarantor to verify:
- (1) whether a facility was an Eligible Facility as at its Offer Date and whether its inclusion in the Scheme is in compliance with the terms of this Agreement and any Related Agreement; and/or
 - (2) that the information included in the Scheme Portal with respect to a Scheme Facility is accurate in all material respects. The Lender will supply to the Guarantor any such information requested by the Guarantor.
- (B) To enable the monitoring, control and auditing of the correct use of the Scheme and compliance with this Agreement and each Related Agreement, the Lender agrees that any Guarantor Related Party has the right to carry out audits and controls and to request information about this Agreement, any Related Agreement and the Scheme Facilities. The Lender will permit monitoring visits and inspections of its business operations, books and records relating to this Agreement, any Related Agreement and the Scheme Facilities by any Guarantor Related Party, provided that it receives at least five (5) Business Days' notice of such visit or inspection. For these purposes, the Lender will permit access to its premises to each Guarantor Related Party during normal business hours.
- (C) The Lender will, and will procure that its officers, employees, agents and delegates [REDACTED] will, give the Guarantor Related Parties all such reasonable assistance (including, but not limited to, investigating (where appropriate) and responding to any enquiries raised by the Guarantor Related Party in connection with an audit/monitoring) and disclose to the Guarantor Related Parties such documents, records and information maintained by the Lender about the Borrowers and/or the Scheme Facilities which are relevant to the audit/control as needed by the Guarantor Related Parties to enable them to complete an audit to their satisfaction (except where the Lender is prohibited from such disclosure by law (including by a court order)).

- (D) The Lender will investigate (where appropriate) and respond to any enquires made by the Guarantor Related Parties about the information, documents, reports and records provided to the Guarantor Related Parties pursuant to this Clause or pursuant to Clause 13 (except where the Lender is prohibited from such disclosure by law (including by a court order)).
- (E) At such frequency as the Guarantor Related Parties may reasonably determine, the Lender agrees to ensure that one or more of its officers or employees (in each case holding a senior position in the Lender) is available to meet with a representative of the Guarantor Related Parties, each such meeting to be:
- (1) held at a location and at a date and time agreed as being mutually convenient to both the Lender and the Guarantor Related Party; and
 - (2) used as a forum for discussing any relevant matters relating to the operation of this Agreement and any Related Agreement including, but not limited to, any operational difficulties or issues arising and needing to be addressed.
- (F) Any information, documents, reports and records requested by any Guarantor Related Party pursuant to Clauses [REDACTED] 13.3 shall be provided by the Lender in whatever manner or form requested by such Guarantor Related Party. Each Guarantor Related Party has sole discretion as to the method it adopts to exercise its monitoring, control and auditing rights under this Clause 13.3 and the Lender may not refuse any request for information, monitoring visit, inspection or similar (each as contemplated in this Clause 13.3) on the basis that the Lender would prefer that the Guarantor exercises its monitoring, control and auditing rights using another method.
- (G) Where an audit or monitoring assessment has identified any remedial or management actions, the Lender will address such actions in a manner and within timeframes agreed with the Guarantor Related Party.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.4 Maintenance of records

- (A) The Lender undertakes to prepare, update and at all times maintain and make available for the Guarantor Related Parties, the following documentation:
- (1) information necessary to verify that each Scheme Facility complies with the relevant requirements set by this Agreement and any Related Agreement, [REDACTED]
 - (2) information necessary to verify the proper implementation of this Agreement and any Related Agreement into the Scheme Facility Letters;
 - (3) information about the payment and recovery processes of the Lender;
 - (4) information about the Lender's standards, policies and procedures for managing fraud to the extent these are relevant to this Agreement or the Scheme; and
 - (5) any other information reasonably required by any Guarantor Related Party, [REDACTED]
- (B) If any deficiency in the maintenance of records is identified by any Guarantor Related Party and the Lender is informed of that deficiency, the Lender undertakes promptly to (and in any event no later than two (2) months after being informed of such deficiency (or such shorter period communicated to it by the Guarantor Related Party)), comply with the instructions given by the Guarantor or the Guarantor Related Party and provide any additional information reasonably requested by the Guarantor Related Party.
- (C) The Lender will promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, on request supply certified copies to the Guarantor of, any authorisation required under applicable law or regulations to enable the Lender to perform its rights and obligations under this Agreement, any Related Agreement and any Scheme Facilities, to ensure this Agreement's and any Related Agreement's legality, validity, enforceability and admissibility in evidence in the Lender's jurisdiction of incorporation and carry out its business.

13.5 Nothing in this Clause 13 requires the Lender to disclose or permit access to any information breaching its obligations under Clause 21 (*Confidentiality and disclosure*) or any applicable law or regulation.

14. **Representations and warranties**

The Lender makes the following representations and warranties. These representations and warranties will be deemed to be repeated at all times except for the representations and warranties in [REDACTED] and Clause 14.12 (*Proceedings*) which will be deemed to be made on the Effective Date only.

14.1 Status

- (A) It is duly incorporated and validly existing under the law of its jurisdiction of incorporation.

- (B) It has the power to own its assets and carry on its business as it is being conducted.

14.2 Binding obligations

The obligations expressed to be assumed by it in this Agreement and any Related Agreement are legal, valid, binding and enforceable obligations, in accordance with their terms.

14.3 Non-conflict with other obligations

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

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

where, in the case of sub-Clauses 14.3(A)-(C) above, the same would affect its ability to perform its obligations under this Agreement or any Related Agreement.

14.4 Power and authority

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

14.5 Authorisations and regulatory standards

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

14.6 No default



- (B) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject which, in either case, might have a Material Adverse Effect.

■

[REDACTED]

14.7 No misleading information

- (A) All information (including any factual information) provided by it for the purposes of or pursuant to this Agreement and any Related Agreement (including, without limitation, any information provided before the Effective Date and any information provided to the Guarantor Related Parties in connection with the accreditation of the Lender) was true and accurate as at the date it was provided or as at the date (if any) at which it is stated.
- (B) Nothing has occurred or been omitted from the information referred to in paragraph (A) above and no information has been given or knowingly withheld that results in that information being untrue or misleading.

14.8 Governing law and enforcement

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

14.9 Good faith

It has entered into this Agreement and any Related Agreement in good faith.

14.10 Compliance with Eligibility Criteria

Each Scheme Facility complied with the relevant Eligibility Criteria as at the Offer Date of such Scheme Facility.

[REDACTED]

[REDACTED]

14.12 Proceedings

No litigation, arbitration or administrative or regulatory 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.

14.13 Government funding

The Lender's capital to fund the Scheme Facilities must be at least 30% from sources that are not controlled by Her Majesty's Government, any Devolved Administration, any local authority of the foregoing, the European Regional Development Fund (or any associated legacy fund) or any other public sector legacy fund.

14.14 Bribery and anti-corruption laws

It has at all times conducted its businesses in compliance with the Bribery Act 2010, the United States Foreign Corrupt Practices Act of 1977 (or other similar legislation in other jurisdictions) and all applicable anti-corruption laws, and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

15. General undertakings

15.1 Scheme Guidance and Scheme Portal

- (A) The Lender acknowledges that it has received copies of or is otherwise able to access all provided Scheme Guidance and agrees to take account of, and comply with, all relevant sections of such Scheme Guidance in complying with its obligations hereunder.
- (B) The Lender undertakes to comply with the requirements of the Scheme Portal, as may be amended and/or updated from time to time by the Guarantor, provided that it receives reasonable prior notice thereof.

15.2 Visibility and promotion

- (A) The Lender will comply with the Visibility and Promotion Guidelines at all times during the term of this Agreement.
- (B) The Lender will use reasonable endeavours to ensure that appropriate and adequate information and training regarding the availability and the operation of the Scheme will be communicated and provided to those offices and branches in the United Kingdom which the Lender has designated as being involved or responsible for the implementation of the Scheme and those of its employees and officers who, on a day to day basis, are the principal points of contact with potential Applicants with a view to ensuring that:
 - (1) there is sufficient awareness of the availability and operation of the Scheme in those employees and officers; and
 - (2) the Scheme is available on a consistent geographical basis, taking into account the extent of the Lender's operations, throughout the United Kingdom.
- (C) The Lender (and its officers and employees) will not represent in any way that the provision by the Guarantor of a Scheme Guarantee implies any endorsement or warranty of the Lender from the Guarantor or the Government of the United Kingdom and will ensure that any material utilised by it in respect of the Scheme includes a clear provision to that effect.

15.3 Other Government Schemes

The Lender may not fund any Scheme Facility using:

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

in the case of Clause 15.3(B), without the consent of the Guarantor (such consent to be provided in its sole and absolute discretion).

Lenders may wish to check with their fund providers and/or legal advisers if they are unsure as to whether any funds are likely to constitute grant or grant-equivalent monies.

15.4 Subsidy Control Requirements

- (A) If the Lender becomes aware that any Subsidy Control Requirements have not been complied with in respect of the Scheme or any Scheme Facility, the Lender will promptly notify the Guarantor.
- (B) If, in the opinion of the Guarantor, any Subsidy Control Requirements have not been complied with in respect of the Scheme, the Lender agrees to take any remedial action required by the Guarantor in relation to the same, including to recover from the Borrower the relevant subsidy notified to it by the Guarantor, and, if so recovered, to reimburse the Guarantor that amount.

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■

[REDACTED]

■

■

[REDACTED]

15.7 Use of brokers and intermediaries

If the Lender is introduced to any Applicant by a broker or other third party intermediary (each a “Third Party Intermediary”):

- (A) the Lender will (i) procure that such Third Party Intermediary accurately conveys the features of the Scheme to such Applicant and (ii) conduct periodic quality assurance reviews on that Third Party Intermediary to ensure the features of the Scheme are being accurately conveyed to Applicants;
- (B) for the purposes of Clause 15.2, such Third Party Intermediary will be deemed to be an officer of the Lender; and
- (C) any act or omission of that Third Party Intermediary in respect of the relevant Applicant will be treated as an act or omission by the Lender.

The Lender will ensure that it does not make the provision of any Scheme Facility to an Applicant:

- (A) conditional on the performance of exports relating to goods or services by the Applicant or any part of the Applicant's Group;
- (B) fixed in amount according to the price or quantity of products that are purchased or put on the market by the Applicant or any part of the Applicant's Group concerned;
- (C) conditional on the basis that the proceeds of the Scheme Facility will be partly or wholly passed on to primary producers of agricultural products or aquaculture/fisheries products by the Applicant or any part of the Applicant's Group; or
- (D) contingent on the use of domestic over imported goods or services by the Applicant or any part of the Applicant's Group.

For example this would be relevant to a facility where the interest rate varied depending on the volume of goods that were exported or where the facility was conditional on the borrower agreeing to sell goods at an agreed price.

The Lender will ensure that it maintains and applies anti-fraud, anti-money laundering and know your customer policies in connection with the Scheme Facilities that are consistent with those that a prudent lender would be reasonably expected to apply with respect to facilities with similar characteristics or commercial terms to the Scheme Facility that do not have the benefit of a government guarantee.

[illegible]

- [REDACTED]
- [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
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 - [REDACTED]
 - [REDACTED]

- [REDACTED]
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 - [REDACTED]
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[illegible]

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[REDACTED]

18. **Survival of rights**

The provisions of [REDACTED] 5 (*Pricing of Scheme Facilities*), 7 (*Scheme Lender Fee*), [REDACTED] 13 (*Reporting, monitoring, audit and maintenance of records*), [REDACTED] 18 (*Survival of rights*), 19 (*Liability and indemnity*), 20 (*Data and data protection*), 21 (*Confidentiality and disclosure*), 22 (*Notices*), 23 (*Scheme Portal rights*), 25 (*Remedies and waivers*), 27 (*Further assurances*), 28 (*Amendments and waivers*), 29 (*Assignment and transfer*), 31 (*Contracts (Rights of Third Parties Act 1999)*), 32 (*Governing law and jurisdiction*), 33 (*Service of process*), Schedule 1 (*Definitions and interpretation*) and Schedules 5 to 8 (inclusive) (containing the Scheme Facility Type Schedules) will survive termination of this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20. **Data and data protection**

20.1 The Guarantor shall comply with its obligations under the UK Data Protection Legislation and the Lender shall comply with its obligations under the Data Protection Legislation.

20.2 Subject to its obligations under Clause 20.1, the Lender agrees:

- (A) to provide to the Guarantor Related Parties (or at the request of any Guarantor Related Party, to a Guarantor Relevant Party) all Scheme Data (including any Personal Data relating to any Applicant, Borrower or Personal Guarantor) which a Guarantor Related Party may reasonably request in connection with the purposes set out in Clause 20.2(B) below;
- (B) that any Scheme Data (including Personal Data) may be used by the Guarantor Related Parties or by any other Guarantor Relevant Party:
 - (1) for analytical and administrative purposes (including to keep a record of the types of Borrowers and/or Applicants applying for a Scheme Facility);

- (2) for the prevention or detection of crime or the apprehension or prosecution of offenders, fraud prevention purposes, or in response to police or law enforcement requests and investigations;
 - (3) for reporting purposes to the UK Government or any other state, supranational or public body including the European Commission;
 - (4) in order to meet any reporting requirements or as required whether under law or regulation or otherwise;
 - (5) in order to contact the relevant Borrower or Applicant in connection with the Scheme;
 - (6) to make enquiries about the relevant Applicant's application to the Scheme;
 - (7) to take up references about the relevant Applicant and that Applicant's business;
 - (8) to give information relating to the relevant Applicant and that Applicant's business, or any Personal Guarantor, to any other Guarantor Related Party or to any other official involved in running or monitoring the Scheme; and
 - (9) in order to evaluate the effectiveness of the Scheme; and
- (C) that any Guarantor Related Party (or where applicable any Guarantor Relevant Party) may store any Scheme Data (including Personal Data) relating to an Applicant, Borrower or a Personal Guarantor for a minimum of ten (10) years after the Initial Drawdown Date of the relevant Scheme Facility.

20.3 The Lender undertakes at no additional cost:

- (A) to assist the Guarantor Related Parties in obtaining information from each Applicant and each relevant Personal Guarantor and each Applicant's and each relevant Personal Guarantor's acknowledgment to the use of its information (including any Personal Data) in the manner contemplated by this Clause 20, by requiring the Applicant and any relevant Personal Guarantor to provide a Data Protection and Disclosure Declaration prior to inputting any information in respect of such Applicant and/or relevant Personal Guarantor into the Scheme Portal or otherwise providing such information to any Guarantor Related Party;
- (B) to obtain all rights and consents (including in relation to the Guarantor Related Parties' processing of Personal Data) necessary to ensure that the Guarantor is able to use the Scheme Data (including Personal Data) in the manner contemplated by Clauses 20 and 21 [REDACTED];
- (C) to promptly execute and deliver such documents and perform such acts as may be required by any Guarantor Related Party to ensure that any transfer of Scheme Data (including Personal Data), and any processing activities carried out by any Guarantor Related Party, complies with Data Protection Legislation; and
- (D) to assist the Guarantor Related Parties in: (i) collecting and processing information or data relevant to the Scheme, including relating to any Applicant, Borrower or Personal Guarantor; (ii) disseminating information or data relating to the Scheme, including (without limitation) by preparing and/or delivering any reports, letters or notices to Borrowers as may be requested by the Guarantor Related Parties; (iii)

communicating and updating any data declarations or privacy notices applicable to Applicants, Borrowers or Personal Guarantors; (iv) communicating changes and/or updates to the Scheme (including any relevant privacy notices relating thereto); and (v) for the purposes of fraud prevention, disclosing information or data relevant to the Scheme and identified by the Guarantor to third parties and/or to other lenders under the Scheme or any Other Scheme.

- 20.4 The Parties acknowledge that both the Lender and the Guarantor are acting as independent Data Controllers in respect of the Personal Data that they process in connection with the Scheme.

However, in the event that:

- (A) the Parties are deemed by the Information Commissioner's Office or another Supervisory Authority or court to be acting as joint controllers (as described under Data Protection Legislation); and
- (B) one Party acts in breach of Data Protection Legislation (the "**Breaching Party**"),

then the other Party shall not be liable for the Breaching Party's breach except to the extent that the Breaching Party's breach was caused by a breach of Data Protection Legislation by the other Party.

21. **Confidentiality and disclosure**

- 21.1 Each Party will, and will use all reasonable endeavours to ensure that any of its agents, sub-contractors and delegates [REDACTED] will, keep confidential all Confidential Information supplied to it in accordance with this Agreement and any Related Agreement.

21.2 Notwithstanding Clause 21.1:

- (A) the Guarantor is entitled to disclose any information or data permitted to be disclosed pursuant to Clause 20 (to the persons or entities contemplated therein) and any Scheme Data, including any Confidential Information, to the Guarantor Related Parties. Each Guarantor Related Party is entitled to disclose any Scheme Data, including any Confidential Information:
 - (1) where required under any applicable law or contemplated by the terms of this Agreement and any Related Agreement;
 - (2) where requested or required by any securities exchange, court of competent jurisdiction or any competent judicial, regulatory, governmental or supervisory body or administrative order to which any Guarantor Related Party is subject, wherever situated, whether or not the requirement for information has the force of law including, for the avoidance of doubt, disclosure by the Guarantor to Parliament to discharge his duty to report about the operation of the Scheme;
 - (3) to enable the Guarantor Related Party to comply with any reporting and/or publication requirements whether required under any law or regulation or otherwise;
 - (4) to any person to whom the Guarantor is proposing to assign or transfer any of its rights or obligations under this Agreement pursuant to Clause 29 (*Assignment and transfer*);

- (5) where the information is already in the public domain through no fault of any Guarantor Related Party;
- (6) with the prior written consent of the Lender or (if such information relates to an Applicant) such Applicant (whether pursuant to the Data Protection and Disclosure Declaration or otherwise), in the case of the Lender, not to be unreasonably withheld;
- (7) to the Guarantor Relevant Parties and each other person or entity to which any Guarantor Related Party or Guarantor Relevant Party is required to disclose Scheme Data, including any Confidential Information, for the purposes of reporting on the establishment, performance or operation of, or compliance with the Scheme, this Agreement and any Related Agreement;
- (8) to any relevant regulatory body in respect of the Lender, to the extent such Scheme Data or Confidential Information relates to the Guarantor's (or any Guarantor Related Party's) monitoring or audit of the Lender; and
- (9) for the purposes of preventing, analysing or detecting fraud (including fraudulent behaviour, activities or patterns), to third parties and/or other lenders under the Scheme or any Other Scheme.

and, where any Scheme Data, including any Confidential Information, is required or permitted to be disclosed pursuant to this Clause 21.2(A), the Lender shall assist the Guarantor Related Parties in collecting, processing or disseminating such Scheme Data and Confidential Information to the extent requested pursuant to Clause 20.3(D) above;

(B) the Lender is entitled to disclose any Confidential Information:

- (1) where:
 - (a) required under any applicable law or contemplated by the terms of this Agreement and any Related Agreement (including, without limitation, the visibility and promotion, reporting and monitoring obligations to be complied with by the Lender); or
 - (b) where requested or required by any securities exchange, court of competent jurisdiction or any competent judicial, regulatory, governmental or supervisory body or administrative order to which the Lender is subject, wherever situated, whether or not the requirement for information has the force of law,

provided the Lender shall obtain the prior written consent of the Guarantor prior to the disclosure of any Confidential Information pursuant to the foregoing, unless such notification or consultation would itself breach any applicable law or be directly contrary to the request from, or requirements of, the relevant securities exchange, court of competent jurisdiction or competent judicial, regulatory, governmental or supervisory body or administrative order;

- (2) to each of the Lender's officers, directors, employees, Affiliates (if any) and professional advisers to the extent necessary for the purposes of this Agreement and any Related Agreement and to its auditors, provided such party is subject to professional duties of confidentiality or agrees to a confidentiality undertaking that requires it, and any of its agents, sub-

contractors and delegates, to keep confidential all Scheme Data (including Confidential Information) that is supplied to it;

- (3) subject to obtaining the Guarantor's prior written consent, to any person to whom the Lender is proposing to assign or transfer any of its rights or obligations under this Agreement pursuant to Clause 29 (*Assignment and transfer*);
- (4) where the information is already in the public domain through no fault of the Lender; and
- (5) with the prior written consent of the Guarantor or (if such information relates to an Applicant) such Applicant (whether pursuant to the Data Protection and Disclosure Declaration or otherwise).

21.3 If a Guarantor Related Party is requested to disclose any Scheme Data (including but not limited to any Confidential Information) pursuant to the provisions of the FOI Act (an "**FOI Request**") or the EIR (an "**EIR Request**"), the relevant Guarantor Related Party will (solely to the extent the Guarantor Related Party considers it necessary (in its sole discretion) and to the extent practicable and permissible under the FOI Act or EIR and consistent with the Code of Practice of the Department for Constitutional Affairs on discharge of public authorities' functions under Part 1 of the FOI Act or the Code of Practice of the Department for Constitutional Affairs on discharge of public authorities' functions under the EIR):

- (A) notify the Lender in writing of the nature and content of such FOI Request or EIR Request as soon as practicable;
- (B) before making a disclosure pursuant to an FOI Request or EIR Request, for a period of no longer than five (5) Business Days (or if the Guarantor Related Party considers there to be exceptional circumstances, such shorter period as the Guarantor Related Party considers reasonably practicable) consult with the Lender as to:
 - (1) whether such FOI Request or EIR Request is valid;
 - (2) whether or not disclosure pursuant to the FOI Act or EIR is required; and
 - (3) (if the Guarantor Related Party determines that disclosure pursuant to the FOI Act or EIR is required) the scope and content of any proposed disclosure,

and, as part of such consultation process, the Guarantor Related Party will take into account any representation from the Lender as to whether any Confidential Information is commercially sensitive or falls within one or more of the exemptions set out in Part II of the FOI Act and any other representations from the Lender about whether or not there is an obligation to disclose such Confidential Information and/or the extent of any such required disclosure;

- (C) (if the Guarantor Related Party determines that disclosure of any Confidential Information pursuant to the FOI Act or EIR is required and the Lender has objected to such disclosure or the extent of the proposed disclosure) give the Lender as much prior notice as is reasonably practicable before such disclosure being made; and
- (D) subject to the above, the Guarantor Related Party may determine in its absolute discretion whether and to what extent disclosure of any Confidential Information pursuant to the FOI Act or EIR is required.

- 21.4 Nothing in this Clause 21 restricts or prevents the publication by a Guarantor Related Party of any information (whether Confidential Information or otherwise):
- (A) in accordance with any publication scheme (as defined in the FOI Act or EIR) adopted and maintained by the Guarantor Related Party in accordance with the FOI Act or EIR;
 - (B) in accordance with any model publication scheme (as defined in the FOI Act or EIR) applicable to the Guarantor Related Party as may be published from time to time by the Information Commissioner;
 - (C) as required for the purposes of any reporting to any institution or other body of the European Union; or
 - (D) as required for the purposes of reporting to HM Government including pursuant to any Subsidy Control Reporting Requirements.

In deciding whether to publish information (whether Confidential Information or otherwise) in accordance with any publication scheme or model publication scheme in accordance with the preceding paragraph, the Guarantor Related Party will have due regard to whether, in its sole opinion, such information would be exempt from disclosure under the FOI Act or EIR.

- 21.6 This Clause 21 supersedes any previous confidentiality undertaking given by either Party in respect of the Scheme before the Effective Date.
- 21.7 Notwithstanding any other term of this Agreement, no Party is required to disclose any information to the other Party (or any other entity) if to do so would breach applicable law or regulation.

22. **Notices**

- 22.1 Subject to Clause 22.2, all notices, requests, demands or other communications required to be given to or served upon the Parties under the provisions of a Scheme Document will be given in writing in English and will be deemed to be duly given only when received by the relevant recipient. Notices shall be addressed as follows:

- (A) if to the Guarantor:

c/o Managing Director Guarantee and Wholesale Solutions
British Business Bank
Steel City House
West Street
Sheffield
S1 2GQ

Email: info@british-business-bank.co.uk; and

(B) if to the Lender, to the postal address and/or email address [REDACTED]

or such other address as the Guarantor or Lender may specify by at least five (5) Business Days' notice to the other Party.

22.2 If the provisions of any Scheme Document require any notice, request, demand or other communication to be given or made electronically through the Scheme Portal, such notice, request, demand or other communication will be:

(A) sent/submitted to that Party in the manner specified in the Scheme Portal; and

(B) deemed to have been duly given or made when received by that Party.

22.3 The Guarantor will notify the Lender, via email in accordance with Clause 22.1, of:

(A) any change made by or on behalf of the Guarantor to the Scheme Portal that is reasonably likely to affect the Lender's obligations under this Agreement, if reasonably practicable, prior to such change taking effect; and

(B) any notice, request, demand or other communication given or made electronically through the Scheme Portal by the Guarantor to the Lender in accordance with Clause 22.2 as soon as reasonably practicable following the delivery of such notice, request, demand or other communication.

23. **Scheme Portal rights**

The Guarantor and the Lender agree that all rights in data, text, databases, records and logs, graphics and images which are embodied in any electronic or tangible medium comprised in or generated via the Scheme Portal and the RLS for Lenders website (but not, for the avoidance of doubt, generated by the Lender itself) pursuant to this Agreement are assigned to and vest in the Guarantor absolutely.

24. **Relationship between the Parties**

Save as may be expressly agreed between them from time to time and as set out in Clauses 11.1(B) and 11.4 above, neither the Lender nor the Guarantor will, as a result of the participation of either in the Scheme, (i) be (or have authority to act as) agent for the other or (ii) be (or be treated as being) in a fiduciary relationship to the other.

25. **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of either Party any right or remedy under this Agreement or any Related Agreement will operate as a waiver thereof nor will any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement and each Related Agreement are cumulative and not exclusive of any rights or remedies provided by law.

26. **Invalidity and severability**

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

- (A) in that jurisdiction of any other provision of this Agreement or any Related Agreement; or
- (B) in any other jurisdiction of that or any other provision of this Agreement or any Related Agreement.

27. Further assurances

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

- (A) to implement and/or required to give full effect to this Agreement, any Related Agreement and any Scheme Guarantee contemplated by this Agreement;
- (B) for the exercise or preservation of any rights, powers and remedies of the Guarantor provided by or pursuant to this Agreement, any Related Agreement, any Scheme Guarantee contemplated by this Agreement or by law; or
- (C) to enable the Guarantor to comply with any of its obligations or duties under any Subsidy Control Requirements or other legal or regulatory requirements;
- (D) to facilitate any amendments to this Agreement pursuant to Clause 28 (*Amendments and waivers*); and
- (E) to facilitate the transfer of this Agreement by the Guarantor in accordance with Clause 29.2(B) (*Assignment and transfer of rights and obligations under this Agreement*).

28. Amendments and waivers

Unless expressly stated otherwise in this Agreement, any term of this Agreement may be amended or waived only with the written consent of both Parties and any such amendment or waiver will be binding on both Parties. The Guarantor may, at its discretion, charge the Lender for any costs it incurs (including, without limitation, its own internal costs and any fees and costs charged to the Guarantor by its legal or other advisers) in relation to any amendment, waiver or consent that it enters or grants in connection with this Agreement or the Scheme, provided such costs are agreed with the Lender in advance.

29. Assignment and transfer

29.1 Transfer of an individual Scheme Facility

The Lender undertakes that it will not assign (in law or equity), novate, declare a trust over or otherwise transfer its rights and obligations in respect of an individual Scheme Facility to any person without the prior written consent of the Guarantor.

29.2 Assignment and transfer of rights and obligations under this Agreement

(A) Lender

The Lender undertakes that it will not assign (in law or equity), novate, declare a trust over or otherwise transfer the benefit of any Scheme Guarantee or any of its rights, or obligations under this Agreement without the prior written consent of the Guarantor.

(B) Guarantor

- (1) The Guarantor will be entitled to assign or transfer any of its rights or obligations under this Agreement with the prior consent of the Lender, such consent not to be unreasonably withheld or delayed.
- (2) If the Guarantor assigns or transfers any of its rights or obligations under this Agreement in accordance with Clause 29.2(B)(1), the Lender and the Guarantor will negotiate in good faith in order to agree any amendments to this Agreement which the Guarantor determines to be necessary as a result of such assignment or transfer.

29.3 Risk retention

The Lender agrees that at all times while a Scheme Guarantee is outstanding, it will, retain on an ongoing basis all of the credit risk of the related Scheme Facility save for the credit risk covered by the relevant Scheme Guarantee or where the prior written consent of the Guarantor is obtained. Notwithstanding the foregoing, nothing in this Clause 29.3 will prohibit a Lender from accepting Collateral in connection with the relevant Scheme Facility [REDACTED] or from complying with any risk retention requirements [REDACTED]

30. Counterparts

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

31. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

32. Governing law and jurisdiction

32.1 Governing law

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

32.2 Jurisdiction

The parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Agreement and the documents entered into pursuant to it and that accordingly any proceedings arising out of or in connection with this Agreement and such documents will be brought in such courts. The parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground or venue or on the ground that the proceedings have been brought in an inconvenient forum.

33. Service of process

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

- (A) if incorporated outside of the United Kingdom, will notify the Guarantor of its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement within 5 (five) Business Days of the Effective Date; and
- (B) agrees that failure by a process agent to notify the Lender will not invalidate the proceedings concerned.

SIGNATORIES

Secretary of State for Business and Trade

Signature: Signature:

Name: Name:

Authorised signatory Authorised signatory

For and on behalf of **British Business Financial Services Limited**
as agent for **the Secretary of State for Business and Trade**

The Lender¹

Signature: [Signature:]²

Name: [Name:]

[Authorised Signatory] [Authorised Signatory]

[Director] [Director]

[Company Secretary] [Company Secretary]

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

[Other:] [Other:]

For and on behalf of **[•]**

[In the presence of:

Signature of witness:.....

Name of witness:.....

Address of witness:.....]³

¹ The authorised signator(y)(ies) of the Lender should specify the capacity in which they are signing by deleting all but the relevant option below.

² To be deleted if this Agreement is signed by only one signatory on behalf of the Lender.

³ To be deleted if signature of this Agreement by the signatory of the Lender is not witnessed.

SCHEDULE 1 : DEFINITIONS AND INTERPRETATION

PART 1: DEFINITIONS

“Accredited” means in respect of the Lender and a Scheme Facility Type, that such Lender has completed the Guarantor’s accreditation process for that Scheme Facility Type and [REDACTED]

“Additional Condition to Claim” means each additional condition specified in any relevant Related Agreement which must be satisfied prior to the Lender submitting a Payment Claim in respect of a Scheme Facility.

“Additional Condition to Offer” means each additional condition specified in any relevant Related Agreement which must be satisfied prior to the Lender offering a Scheme Facility to an Applicant.

“Additional Type of Scheme Facility” means any type of Scheme Facility other than a Term Loan Scheme Facility, a RCF Scheme Facility, an Invoice Finance Scheme Facility or an Asset Finance Scheme Facility, as may be notified to the Lender from time to time in accordance with Clause 22 (*Notices*).

“Additional Questionnaire” means the questions set out in Part B and Part C (as applicable) of Schedule 10 (*Question Sets*) to this Agreement, as the same may be updated and/or modified from time to time by notice from the Guarantor to the Lender.

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

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

“Aided Costs” means any costs that an NI Applicant has received any other form of aid (apart from support under the Covid-19 Temporary Framework) to support. This will be relevant if an Applicant is applying for a Scheme Facility for a specific purpose (e.g. an Asset Finance Scheme Facility), Applicants will not be eligible for aid to support the same costs under this Scheme.

“Annual Effective Rate” means, in respect of a Scheme Facility, the Lender’s monthly internal rate of return, expressed on an annual basis and calculated (1) taking into account all Borrower Costs, drawdowns and repayments across the term of the Scheme Facility based, in each case where such amounts are not known at the time the Annual Effective Rate is being determined, on the timing and quantum of such amounts anticipated by the Lender based on reasonable assumptions, (2) without adjusting to take account of any on-payment by the Lender of amounts received by the Lender from the Borrower to any third party (including payment by the Lender of third party costs charged to the Borrower or funding costs of the Lender), and (3) taking into account all other relevant factors including, as applicable, actual or assumed utilisation rates and prepayment percentages.

“Applicable Guaranteed Percentage” means, in respect of a Scheme Facility, the Guaranteed Percentage applicable on the Offer Date of such Scheme Facility.

“Applicable Margin” has the meaning given to it in Clause 7.3.

“Applicant” means a Business to which the Lender proposes, or is considering proposing, to make available a Scheme Facility and which has undertaken, or is undertaking, the Lender’s Application Process.

“Application Deadline Date” means 30 June 2024 or such later date as is determined by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*).

“Approved Asset” means one or more specific identifiable assets (other than a motor vehicle which is regarded as a “benefit in kind” for taxation purposes by HM Revenue & Customs).

“Asset Finance Scheme Facility” has the meaning given to it in the Scheme Facility Type Schedule relating to asset finance scheme facilities.

[REDACTED]

“BBLs Guarantee Agreement” means the guarantee agreement (if any) entered into between the Guarantor and the Lender in connection with the Bounce Back Loan Scheme.

“BBLs Scheme Facility” means a scheme facility entered into between the Lender and the Borrower under the Bounce Back Loan Scheme.

“Borrower” means, in respect of a Scheme Facility, the person that is the borrower under such Scheme Facility or in respect of a Related Invoice Finance Commercial Facility, under such Related Invoice Finance Commercial Facility.

“Borrower Costs” means the aggregate of all interest, fees, costs and charges (howsoever described), including (without limitation) default interest, default fees, non-utilisation fees, exit fees, prepayment fees, fees of third party advisers to the Lender, administration fees and Upfront Fees, but excluding: (i) any standard operational fees payable by a Borrower in respect of events or circumstances arising outside of the ordinary course of a facility (as determined by the Lender, acting reasonably) (ii) in respect of Invoice Finance Scheme Facilities only, annual administration and/or service charges which are subject to VAT and (iii) any interest, fees, costs and charges which the Guarantor has agreed in writing to exclude from this definition.

“Borrowing Facilities Demand Date” means, in respect of a Scheme Facility, the earliest date to occur on which a written demand for immediate repayment of any Borrowing Facility is made by the Lender on the Borrower of such Scheme Facility which is not subsequently waived by the Lender.

“Borrowing Facility” means, in respect of a Borrower, each Scheme Facility, each Other Scheme Facility and each Commercial Facility made available by the Lender to that Borrower in respect of which sums remain outstanding from the Borrower to the Lender.

“Breaching Party” has the meaning given to it in Clause 20.4.

“Business” means a sole trader, body corporate, partnership, limited partnership, limited liability partnership or other legal person Carrying on a Business in the United Kingdom. “Business” does not include a private individual unless they are acting as a sole trader or as a partner in a partnership.

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

“Business in Difficulty” means an Applicant with one or more of the following features:

- (A) if it holds a credit rating, it has a long-term issuer or debt rating below Credit Quality Step 5 from a recognised rating agency; or
- (B) if the Applicant does not hold such a rating, an Applicant, considered by the Lender to be:
 - (1) of poor credit standing; or
 - (2) subject to very high credit risk; or
- (C) the Applicant is subject to Relevant Insolvency Proceedings.

In respect of paragraph (B) above, this should be interpreted to mean that, if the Applicant had a credit rating, such rating would be, for a small or medium-sized enterprise, comparable to a rating below Credit Quality Step 5.

“Carrying on a Business in the United Kingdom” means that the relevant person is trading (or, in respect of a person that is a registered charity or further education college, conducting its activities) in the United Kingdom and has the core of its business operations in the United Kingdom. A person will not be Carrying on a Business in the United Kingdom solely by selling into, or trading with a person in, the United Kingdom.

“CBILS Scheme Facility” means a scheme facility entered into between the Lender and the Borrower under the Coronavirus Business Interruption Loan Scheme or the Enterprise Finance Guarantee Scheme.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“CLBILS Scheme Facility” means a scheme facility entered into between the Lender and the Borrower under the Coronavirus Large Business Interruption Loan Scheme.

“Collateral” means, in respect of a Borrowing Facility:

- (A) if such Borrowing Facility is an Asset Finance Scheme Facility, the Purchased Asset in respect of such Asset Finance Scheme Facility;

- (B) if such Borrowing Facility is an Invoice Finance Scheme Facility, those debts which have been financed by the Lender under than Invoice Finance Scheme Facility and which have been purchased or assigned to (or, prior to such purchase or assignment taking effect, secured in favour of, or held on trust on behalf of) the Lender;
- (C) any mortgage, charge, assignation or assignment by way of security, pledge, hypothecation, lien, right of set-off, retention of title provision, trust or flawed asset arrangement (for the purpose of, or which has the effect of, granting security) or any other security interest of any kind whatsoever, or any agreement, whether conditional or otherwise, to create any of the same, or any agreement to sell or otherwise dispose of any asset on terms whereby that asset is or may be leased to or re-acquired or acquired by the person selling or disposing of it; and
- (D) any guarantee (including, without limitation, any personal guarantee), indemnity, undertaking, assurance, commitment, letter of comfort and any other obligation (whatever called) of any person to pay, purchase, provide funds (whether by the advance of money, the purchase of assets or services, or otherwise) for the payment of, indemnity against the consequences of default in the payment of, or otherwise be responsible for, any indebtedness of any other person,

but excluding any security over a Principal Private Residence.

“Commercial Facility” means any term loan, revolving, invoice finance, factoring or asset finance facility or other type of credit, financing, loan or mortgage facility available or made available to the borrowers of that facility or financing from time to time by the Lender, other than a Scheme Facility or an Other Scheme Facility.

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

- (A) is or becomes public knowledge, other than as a result of any breach by a Party of Clause 21 (*Confidentiality and disclosure*);
- (B) in relation to information about Lenders and Borrowers only, is not marked as confidential by the relevant Lender at the time of delivery;
- (C) in relation to information about Lenders and Borrowers only, is known by the Guarantor or a Guarantor Related Party before the date the information is disclosed to it by the relevant Lender or any of its Affiliates or advisers; and
- (D) in relation to information about Lenders and Borrowers only, is lawfully obtained by the Guarantor or a Guarantor Related Party, other than from a source which is connected with the relevant Lender and which, in either case, as far as the relevant Guarantor Related Party is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

“Control” means, in relation to a party:

- (A) that is a body corporate, the power of a person to secure:
 - (1) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or

- (2) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of such body corporate are conducted in accordance with such person's wishes; or

- (B) in relation to a partnership, the right to a share of more than half the assets, or of more than half the income, of the partnership.

"Covid-19 Scheme Facility" means a BBLS Scheme Facility, a CBILS Scheme Facility or a CLBILS Scheme Facility.

"Credit Quality Step" means a credit quality step in the system for mapping external credit assessment institution (ECAI) credit assessments pursuant to Regulation (EU) No. 575/2013 of the European Parliament and Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, as the same may be further amended, supplemented and/or replaced in the United Kingdom by the Prudential Regulation Authority or other competent authority from time to time.

[REDACTED]

[REDACTED]

[REDACTED]

"Data Controller" has the meaning given to such term in the Data Protection Act 2018 or, if the context so requires, the meaning given to any equivalent term under Regulation (EU) 2016/679.

"Data Protection and Disclosure Declaration" means, in respect of a Proposed Scheme Facility, a declaration from the relevant Applicant substantially in the form set out in Schedule 3 (*Form of Data Protection and Disclosure Declaration*) (as the same may be supplemented or amended from time to time by the Guarantor) obtained by the Lender as required by the Scheme Portal Application Process.

"Data Protection Legislation" means all applicable laws relating to the processing of personal data and privacy, in each case which are in force from time to time in any relevant jurisdiction, including, where applicable, EU Data Protection Legislation and UK Data Protection Legislation, including all law and regulations implementing or made under them, any amendment or re-enactment of them and, where applicable, the guidance and codes of practice issued by applicable Supervisory Authorities.

"Date of Application" means, in respect of a Scheme Facility, the date of completion of the Scheme Portal Application Process for the relevant Applicant.

"Day Count Fraction" has the meaning given to it in Clause 7.3.

[REDACTED]

“Devolved Administration” means each of the Northern Ireland Executive, the Scottish Government and the Welsh Government.

“Due Enquiry” means those enquiries, investigations and due diligence processes adopted by the Lender from time to time in assessing an Applicant and completing the Lender’s Application Process, [REDACTED]

“Effective Date” means the later of (A) 1 August 2022; and (B) the date of this Agreement.

“EIR” means the Environmental Information Regulations 2004.

“EIR Request” has the meaning given to it in Clause 21.3.

“Eligibility Criteria” has the meaning given to it in Clause 4.1 (*Conditions to making a Scheme Facility available to an Applicant*).

“Eligible Facility” has the meaning given to it in Clause 4.1 (*Conditions to making a Scheme Facility available to an Applicant*).

“Eligible Purpose” means, in respect of an Applicant, a purpose which provides an economic benefit to the Business of that Applicant or its Group, including, but not limited to:

- (A) (other than in the case of an Asset Finance Scheme Facility) working capital; or
- (B) investment.

“EU Data Protection Legislation” means all applicable laws relating to the processing of personal data and privacy in the European Union, including the Electronic Communications Data Protection Directive (2002/58) and the General Data Protection Regulation (2016/679), including all law and regulations implementing or made under them, any amendment or re-enactment of them and, where applicable, the guidance and codes of practice issued by applicable Supervisory Authorities.

[REDACTED]

“Excluded Debts” means, in respect of an Invoice Finance Scheme Facility, any aged debts that the Lender would not ordinarily finance under a facility without the benefit of a Scheme Guarantee, any debts currently in dispute and any debt owed to another member of the Borrower’s Group.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Expiry Date” means:

- (A) in respect of a Term Loan Scheme Facility or an Asset Finance Scheme Facility, the date specified by the Lender in the relevant Scheme Facility Letter as being the date (following

any applicable grace periods) on or before which the Borrower is required to have repaid all amounts outstanding under that Scheme Facility;

- (B) in respect of an RCF Scheme Facility, the date specified by the Lender in the relevant Scheme Facility Letter as being the date on or before which the Borrower is required to have repaid where the RCF Scheme Facility is a new RCF Scheme Facility or an RCF Scheme Facility which is used to refinance another facility of the relevant Applicant with the Lender, all outstanding utilisations under such RCF Scheme Facility;
- (C) in respect of an Invoice Finance Scheme Facility, the date specified by the Lender in the relevant Scheme Facility Letter as being the date on or before which that Invoice Finance Scheme Facility will cease to be available for use by the Borrower,

provided, in each case, that if that date is later than the expiry date notified to the Guarantor through the Scheme Portal then the date so notified to the Guarantor will be the Expiry Date of that Scheme Facility.

“Export Related Activities” means:

- (A) an advertising campaign outside the UK;
- (B) the manufacture of a product which is only available to customers in a market outside the UK;
- (C) the establishment of a representative office outside the UK or the appointment of an agent outside the UK;
- (D) the setting up or operation of a distribution network outside the UK; and
- (E) direct fulfilment of an export order.

[REDACTED]

“FOI Act” means the Freedom of Information Act 2000.

“FOI Request” has the meaning given to it in Clause 21.3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

“**Funded Debts**” means, in respect of an Invoice Finance Scheme Facility, those Purchased Debts against which the Lender has advanced financing and which have been taken into account in assessing the facility limit of the Scheme Facility.

“**GBER**” means the General Block Exemption Regulation - Commission Regulation (EU) No. 651/2014.

“**General Eligibility Criteria**” means, in respect of an Applicant and a Scheme Facility, the criteria specified in Schedule 2 (*General Eligibility Criteria*), as the same may be supplemented or amended from time to time by the Guarantor provided that the Lender has received at least thirty (30) calendar days’ notice of such change in accordance with Clause 22 (*Notices*).

“**Group**” means all enterprises having at least one of the following relationships with each other:

- (A) one enterprise has a majority of the shareholders’ or members’ voting rights in another enterprise;
- (B) one enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;
- (C) one enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;
- (D) one enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders’ or members’ voting rights in that enterprise; or
- (E) an enterprise is otherwise able, directly or indirectly, to control or materially to influence the policy of another enterprise as regards carrying on an economic activity that entails offering goods or services on a market, even if the enterprise does not have a controlling interest in that enterprise.

For this purpose, an ‘enterprise’ refers to any entity or person engaged in an economic activity, irrespective of its legal form. Enterprises having any of the relationships referred to in points (A) to (E) above through one or more other enterprises shall also be considered to be a single group.

“**Group Lender**” has the meaning given to it in Part 2 (*Interpretation*) of Schedule 1 (*Definitions and Interpretation*).

“Guaranteed Amount” has the meaning given to it in Clause 2 (*Guarantee*).

“Guaranteed Amount Payment Claim” means a claim under a Scheme Guarantee to be made by the Lender to the Guarantor in the form accessible through the Scheme Portal and containing the information specified therein, as such form may be amended, varied, supplemented or replaced from time to time.

“Guaranteed Percentage” means 70% or such other percentage as the Guarantor may from time to time notify by no less than 90 calendar days’ written notice to the Lender. Any such notification shall not have retroactive effect.

“Guaranteed Portion” means:

- (A) in respect of an Invoice Finance Scheme Facility, that part of the balance of the Invoice Finance Scheme Facility that the Guarantor has agreed to guarantee, which, at any time is equal to the lower of (1) the aggregate amount outstanding of the financing advanced by the Lender under such Invoice Finance Scheme Facility at such time together with (without double-counting) any Accrued Amounts relating to the same at such time, and (2) the Maximum Guaranteed Amount; and
- (B) in respect of an Asset Finance Scheme Facility, that part of the principal or capital balance of that Asset Finance Scheme Facility that the Guarantor has agreed to guarantee, determined by multiplying the Outstanding Balance Financed of that Asset Finance Scheme Facility by the Guarantee Cover Percentage.

“Guarantor” has the meaning given to it at the beginning of this Agreement.

“Guarantor Related Party” means

- (A) the Guarantor;
- (B) the British Business Bank plc;
- (C) any Affiliate of the British Business Bank plc;
- (D) any auditor or agent of any party specified in paragraphs (A) to (C) above to the extent it is advising or acting for a party specified in paragraphs (A), (B) or (C) above; and
- (E) any officers, directors, employees, affiliates, advisers, consultants, agents or contractors of such auditors or agents (including, without limitation, any advisers, consultants, and auditors carrying out due diligence), of any party specified in paragraphs (A) to (D) above, in the case of paragraph (D) above, to the extent the party specified in paragraph (D) above is acting in the capacity specified in that paragraph.

“Guarantor Relevant Party” means:

- (A) each Guarantor Related Party;
- (B) processing agents, fund managers, delivery partners and companies providing services to the British Business Bank plc and its Affiliates;
- (C) UK Parliament (including any Committee of the House of Commons or the House of Lords);
- (D) all UK Government departments and Devolved Administrations (including but not limited to the National Audit Office, the office for National Statistics, HM Treasury, the Cabinet Office,

the Public Accounts Committee, the Government Internal Audit Agency (GIAA) and the Department for Business and Trade) and other politicians or government members (i.e. ministers);

- (E) all UK agencies and authorities including without limitation the Bank of England (including the Prudential Regulation Authority), the Financial Conduct Authority, the Financial Policy Committee, the Insolvency Service, Companies House, or any other governmental, banking, taxation or regulatory agency or authority;
- (F) the National Crime Agency the National Investigation Service, Cifas, the UK Financial Intelligence Unit, Action Fraud or any other UK agency, service or organisation involved in the detection of criminal behaviour or fraud prevention;
- (G) the Financial Ombudsman Service; and
- (H) the European Commission.

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

“Information Commissioner” means the UK Information Commissioner’s Office (ICO).

“Initial Drawdown” means:

- (A) in respect of a Term Loan Scheme Facility, the first drawdown made by the Borrower under that Term Loan Scheme Facility;
- (B) in respect of an RCF Scheme Facility, the mark by the Lender on the account of the Borrower in respect of such RCF Scheme Facility of the availability of such RCF Scheme Facility;
- (C) in respect of an Invoice Finance Scheme Facility, the mark by the Lender on the account of the Borrower in respect of that Invoice Finance Scheme Facility of the availability of such Invoice Finance Scheme Facility (or where that Invoice Finance Scheme Facility is an increase to an existing invoice finance facility, of the increased amount of such invoice finance facility; or
- (D) in respect of an Asset Finance Scheme Facility, the mark by the Lender on such account(s) as are maintained and operated by the Lender in respect of that Asset Finance Scheme Facility to record the initial drawing of the financing provided to the Borrower under such Asset Finance Scheme Facility.

“Initial Drawdown Date” means, in respect of a Scheme Facility, the date when the Initial Drawdown under that Scheme Facility is made by the Borrower.

“Initial Drawdown Deadline” means, in respect of a Scheme Facility the day falling six (6) months after such Offer Date.

“Invoice Finance Scheme Facility” has the meaning given to it in the Scheme Facility Type Schedule relating to invoice finance scheme facilities.

“Lender Delegate” has the meaning given to it in Clause 13.1(A).

“Lender Manual” means, in respect of a Scheme Facility, the lender manual applicable to the Scheme Facility Type of such Scheme Facility as notified to the Lender by the Guarantor from time to time.

“Lender’s Application Process” means the application process for the Proposed Scheme Facility to be undertaken by an Applicant, which shall incorporate the Location Question Set, as the same may be updated and/or modified from time to time by notice from the Guarantor to the Lender.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Location Question Set” means the questions set out in Part A of Schedule 10 (*Question Sets*) to this Agreement, as the same may be updated and/or modified from time to time by notice from the Guarantor to the Lender.

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

- (A) the financial condition, assets, prospects, business, operations, property or condition (financial or otherwise) of a Party which impacts that Party’s ability to perform or comply with any of its obligations under this Agreement or any Related Agreement; or
- (B) the validity, legality or enforceability of this Agreement or any Related Agreement or the rights and remedies of the Guarantor hereunder.

“Maximum Amount” means:

- (A) if the Applicant is not an NI Applicant, the lower of:
 - (1) £2,000,000; and
 - (2) the amount that would result in the total value of the Relevant Subsidy and Relevant Support granted to the relevant Applicant and, if it is part of a Group, its Group, by the UK Government or any other state, supranational or public body over the previous three fiscal years, including that arising from the Proposed Scheme Facility, not exceeding £315,000.

- (B) if the Applicant is an NI Applicant and it is not carrying on business in the primary production of agricultural products, in the fishery or aquaculture sector, or the road freight transport sector, the lower of:
- (1) £1,000,000; and
 - (2) the amount that would result in the total value of the Relevant Subsidy and Relevant Support granted to the relevant Applicant and, if it is part of a Group, its Group, by the UK Government or any other state, supranational or public body over the previous three fiscal years of the relevant undertaking, including that arising from the Proposed Scheme Facility, not exceeding £170,000;
- (C) if the Applicant is an NI Applicant and it is carrying on business in the primary production of agricultural products, the lower of:
- (1) £110,000; and
 - (2) the amount that would result in the total value of the Relevant Subsidy and Relevant Support granted to the relevant Applicant and, if it is part of a Group, its Group, by the UK Government or any other state, supranational or public body over the previous three fiscal years of the relevant undertaking, including that arising from the Proposed Scheme Facility, not exceeding £17,000,
- (D) if the Applicant is an NI Applicant and it is carrying on business in the production, processing and marketing of fishery or aquaculture products, the lower of:
- (1) £170,000; and
 - (2) the amount that would result in the total value of the Relevant Subsidy and Relevant Support granted to the relevant Applicant and, if it is part of a Group, its Group, by the UK Government or any other state, supranational or public body over the previous three fiscal years of the relevant undertaking, including that arising from the Proposed Scheme Facility, not exceeding £25,500,
- (E) if the Applicant is an NI Applicant and it is carrying on business in the road freight transport sector, the lower of:
- (1) £570,000; and
 - (2) the amount that would result in the total value of the Relevant Subsidy and Relevant Support granted to the relevant Applicant and, if it is part of a Group, its Group, by the UK Government or any other state, supranational or public body over the previous three fiscal years of the relevant undertaking, including that arising from the Proposed Scheme Facility, not exceeding £85,000,

provided that the Guarantor may notify the Lender of an alternative definition of Maximum Amount from time to time on not less than 30 calendar days' notice, such notice not to be retroactive.

Lenders should note also the Eligibility Criterion in paragraph 2(I) of Schedule 2 which applies the Maximum Amount to both the Applicant and also the Applicant's Group.

“Maximum Guarantee Term” has, in respect of a Scheme Facility, the meaning given to it in the Scheme Facility Type Schedule applicable to that Scheme Facility.

“Minimum Amount” means:

- (A) in respect of a Term Loan Scheme Facility or an RCF Scheme Facility, £25,001;
- (B) in respect of an Asset Finance Scheme Facility or an Invoice Finance Scheme Facility, £1,000; and
- (C) in respect of any Additional Type of Scheme Facility, the amount determined by the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“NI Applicant” means an Applicant determined to be potentially within scope of Article 10 of the NI Protocol in accordance with Clause 4.2 (*NI Applicants*).

“NI Borrower” means a Borrower that was determined to be an NI Applicant.

“NI Filter Questions” means the questions set out in Part D of Schedule 10 (*Question Sets*) to this Agreement, as the same may be updated and/or modified from time to time by notice from the Guarantor to the Lender.

“NI Protocol” means the Northern Ireland Protocol to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01).

“NI Transaction” means a transaction within scope of Article 10 of the NI Protocol.

“Non-Guaranteed Portion” means:

- (A) in respect of an Invoice Finance Scheme Facility, that part of the balance of the Invoice Finance Scheme Facility that is not the Guaranteed Portion; and
- (B) in respect of an Asset Finance Scheme Facility, the sum of (1) the principal or capital balance of that Asset Finance Scheme Facility which is not the Guaranteed Portion, and (2) interest and other sums that have accrued to the Lender on the whole of the Scheme Facility.

[REDACTED]

“Offer Date” means, in respect of a Scheme Facility, subject to the provisions of each Scheme Facility Type Schedule, the date when the Lender makes the offer of such Scheme Facility to an Applicant which is capable of being accepted by the Applicant, as set out in the relevant Scheme Facility Documentation.

“Offer Deadline Date” means the earlier of:

- (A) the date determined by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*); and
- (B) the Termination Date.

“Original Balance Financed” has the meaning given to it in paragraph 2 of the Scheme Facility Type Schedule: Asset Finance Scheme Facilities.

“Original Guaranteed Balance” has, in respect of a Scheme Facility, the meaning given to it in the Scheme Facility Type Schedule applicable to that Scheme Facility.

“Other Scheme” means each of the Recovery Loan Scheme Phase 1&2, the Bounce Back Loan Scheme, the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme and the Enterprise Finance Guarantee Scheme.

“Other Scheme Facility” means an RLS 1&2 Scheme Facility, a BBLS Scheme Facility, a CBILS Scheme Facility or a CLBILS Scheme Facility.

“Outstanding Balance Financed” has the meaning given to it in paragraph 2 of the Scheme Facility Type Schedule: Asset Finance Scheme Facilities.

“Outstanding Guaranteed Balance” has, in respect of a Scheme Facility, the meaning given to it in the Scheme Facility Type Schedule applicable to such Scheme Facility.

“Party” means a party to this Agreement.

[REDACTED]

[REDACTED]

“Payment Claim” means a Forbearance Amount Payment Claim or a Guaranteed Amount Payment Claim.

“Personal Data” has the meaning given to such term in the Data Protection Legislation.

“Personal Guarantor” means, in respect of an Applicant, any individual who has granted a personal guarantee to such Applicant in connection with such Applicant’s participation in a Scheme Facility.

[REDACTED]

“Principal Private Residence” means the principal private residence of:

- (A) a Borrower;
- (B) any individual who has provided or is proposing to provide a guarantee and/or indemnity in favour of the Lender which, according to its terms, is capable of being used as a means of repaying any Borrowing Facility; or
- (C) any individual, not falling within paragraph (B) above, who has provided or is proposing to provide security in favour of the Lender which, according to its terms, is capable of being used as means of repaying any Borrowing Facility,

in each case, irrespective of whether or not that individual is the sole owner of that residential property or jointly owns that residential property with one or more other persons.

“Proposed Scheme Facility” means a Scheme Facility which the Lender proposes, or is considering proposing, to make available to an Applicant.

“Proposed Scheme Facility Amount” means, in respect of a Proposed Scheme Facility, the proposed amount of such Proposed Scheme Facility or, in the case of an Asset Finance Scheme Facility, the balance of the financing to be provided, in each case as at the date the Lender proposes to offer that Proposed Scheme Facility to the Borrower, as specified in the Scheme Portal Application Process.

“Purchased Assets” means, in respect of an Asset Finance Scheme Facility, those assets (including the rights to the performance of a service) which have been financed by the Lender under that Asset Finance Scheme Facility and which have been acquired by or assigned to the Lender.

“Purchased Debts” means, in respect of an Invoice Finance Scheme Facility, those debts which have been purchased by or assigned to the Lender in connection with that Invoice Finance Scheme Facility.

“RCF Scheme Facility” has the meaning given to it in the Scheme Facility Type Schedule relating to revolving credit facilities.

“RCF Scheme Facility Limit” has the meaning given to it in paragraph 2 of the Scheme Facility Type Schedule: RCF Scheme Facilities.

“Recovery Loan Scheme” means the Recovery Loan Scheme Phase 1&2 and this Scheme.

"Recovery Loan Scheme Phase 1&2" means the scheme established by the Guarantor in 2021 known as the Recovery Loan Scheme, including as extended but excluding the Scheme constituted by this Agreement.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Related Agreement" means any side letter, [REDACTED] or other agreement, letter or document entered into between the Lender and the Guarantor (and any other relevant third parties) in connection with this Agreement and the Scheme, which has been designated as a Related Agreement.

"Relevant Balance" has the meaning given to it in Clause 7.3.

"Relevant Personal Guarantee" means a personal guarantee from a Personal Guarantor the proceeds of which would be available to the Lender in whole or in part to cover liabilities of the Borrower under a Scheme Facility.

"Relevant Insolvency Proceedings" means the following UK proceedings:

- (A) winding-up by or subject to the supervision of the court;
- (B) creditors' voluntary winding-up (with confirmation by the court);
- (C) administration, including appointments made by filing prescribed documents with the court;
- (D) voluntary arrangements under insolvency legislation; and
- (E) bankruptcy or sequestration.

The 'voluntary arrangements' listed above include company voluntary arrangements and individual voluntary arrangements. Receiverships, members' voluntary liquidations, restructuring plans under Part 26A of the Companies Act 2006 and schemes of arrangement under Part 26 of the Companies Act 2006 are not Relevant Insolvency Proceedings.

"Relevant Subsidy" means:

- (A) for Applicants who are not NI Applicants:
 - (1) small amounts of financial Assistance granted under Article 364(4) or under Article 365(3) of the Trade and Cooperation Agreement as incorporated into UK Law by the European Union (Future Relationships) Act 2020 in the period from 1 January 2021 to the coming in into force of the Subsidy Control Act; and
 - (2) Minimal Financial Assistance granted under the Subsidy Control Act once it is in force; and

(B) for Applicants that are NI Applicants, *de minimis* aid,

in each case provided to the Applicant or, where it is part of a Group, the Applicant and its Group, during the previous rolling three-year period. The amount of any subsidy granted during this period will reduce the amount the Applicant is entitled to under subsidy control rules.

The “rolling three-year period” is defined as follows:

(I) For Applicants that are NI Applicants:

- (1) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (2) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “current fiscal year” being the fiscal year of the relevant undertaking in which the date of the Scheme Facility Letter for the Proposed Scheme Facility falls.

(II) For Applicants that are not NI Applicants:

- (1) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (2) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “current fiscal year” being the time elapsed in the fiscal year in which the relevant subsidy is given together with the two previous fiscal years preceding that year. Fiscal year means a period of 12 months ending with 31 March.

For the purposes of this definition, “small amounts of financial Assistance” and “Minimal Financial Assistance” have the meanings given to them in the corresponding legislation referred to in paragraphs (A)(1) or (2) above (as applicable).

Applicants should have been informed by the subsidy provider of the basis of the subsidy at the time the subsidy was granted.

“Relevant Support” means:

(A) for Applicants who are not NI Applicants:

- (1) *de minimis* aid granted (i) prior to the UK exiting the EU on 31 December 2020; and/or (ii) after that date by virtue of the NI Protocol;
- (2) small amounts of financial Assistance granted under Article 364(4) or under Article 365(3) of the Trade and Cooperation Agreement as incorporated into UK Law by the European Union (Future Relationships) Act 2020 in the period from 1 January 2021 to the coming into force of the Subsidy Control Act; and
- (3) Minimal Financial Assistance or SPEI Financial Assistance granted under the Subsidy Control Act once it is in force; and

(B) for Applicants that are NI Applicants, *de minimis* aid,

in each case provided to the Applicant or, where it is part of a Group, the Applicant and its Group, during the previous rolling three-year period. The amount of any subsidy granted during this period will reduce the amount the Applicant is entitled to under subsidy control rules.

The “rolling three-year period” is defined as follows:

(I) For Applicants that are NI Applicants:

- (1) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (2) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “current fiscal year” being the fiscal year of the relevant undertaking in which the date of the Scheme Facility Letter for the Proposed Scheme Facility falls.

(II) For Applicants that are not NI Applicants:

- (1) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (2) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “current fiscal year” being the time elapsed in the fiscal year in which the relevant subsidy is given together with the two previous fiscal years preceding that year. Fiscal year means a period of 12 months ending with 31 March.

For the purposes of this definition, “small amounts of financial Assistance”, “Minimal Financial Assistance” and “SPEI Financial Assistance” have the meanings given to them in the corresponding legislation referred to in paragraphs (A)(2) or (3) above (as applicable).

Applicants should have been informed by the subsidy provider of the basis of the subsidy at the time the subsidy was granted.

“Relevant Threshold” means (as applicable):

- (A) if the Applicant is not an NI Applicant, £315,000.
- (B) if the Applicant is an NI Applicant and it is not carrying on business in the primary production of agricultural products, in the fishery or aquaculture sector, or the road freight transport sector, £170,000;
- (C) if the Applicant is an NI Applicant and it is carrying on business in the primary production of agricultural products, £17,000;
- (D) if the Applicant is an NI Applicant and it is carrying on business in the production, processing and marketing of fishery or aquaculture products, £25,500; or
- (E) if the Applicant is an NI Applicant and it is carrying on business in the road freight transport sector, £85,000.

“Restricted Fishing Activities” means:

- (A) the purchase of fishing vessels;
- (B) the modernisation or replacement of main or ancillary engines of fishing vessels;
- (C) operations increasing the fishing capacity of a vessel or equipment increasing the ability of a vessel to find fish;
- (D) the construction of new fishing vessels or importation of fishing vessels;
- (E) the temporary or permanent cessation of fishing activities unless specifically provided for in the Regulation (EU) No 508/2014;
- (F) exploratory fishing;
- (G) the transfer of ownership of a business; or
- (H) direct restocking in the fishery and aquaculture sector, unless explicitly provided for as a conservation measure by a European Union legal act or in the case of experimental restocking.

“Risk Finance Aid” means in respect of an Applicant, or if an Applicant is part of a Group, an Applicant and its Group, aid for risk finance under the GBER or under a specific aid approval decision, these include the following schemes in the UK the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

“RLS 1&2 Scheme Facility” means a scheme facility entered into between the Lender and the Borrower under the Recovery Loan Scheme Phase 1&2.

“RLS Scheme Facility” means an RLS 1&2 Scheme Facility or a Scheme Facility, as the case may be.

“RL Scheme Facility Lender Fee” has the meaning given to it in Clause 7.3.

“RL Scheme Lender Fee Calculation Period” has the meaning given to it in Clause 7.3.

“RL Scheme Lender Fee Calculation Period End Date” has the meaning given to it in Clause 7.3.

“Sale and Leaseback and Hire Purchase Back Authorised Lender” means a Lender that has been authorised in writing by the Guarantor to include Sale and Leaseback Arrangements and/or Hire Purchase Back Arrangements within this Agreement, other than a Lender in respect of which such authorisation is currently withdrawn or suspended.

“Scheme” means the scheme established in July 2022 known as the Recovery Loan Scheme Phase 3 or “RLS 3”, including as extended.

“Scheme Data” means any information in connection with the Scheme, any Scheme Facility, any potential Scheme Facility, the Scheme Guarantee, the Applicant, the Borrower or any Personal Guarantor, including without limitation any information or data on or connected to the Scheme Portal.

“Scheme Documents” means this Agreement, each Scheme Guarantee, each Related Agreement, and any other agreement or document designated as such and notified to the Lender in writing by the Guarantor.

“Scheme Facility” means a Term Loan Scheme Facility, an RCF Scheme Facility, an Invoice Finance Scheme Facility, an Asset Finance Scheme Facility or an Additional Type of Scheme Facility (as applicable) made available by the Lender to a Borrower pursuant to the Scheme in accordance with this Agreement.

“Scheme Facility Documentation” means, the Scheme Facility Letter, the offer letter (if any) and any other related documentation.

“Scheme Facility Letter” means, in respect of a Scheme Facility, the letter or agreement between the Lender and the relevant Borrower which commits the Lender to provide such Scheme Facility and sets out the terms of that Scheme Facility.

“Scheme Facility Type” means each of:

- (A) a Term Loan Scheme Facility;
- (B) an RCF Scheme Facility;
- (C) an Invoice Finance Scheme Facility;
- (D) an Asset Finance Scheme Facility; and
- (E) any Additional Type of Scheme Facility.

“Scheme Facility Type Schedule” means, in respect of:

- (A) a Term Loan Scheme Facility, the Scheme Facility Type Schedule: Term Loan Scheme Facilities set out in Schedule 5 hereto;
- (B) an RCF Scheme Facility, the Scheme Facility Type Schedule: RCF Scheme Facilities set out in Schedule 6 hereto;
- (C) an Invoice Finance Scheme Facility, the Scheme Facility Type Schedule: Invoice Finance Scheme Facilities set out in Schedule 7 hereto;
- (D) an Asset Finance Scheme Facility, the Scheme Facility Type Schedule: Asset Finance Scheme Facilities set out in Schedule 8 hereto; or
- (E) any Additional Type of Scheme Facility, the schedule applicable to such Additional Type of Scheme Facility which shall be in the form notified by the Guarantor to the Lender in accordance with Clause 22 (*Notices*) and which shall, upon execution of the same by the Guarantor and the Lender, be deemed to form part of this Agreement as if set out herein in full,

as such schedules may be amended, supplemented or replaced from time to time.

“Scheme Guarantee” has the meaning given to it in Recital (A).

“Scheme Guidance” means the relevant Lender Manual and such other scheme guidance in respect of which the Lender is provided reasonable prior notice in accordance with Clause 22 (*Notices*) from time to time.

“Scheme Lender Fee” has the meaning given to it in Clause 7.1.

“Scheme Lender Fee Payment Date” has the meaning given to it in Clause 7.3.

“Scheme Period” means each period from (and including) 1 April in any year to (and including) 31 March in the next following year, provided the first Scheme Period will begin on (and include) the Effective Date and the final Scheme Period will end on (and include) the Termination Date.

“Scheme Portal” means the website maintained by the Guarantor as notified from time to time by the Guarantor to the Lender as being the Scheme Portal address for the purposes of this Agreement.

“Scheme Portal Application Process” means, in respect of a Proposed Scheme Facility, the application, eligibility and validation process comprising the submission by the Lender to the Guarantor of the information specified from time to time in the application, eligibility and validation section(s) of the Scheme Portal, as such section(s) may be amended, varied, supplemented or replaced from time to time.

“Service Provider” has the meaning given to the term in Clause 13.1(B)(1) (*Administration by the Guarantor of this Agreement*).

“Sterling” and **“£”** mean the lawful currency of the United Kingdom.

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

“Subsidy Control Letter” means, in respect of an offer of a Scheme Facility to an Applicant provided in accordance with Clause 4.3 (*Offer process in respect of new Scheme Facilities*), the letter to be issued to that Applicant stating the amount of Relevant Subsidy which that Applicant will have received in respect of the issue by the Guarantor of the relevant Scheme Guarantee which, as at the date of this Agreement, is in substantially the form set out in Schedule 11 (*Form of Subsidy Control Letter*) hereto.

“Subsidy Control Requirements” means subsidy control and State aid requirements applicable to the Scheme including, without limitation, those arising from section 29 of the European Union (Future Relationship) Act 2020 and EU State aid law, and from the Subsidy Control Act 2022 and any regulations made pursuant to it.

“Subsidy Control Reporting Requirements” means the UK’s subsidy reporting requirements, including without limitation those arising under the Subsidy Control Act 2022 and any regulations made pursuant to it, the UK-EU Trade and Co-operation Agreement, World Trade Organization Agreement on Subsidies and Countervailing Measures and other Free Trade Agreements; the European Union (Future Relationship) Act 2020 and/or EU State aid law.

“Supervisory Authorities” means those government departments and regulatory, statutory and other bodies, entities and committees which, whether under statute, rule, regulation, code of practice or otherwise, are entitled to regulate, investigate or influence the matters relating to the security of data, personal data and privacy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Termination Date” means the date of termination of this Agreement being whichever is the earlier of:

- (A) 30 June 2024, unless such date is extended by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*); and

[REDACTED]

“Term Loan Scheme Facility” has the meaning given to it in the Scheme Facility Type Schedule applicable to term loans.

“Third Party Intermediary” has the meaning given to it in Clause 15.7 (*Use of brokers and intermediaries*).

“Trading Activity” means any trading or commercial activity that generates turnover (whether or not such activity is carried on with the intention of making a profit).

“Type Specific Eligibility Criteria” means, in respect of any Proposed Scheme Facility, the eligibility criteria specified as being applicable to that Proposed Scheme Facility as at its Offer Date in the applicable Scheme Facility Type Schedule (as the same may be supplemented or amended from time to time by the Guarantor if the Lender has received at least thirty (30) calendar days’ notice of such change in accordance with Clause 22 (*Notices*), provided that no such amendment or supplement shall have retroactive effect).

“UK Data Protection Legislation” means all applicable laws relating to the processing of personal data and privacy in the United Kingdom, including the UK GDPR, including all law and regulations implementing or made under them, any amendment or re-enactment of them and, where applicable, the guidance and codes of practice issued by applicable Supervisory Authorities.

“UK GDPR” means the General Data Protection Regulation (2016/679) as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018, with adjustments as provided in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019, and as supplemented by the Data Protection Act 2018.

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

“Upfront Fee” means upfront fees, costs or charges that are charged to the Borrower by the Lender in connection with the entry, arrangement or utilisation of a facility, including any third party fees, such as broker fees, intermediary fees or valuation fees that are invoiced to the Lender but passed on to the Borrower.

“Visibility and Promotion Guidelines” means the visibility and promotion guidelines that are set out in the Scheme Guidance from time to time.

PART 2: INTERPRETATION

1. General

In this Agreement:-

- (A) the headings to Clauses and Schedules are for ease of reference only;
- (B) a reference to a “Clause” or a “Schedule” is to a Clause or Schedule in this Agreement;
- (C) the term “month” means calendar month;
- (D) the term “person” includes any individual, firm, partnership, joint venture, company, corporation, corporation sole, unincorporated body, state, Agency or association or any two or more of the foregoing and will be construed so as to include that person’s assignees, transferees or successors in title;
- (E) references to any one gender include references to all other genders;
- (F) references in this Agreement to “this Agreement”, any “Related Agreement” or any other document will be construed as references to this Agreement, that Related Agreement or that other document as amended, varied, replaced, novated or supplemented from time to time, as the case may be;
- (G) words importing the singular will include the plural and vice versa unless the context otherwise requires;
- (H) references to any statutes or statutory provisions of the European Union shall be construed as the relevant statute or statutory provision as it forms part of United Kingdom domestic law by virtue of the European Union (Withdrawal) Act 2018;
- (I) subject to (H) above, references to any statute or statutory provision include any statute or statutory provision which amends, extends, consolidates, or replaces the same, or which has been amended, extended, consolidated, re-enacted or replaced, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;
- (J) references to “assets” will include revenues and the right to revenues and property and rights of every kind, present, future and contingent and whether tangible or intangible (including uncalled share capital);
- (K) the words “other” and “otherwise” will not be construed as the same as any foregoing words where a wider construction is possible;
- (L) the words “including” and “in particular” will be construed as being by way of illustration or emphasis only and will not be construed as, nor will they take effect as, limiting the generality of any foregoing words;
- (M) references to “quarter” and “quarterly” will be construed, respectively, as being and relating to a period of three (3) months;

- (N) references to the “Guarantor” in the context of any obligations owed to the Guarantor or rights of the Guarantor under this Agreement but not, for the avoidance of doubt, in respect of any duties owed by or obligations of the Guarantor under this Agreement, will be construed, so as to include any person to whom the Guarantor has delegated authority to act on his behalf, or any person through whom the obligations and functions of the Guarantor are performed, under or in connection with this Agreement and/or the operation of the Scheme (including, but not limited to, the British Business Bank plc or any of its Affiliates);
- (O) references to the “Lender” will be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (P) references to anything being “remedied” or “unremedied” means remedied or not remedied (as the case may be) to the satisfaction of the Guarantor and references to anything being “waived” or “unwaived” means waived or not waived (as the case may be) in writing by the Guarantor;
- (Q) the Schedules will be treated as an integral part of this Agreement and references to “this Agreement” will include the Schedules;
- (R) if there is any inconsistency in the information provided to the Guarantor by the Lender pursuant to, or in connection with, this Agreement or the Scheme Portal (including any amount, limit or date in respect of a Scheme Facility) and the terms of a Scheme Facility as agreed with the relevant Borrower, then the information so notified to the Guarantor will be deemed to be correct for the purposes of any determination or calculation to be made pursuant to this Agreement;
- (S) if an Applicant is recorded as an NI Applicant on the basis of the Location Question Set, this is without prejudice to any subsequent determination that the Applicant and the Scheme Facility is not an NI Transaction. The recording of an Applicant as an NI Applicant and any subsequent reporting of the Applicant as such, shall not be considered as a definitive determination by the Guarantor that an Applicant is subject to the NI Protocol for the purposes of the Subsidy Control Requirements; and
- (T) if any payment is stated to be payable on a day that is not a Business Day then such payment shall instead be due on the following day that is a Business Day.

2. Multiple Lenders

Unless otherwise notified to the relevant Group Lender [REDACTED] where the term “Lender” (as defined in paragraph 1(O) of Part 2 (*Interpretation*) of Schedule 1) comprises more than one person (each such person being a “Group Lender”) the obligations and liabilities of each Group Lender under the Scheme Documents will, where the context requires, be several and not joint and several and any references to “Lender”, “Party” or “Parties” will be construed, and all relevant agreements and undertakings on each Group Lender’s part will take effect, accordingly and provided that:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(B) Notices

Any notice, request, demand or other communication given or made by the Guarantor in accordance with the provisions of Clause 22 will, unless otherwise specified by the Guarantor in the relevant notice, request, demand or other communication, be deemed to have been given or made to every Group Lender notwithstanding that any such notice, request, demand or other communication might not have been given, made, delivered or addressed to that Group Lender.

(C) Scheme Document

Any provision in a Scheme Document which refers to the agreement of the Guarantor and the Lender will, if the relevant agreement is reached with any one Group Lender, be binding on each other Group Lender (unless otherwise agreed by the Guarantor or in circumstances where the nature of the agreement which is reached, or the context of the relevant provision, is such that the agreement is only capable of applying to one or more specific Group Lenders).

(D) Meetings with any Guarantor Related Party

Any provision in a Scheme Document which requires a meeting between any Guarantor Related Party and the Lender will be attended by those Group Lenders which any Guarantor Related Party specifies as being required to attend such meeting and, in default of any such specification being made by any Guarantor Related Party, by one Group Lender as agent for and on behalf of all the Group Lenders (in which case all the Group Lenders will be bound by any agreement reached at any such meeting).

(E) Negotiations with the Guarantor

Any provision in a Scheme Document which requires the Guarantor and the Lender, if the relevant specified circumstances apply, to seek to negotiate amendments to a Scheme Document will take place between the Guarantor and either one Group Lender as agent for and on behalf of all the Group Lenders (in which case all the Group Lenders will be bound) or by all the Group Lenders.

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(J) **Assignment and Transfer**

In Clause 29.1, the phrase “The Lender undertakes that it will not” will be construed as reading “The Group Lenders and each single Group Lender undertakes not to”.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE 2 : GENERAL ELIGIBILITY CRITERIA

Other than as specified below, each Proposed Scheme Facility for such Applicant must satisfy (in the determination of the Lender) each of the following criteria at the relevant Offer Date:

1. The Applicant

(A) The relevant Applicant is not (and, where the Applicant forms part of a Group, no other member of its Group is):

- (1) a firm with a Part 4A permission to carry on the regulated activity of accepting deposits and which is a credit institution; or
- (2) a building society; or
- (3) an EEA bank; or
- (4) a firm with permission to effect contracts of insurance or carry out contracts of insurance (other than a UK ISPV),

as each term is defined in the Prudential Regulation Authority Rulebook as at 1st April 2020.

(B) The relevant Applicant is not:

- (1) an individual other than a sole trader;
- (2) an individual other than a partner acting on behalf of a partnership;
- (3) classified to the public sector by the Office of National Statistics; or
- (4) a state funded primary or secondary school.

(C) The relevant Applicant or Applicant's Group has a business proposition that can reasonably be expected to enable it to meet its repayment obligations under such Proposed Scheme Facility, which may, but is not required to, be determined without regard to any concerns over its short-to-medium term business performance due to the uncertainty and impact of Coronavirus (COVID-19).

(D) Either:

- (1) if the Business of the Applicant has been trading (or, in respect of a person that is a registered charity or further education college, conducting its activities) for fewer than twelve months as at the Date of Application, the turnover relating to the relevant Business of that Applicant in the twelve month period beginning on, and including, the date on which it commenced trading (as assessed and determined by the Lender) is not expected to; or
- (2) if the Business of the Applicant has been trading for twelve months or more as at the Date of Application, the turnover relating to the relevant Business of that Applicant in the twelve month period immediately preceding the Date of Application (as assessed and determined by the Lender by reference to the latest management or statutory accounts), did not,

exceed:

- (1) £45,000,000; or
- (2) such other limit as may be advised to the Lender in accordance with Clause 22 (*Notices*) from time to time by the Guarantor.

If that Applicant is part of a Group, its turnover will be the aggregate amount of that Applicant's turnover (calculated as provided in this paragraph) and the turnover of each other member of the Group of that Applicant.

- (E) The relevant Applicant or Applicant's Group is or will be engaged in Trading Activity in the United Kingdom at the Initial Drawdown Date. If the Applicant is a registered charity or further education college and the Offer Date of the Proposed Scheme Facility falls on or before 31 December 2022 (or such other date as the Guarantor shall publish for such purpose in Scheme Guidance), this Eligibility Criterion will be satisfied if the Applicant is or will be engaged in activities in the United Kingdom at the Initial Drawdown Date.
- (F) Where the Lender, having made Due Enquiry, is aware that such Applicant, together with its Group, receives or will receive income from sources other than its Trading Activity as at the Date of Application, more than 50% of the income of that Applicant, together with its Group, is or will be at the Initial Drawdown Date derived from its Trading Activity. This Eligibility Criterion shall not apply where the Applicant is a registered charity or further education college and the Offer Date of the Proposed Scheme Facility falls on or before 31 December 2022 (or such other date as the Guarantor shall publish for such purpose in Scheme Guidance).
- (G) The relevant Applicant has completed the Lender's Application Process.
- (H) If the Applicant is a registered charity or further education college, it has confirmed to the Lender in writing that it has been impacted by Coronavirus (COVID-19), *provided that* this Eligibility Criterion shall not apply in respect of any Proposed Scheme Facility Date with an Offer Date falling after 31 December 2022 (or such other date as the Guarantor shall publish for such purpose in Scheme Guidance).
- (I) The Lender considers that the Applicant or the Applicant's Group has a viable business proposition determined according to its underwriting policies in place from time to time save that for the purposes of such determination the Lender may, but is not required to, disregard any concerns over the Applicant's or the Applicant's Group's short-to-medium term business performance due to the uncertainty and impact of Coronavirus (COVID-19).

For smaller value facilities in determining eligibility of the Applicant rather than assessing viability in accordance with the above paragraph, a Lender may decide to determine the Applicant's credit worthiness based on its internal credit scoring model from time to time.

- (J) Either (1) the Lender, having made Due Enquiry, is not aware that the Applicant has breached the rules of this Scheme, any Other Scheme or the Bank of England's COVID Corporate Financing Facility (CCFF), or (2) the Lender is aware of a breach described in paragraph (1) of this Eligibility Criterion but such breach by the Applicant was unintentional, innocent or inadvertent as determined by the Lender acting in accordance with Clause 3.1 (*Standard of care of the Lender*).
- (K) On or before the Offer Date, the Applicant and the Applicant's Group have been assessed by the Lender against:

- (1) the Lender's internal fraud and financial crime databases; and
- (2) each of:
 - (a) any external fraud and financial crime analytics data routinely utilised by the Lender; and
 - (b) any data provided to the Lender by or through the Guarantor on not less than 30 days written notice in accordance with Clause 22 (*Notices*),

and, having made Due Enquiry into any concerns raised thereby in relation to potential fraud or financial crime, concluded that the Applicant meets the Lender's anti-fraud policies and standards, and does not, in the Lender's opinion (acting reasonably), pose a material fraud or financial crime risk.

- (L) The Applicant is not a Business in Difficulty.

2. The Scheme Facility

- (A) The Proposed Scheme Facility is of a Scheme Facility Type in respect of which the Lender has been Accredited, [REDACTED]
- (B) The provision by the Lender of the Proposed Scheme Facility will not breach any restrictions imposed by any Subsidy Control Requirements.
- (C) The Applicant has confirmed to the Lender in writing the total of all Relevant Support provided to it.
- (D) The Scheme Portal Application Process has been completed in respect of the Proposed Scheme Facility.
- (E) The Proposed Scheme Facility will be used for an Eligible Purpose (which may include the refinancing of an existing Borrowing Facility used for an Eligible Purpose) and to support trading (or, in respect of Applicants that are registered charities or further education colleges, activities) in the United Kingdom.

The Eligible Purpose in respect of a Proposed Scheme Facility will be set out in the applicable Scheme Facility Type Schedule.

- (F) The Proposed Scheme Facility will be denominated in Sterling or in such other lawful currency of the United Kingdom from time to time.
- (G) The Proposed Scheme Facility Amount of the Proposed Scheme Facility is equal to or more than the Minimum Amount and is not greater than the Maximum Amount.

When determining the Maximum Amount, the Lender may rely on the self-certification of the Applicant as to the amount of any Relevant Support it has received in the relevant rolling three-year period.

- (H) The Lender has concluded, based on Due Enquiry, that the Proposed Scheme Facility Amount of the Proposed Scheme Facility, when aggregated with the original Proposed Scheme Facility Amounts of all outstanding Scheme Facilities or other

Proposed Scheme Facilities to the Applicant or any entities within the Applicant's Group (including facilities with other lenders under the Scheme) would not exceed the Maximum Amount.

- (I) The Proposed Scheme Facility will, upon its due execution and delivery on behalf of the Applicant, constitute legal, valid and binding obligations of the Applicant, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganisation or other similar laws affecting the enforcement of the rights of creditors generally.
- (J) The Proposed Scheme Facility has a term of:
 - (1) no less than three (3) months; and
 - (2) no more than Maximum Guarantee Term.

The Maximum Guarantee Term in respect of a Proposed Scheme Facility will be set out in the applicable Scheme Facility Type Schedule.

- (K) The Initial Drawdown of the Proposed Scheme Facility must be scheduled to occur before the Initial Drawdown Deadline.

The meaning of "Initial Drawdown" with respect to a Proposed Scheme Facility will be set out in the applicable Scheme Facility Type Schedule.

- (L) The full net economic benefit that the Scheme Guarantee provides to the Lender (including but not limited to any reduction in risk and capital requirements) shall be reflected in the pricing of the corresponding Proposed Scheme Facility provided to the Applicant (by way of a reduction in the pricing of such Proposed Scheme Facility).
- (M) The terms of the Proposed Scheme Facility provide that in respect of such Proposed Scheme Facility:
 - (1) at the time that the pricing of the Scheme Facility is agreed between the Lender and the Borrower, and at any time when any aspect of the pricing of the Scheme Facility is amended, the Annual Effective Rate of the Scheme Facility shall not be greater than 14.99% (or such other percentage as the Guarantor may from time to time notify for such purpose to the Lender, in the case of any reduction to such percentage, on not less than 60 calendar days' notice, with any such reduced maximum percentage to only apply in respect of Scheme Facilities with an Offer Date falling after the expiry of such notice period);
 - (2) without prejudice to (1) above and save where otherwise agreed with the Guarantor, if default interest or default fees have been charged to the Borrower, the Borrower Costs shall be no greater than 14.99% (or such other percentage as the Guarantor may from time to time notify for such purpose to the Lender, in the case of any reduction to such percentage, on not less than 60 calendar days' notice, with any such reduced maximum percentage to only apply in respect of Scheme Facilities with an Offer Date falling after the expiry of such notice period) of the average Outstanding Guaranteed Balance calculated daily over a rolling 12-month period (with the initial 12-month period being the twelve (12) months immediately preceding the date on which such default interest or default fees are first charged); and

- (3) any Upfront Fee payable by the Borrower shall be no greater than 5% of the Proposed Scheme Facility Amount.
- (N) In the absence of the Scheme, the Lender would either:
 - (1) not have been prepared to offer the relevant Applicant a Commercial Facility on similar terms in the relevant Proposed Scheme Facility Amount; or
 - (2) would only have been prepared to offer the relevant Applicant a Commercial Facility on similar terms as the relevant Proposed Scheme Facility at pricing that is higher than the pricing applicable to the Proposed Scheme Facility.
- (O) Each Proposed Scheme Facility will not (in whole or in part) be used (or intended to be used):
 - (1) in support of certain Export Related Activities (a Lender may rely on self-certification by an Applicant in respect of ensuring its compliance with this Eligibility Criterion (O)(1) provided that the Lender is not aware of any information to the contrary); or
 - (2) in connection with any other activity as may be advised to the Lender in accordance with Clause 22 (*Notices*) from time to time by the Guarantor.

<p><i>The following Eligibility Criteria are applicable only for Applicants that are NI Applicants.</i></p>

- (P) Each Proposed Scheme Facility for which the Applicant is an NI Applicant will not (in whole or in part) be used (or intended to be used):
 - (1) if the Applicant (or the Applicant's Group) performs road freight transport for hire or reward, for the acquisition of road freight transport vehicles (a Lender may rely on self-certification by an Applicant in respect of ensuring compliance with this Eligibility Criterion (P)(1) provided that the Lender is not aware of any information to the contrary); or
 - (2) if the Applicant (or the Applicant's Group) is active in the fishery and aquaculture sector, in support of Restricted Fishing Activities (a Lender may rely on self-certification by an Applicant in respect of ensuring compliance with this Eligibility Criterion (P)(2) provided that the Lender is not aware of any information to the contrary).
- (Q) The Applicant which is an NI Applicant has confirmed to the Lender in writing the total of all Risk Finance Aid provided to it is not in excess of €14.8 million (a Lender may rely on self-certification by an Applicant in respect of ensuring its compliance with this Eligibility Criterion (Q) provided that the Lender is not aware of any information to the contrary).
- (R) The Applicant which is an NI Applicant has confirmed in writing to the Lender that the proceeds of the Proposed Scheme Facility will not be used in whole or in part to fund Aided Costs (a Lender may rely on self-certification by an Applicant in respect of ensuring its compliance with this Eligibility Criterion (R) provided that the Lender is not aware of any information to the contrary).

SCHEDULE 3 : FORM OF DATA PROTECTION AND DISCLOSURE DECLARATION
DATA PROTECTION AND DISCLOSURE DECLARATION – APPLICANT / BORROWER

“I/We,

Insert full name of individual/s completing the form

acknowledge in relation to the application of

(the “**Borrower**”)

Name of Borrower

to the Recovery Loan Scheme Phase 3 (“**RLS**”, the “**RL Scheme**” or the “**Scheme**”) that information provided about me and/or the Borrower (including any personal data) in connection with the RL Scheme, and if a scheme facility is made available, any information in respect of that scheme facility may be used in the following ways:

- (1) being communicated to each of:
- (i) the Secretary of State for Business and Trade (the “**Guarantor**”) and any of the Guarantor’s auditors and agents (including the British Business Bank plc or any of its affiliates and their auditors and agents), together with any officers, directors, employees, affiliates, advisers, agents or contractors of such auditors or agents (including, without limitation, any advisers, consultants, and auditors carrying out due diligence);
 - (ii) processing agents, fund managers, delivery partners and companies providing services to the British Business Bank plc and its affiliates;
 - (iii) UK Parliament (including any Committee of the House of Commons or the House of Lords);
 - (iv) all UK Government departments and Devolved Administrations (including but not limited to the National Audit Office, the office for National Statistics, HM Treasury, the Cabinet Office, the Public Accounts Committee, the Government Internal Audit Agency (GIAA) and the Department for Business and Trade) and other politicians or government members (i.e. ministers);
 - (v) all UK agencies and authorities including without limitation the Bank of England (including the Prudential Regulation Authority), the Financial Conduct Authority, the Financial Policy Committee, the Insolvency Service, Companies House, or any other governmental, banking, taxation or regulatory agency or authority;
 - (vi) the National Crime Agency the National Investigation Service, Cifas, the UK Financial Intelligence Unit, Action Fraud or any other UK agency, service or organisation involved in the detection of criminal behaviour or fraud prevention;
 - (vii) the Financial Ombudsman Service; and

(viii) the European Commission,

(together, the “**Guarantor Relevant Parties**”);

(2) being used by the Guarantor and any Guarantor Relevant Parties:

- (i) for analytical and administrative purposes (including to keep a record of the types of borrowers and/or applicants applying for a RLS facility);
- (ii) for the prevention or detection of crime or the apprehension or prosecution of offenders, fraud prevention purposes or in response to police or law enforcement requests and investigations;
- (iii) for reporting purposes to the UK Government or any other state, supranational or public body including the European Commission including publication of information under transparency obligations;
- (iv) in order to meet any reporting requirements or as required whether under law or regulation or otherwise;
- (v) to contact me in connection with the RL Scheme;
- (vi) to make enquiries about the RLS application of;

Name of Borrower

- (vii) to take up references about me and the business;
- (viii) to give information about me and the business to any other party referred to in paragraph (1) above or to any official involved in running or monitoring the RL Scheme; and
- (ix) to evaluate the effectiveness of the RL Scheme;

(3) if a scheme facility is made available to

Name of Borrower

by the Lender, being retained by the relevant recipient for a minimum of ten (10) years after the initial drawdown date of such scheme facility,

- (4) being disclosed by the Guarantor (or any Guarantor Relevant Party) or Lender where such entity is requested or required to disclose any information to any regulatory body (including, without limitation, the European Commission) and/or to any UK Government departments or Devolved Administration for the purposes of ensuring compliance with any State aid transparency requirements and/or transparency obligations under UK subsidy control requirements including publication of information on the relevant transparency public databases; and
- (5) being processed in accordance with the British Business Bank privacy notice found at <https://www.british-business-bank.co.uk/privacy-notice/> and the Guarantor’s privacy notices found at <https://www.gov.uk/government/organisations/department-for-business-and->

[trade/about/personal-information-charter#dbtprivacy-notice](#)s (each as updated from time to time).

The Guarantor or Lender may also disclose information to the extent required to comply with any request made under or pursuant to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

I acknowledge that I have the right to request that any personal data held by or on behalf of the Guarantor or the British Business Bank, be verified, amended, deleted or otherwise modified. I acknowledge whilst I have the right to make such requests, the personal data may continue to be used as necessary to administer the RL Scheme. I acknowledge that any such requests made by me should be addressed to the British Business Financial Services Limited (acting as agent for the Guarantor) at the following address, or such other address as may be notified to me by the Lender from time to time:

British Business Bank
Steel City House
West Street
Sheffield
S1 2GQ

Email: DataProtection@british-business-bank.co.uk.

I acknowledge that each of the Guarantor, the British Business Bank and the Lender are acting as independent Controllers (as defined in the Data Protection Act 2018) in respect of the personal data that they process in connection with the RL Scheme and that I may lodge a complaint with the Information Commissioner if I consider that my rights under the UK GDPR (more specifically the General Data Protection Regulation (2016/679) as it forms part of the domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018, and as supplemented by the Data Protection Act 2018) have been infringed as a result of the processing of personal data by the Guarantor or the British Business Bank or the Lender.

I acknowledge that the Lender's ability to provide the Borrower with a RL Scheme facility is dependent upon a guarantee that the Lender obtains from the UK Government under the RL Scheme. The assistance provided through the RL Scheme, like many Government-backed business support activities, is regarded as a subsidy (or State aid in respect of transactions within scope of Article 10 of the Northern Ireland Protocol⁴) and is deemed to benefit the Borrower as it enables the Lender to provide the Borrower with a facility which would not otherwise have been possible. Provision of such subsidy is governed by the UK subsidy control regime (or in the case of State aid, by regulations made by the European Commission).

⁴ Northern Ireland Protocol to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01)

[only to be included where the declaration is signed on behalf of a limited company, limited partnership or partnership]

I confirm that I have authority to enter into this declaration on behalf of

_____ Name of Borrower

and have provided notice of data processing details set out in this Data Protection and Disclosure Declaration to relevant individuals.

Signature

Signed	Signed
Print Name	Print name
Position	Position
Date	Date

To be signed by each person who is required to sign the Lender's Scheme Facility Letter in respect of this RLS application



"The Recovery Loan Scheme Phase 3 is managed by the British Business Bank on behalf of, and with the financial backing of, the Secretary of State for Business and Trade"

DATA PROTECTION AND DISCLOSURE DECLARATION – PERSONAL GUARANTOR

“I,

Insert full name of individual completing the form

acknowledge in relation to the application of

(the “**Borrower**”)

Name of Borrower

to the Recovery Loan Scheme Phase 3 (“**RLS**”, the “**RL Scheme**” or the “**Scheme**”) that information provided about me (including any personal data) in connection with the RL Scheme, and if a scheme facility is made available, any information in respect of that scheme facility may be used in the following ways:

(1) being communicated to each of:

- (i) the Secretary of State for Business and Trade (the “**Guarantor**”) and any of the Guarantor’s auditors and agents (including the British Business Bank plc or any of its affiliates and their auditors and agents), together with any officers, directors, employees, affiliates, advisers, agents or contractors of such auditors or agents (including, without limitation, any advisers, consultants, and auditors carrying out due diligence);
- (ii) processing agents, fund managers, delivery partners and companies providing services to the British Business Bank plc and its affiliates;
- (iii) UK Parliament (including any Committee of the House of Commons or the House of Lords);
- (iv) all UK Government departments and Devolved Administrations (including but not limited to the National Audit Office, the office for National Statistics, HM Treasury, the Cabinet Office, the Public Accounts Committee, the Government Internal Audit Agency (GIAA) and the Department for Business and Trade) and other politicians or government members (i.e. ministers);
- (v) all UK agencies and authorities including without limitation the Bank of England (including the Prudential Regulation Authority), the Financial Conduct Authority, the Financial Policy Committee, the Insolvency Service, Companies House, or any other governmental, banking, taxation or regulatory agency or authority;
- (vi) the National Crime Agency the National Investigation Service, Cifas, the UK Financial Intelligence Unit, Action Fraud or any other UK agency, service or organisation involved in the detection of criminal behaviour or fraud prevention;
- (vii) the Financial Ombudsman Service; and
- (viii) the European Commission,

(together, the “**Guarantor Relevant Parties**”);

(2) being used by the Guarantor and any Guarantor Relevant Parties:

- (i) for analytical and administrative purposes (including to keep a record of the types of borrowers and/or applicants applying for a RL Scheme facility);
- (ii) for the prevention or detection of crime or the apprehension or prosecution of offenders, fraud prevention purposes or in response to police or law enforcement requests and investigations;
- (iii) for reporting purposes to the UK Government or any other state, supranational or public body including the European Commission including publication of information under transparency obligations;
- (iv) in order to meet any reporting requirements or as required whether under law or regulation or otherwise;
- (v) to contact me in connection with the RL Scheme;
- (vi) to make enquiries about the personal guarantee provided by me in respect of the RLS application of

Name of Borrower

- (vii) to take up references about me and the business;
- (viii) to give information about me and the business to any other party referred to in paragraph (1) above or to any official involved in running or monitoring the RL Scheme; and
- (ix) to evaluate the effectiveness of the RL Scheme;

(3) if a scheme facility is made available to

Name of Borrower

by the Lender, being retained by the relevant recipient for a minimum of ten (10) years after the initial drawdown date of such scheme facility;

- (4) being disclosed by the Guarantor (or any Guarantor Relevant Party) or Lender where such entity is requested or required to disclose any information to any regulatory body (including without limitation the European Commission) and/or to any UK Government departments or Devolved Administration for the purposes of ensuring compliance with any State aid transparency requirements and/or transparency obligations under UK subsidy control requirements including publication of information on the relevant transparency public databases; and
- (5) being processed in accordance with the British Business Bank privacy notice found at <https://www.british-business-bank.co.uk/privacy-notice/> and the Guarantor’s privacy notices

found at <https://www.gov.uk/government/organisations/department-for-business-and-trade/about/personal-information-charter#dbtprivacy-notice> (each as updated from time to time).

The Guarantor or Lender may also disclose information to the extent required to comply with any request made under or pursuant to the provisions of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

I acknowledge that I have the right to request that any personal data held by or on behalf of the Guarantor or the British Business Bank, be verified, amended, deleted or otherwise modified. I acknowledge whilst I have the right to make such requests, the personal data may continue to be used as necessary to administer the RL Scheme. I acknowledge that any such requests made by me should be addressed to the British Business Financial Services Limited (acting as agent for the Guarantor) at the following address, or such other address as may be notified to me by the Lender from time to time:

British Business Bank
Steel City House
West Street
Sheffield
S1 2GQ

Email: DataProtection@british-business-bank.co.uk.

I acknowledge that each of the Guarantor, the British Business Bank and the Lender are acting as independent Controllers (as defined in the Data Protection Act 2018) in respect of the personal data that they process in connection with the RL Scheme and that I may lodge a complaint with the Information Commissioner if I consider that my rights under the UK GDPR (more specifically the General Data Protection Regulation (2016/679) as it forms part of the domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018, and as supplemented by the Data Protection Act 2018) have been infringed as a result of the processing of personal data by the Guarantor or the British Business Bank or the Lender.

Signed
Print Name
Date

To be signed by the person who is required to sign a personal guarantee provided in respect of the RLS application of

Name of Borrower



"The Recovery Loan Scheme Phase 3 is managed by the British Business Bank on behalf of, and with the financial backing of, the Secretary of State for Business and Trade"

SCHEDULE 4 : FORM OF LENDING LIMIT LETTER

[Individual name]

[Position]

[Lender name]

[Lender address]

[Date]

Dear [Lender name],

RLS – [[Initial]/[Subsequent] Lending Limit Letter]

We refer to the guarantee agreement relating to the Recovery Loan Scheme Phase 3 dated [on or around the date hereof]/[date] (the “**Scheme**”) entered into between the Secretary of State for Business and Trade (the “**Secretary of State**” or the “**Guarantor**”) and the [entity][entities] listed above ([the][each a] “**Lender**”) as amended from time to time (the “**Guarantee Agreement**”).

Capitalised terms used but not otherwise defined in this letter (the “**Letter**”) shall have the same meaning as in the Guarantee Agreement. This Letter is a Related Agreement for the purposes of the Guarantee Agreement.

British Business Financial Services Ltd (“**BBFSL**”) acts as agent for and on behalf of the Secretary of State under the Scheme.

This Letter sets out your [revised] Lending Limit for the Scheme Period. [It also sets out certain additional terms that are referred to in your Guarantee Agreement and are applicable to your accreditation under the Scheme.]⁵

[Please acknowledge these additional terms by signing and returning a copy of this Letter to [email address].]⁶

Section A: [Revised] Lending Limit

You have been allocated a [revised] Lending Limit of £[•] ([express in pounds]) for the Scheme Period ending 31 March 20[•] (or such later or earlier date as is notified to you by the Guarantor), subject always to the Application Deadline Date and the Termination Date.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Section B: Scheme Facility Type⁸

[[You have][Each Lender has] been accredited to provide the following Scheme Facility Type(s):⁹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Section C: Notices

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Section D: Additional Terms]¹²

[Subsection (i): Pricing]

[REDACTED]

[REDACTED]

[Subsection (ii): Service of Process]

[REDACTED]

[•]
Email: [•]
For the attention of: [•]¹³

[Subsection (iii): Specified Lender]

[REDACTED]

*[Subsection (iv): Additional conditions to continued Accreditation]*¹⁵

[•]

[Subsection (v): Financial Reporting]

[REDACTED]

[•]

[Subsection (vi): Other]

[•]

[REDACTED]

[REDACTED]

[REDACTED]

Counterparts

This Letter may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Letter. Delivery of a counterpart of this Letter by email attachment or telecopy shall be an effective mode of delivery.

Governing law

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

Jurisdiction

The parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any dispute which may arise out of or in connection with this Letter and the documents entered into pursuant to it and that accordingly any proceedings arising out of or in connection with this Letter and such documents will be brought in such courts. The parties irrevocably submit to the jurisdiction of such courts and waive any objection to proceedings in any such court on the ground or venue or on the ground that the proceedings have been brought in an inconvenient forum.

* * *

[Please acknowledge the terms of this Letter by signing and returning a copy of this Letter.]¹⁶[By originating Scheme Facilities after the date of this Letter, you will be deemed to be bound by your obligations set out herein.]¹⁷

Yours sincerely,

Signature:

Signature:

Name:

Name:

Authorised signatory

Authorised signatory

For and on behalf of **British Business Financial Services Limited**
as agent for **the Secretary of State for Business and Trade**

[Agreed and acknowledged on behalf of Lender by:

.....

¹⁶ Include bracketed language in Initial Lending Limit Letters and for Subsequent Lending Limit Letters if pricing terms have changed or material additional terms are included, otherwise remove.

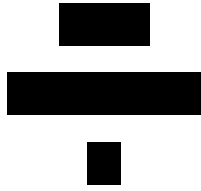
¹⁷ Include bracketed language in Subsequent Lending Limit Letters unless pricing terms have changed or material additional terms are included.

Name:

Position:

Date:]¹⁸





SCHEDULE 5 : SCHEME FACILITY TYPE SCHEDULE: TERM LOAN SCHEME FACILITIES

1. What type of Scheme Facilities does this Scheme Facility Type Schedule apply to?

This Scheme Facility Type Schedule applies to all term loan facilities that are made available by the Lender to an Applicant pursuant to the Scheme (each, a “**Term Loan Scheme Facility**”).

A term loan is a loan for a specific amount that has a specified repayment schedule and a fixed or floating interest rate. A term loan may be repaid either by instalments over a specified period or in full at the end of such period.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Guarantor may use any information obtained by it during any audit of the Lender to verify the amount claimed by the Lender under a Scheme Guarantee.

3. **What is the maximum term of a Term Loan Scheme Facility?**

The “Maximum Guarantee Term” of any Term Loan Scheme Facility will be six (6) years,

4. **What Eligibility Criteria does a Term Loan Scheme Facility need to comply with to be eligible under the Scheme?**

The Term Loan Scheme Facility must satisfy (in the determination of the Lender):

(A) the General Eligibility Criteria; and

The General Eligibility Criteria apply to all Proposed Scheme Facilities and are set out in Schedule 2 to this Agreement.

(B) the following additional eligibility criteria (the “Type Specific Eligibility Criteria”):

None.

5. **What notification obligations does the Lender have in respect of the Scheme Facility?**

Subject to Clause 4.2 of this Agreement, the Lender is required to include as a minimum the following wording in the Scheme Facility Letter for each Term Loan Scheme Facility:

“1. RLS guarantee

Your lender’s ability to provide you with this loan is dependent upon your lender receiving a guarantee from the UK Government under the Recovery Loan Scheme (“RLS”). The guarantee provides your lender with a partial guarantee, should you default on repaying this loan.

2. You are responsible for the repayment of your loan

The RLS guarantee is provided to your lender and not to you. You remain responsible for repaying the whole of this loan at all times.”

Provided that no material changes are made to the meaning of the above language, the Lender may change references to the Guarantor, the Lender, the Borrower and the description of the relevant Term Loan Scheme Facility to match the language in the offer letter for such Term Loan Scheme Facility.

■	[REDACTED]
■	[REDACTED]
■	[REDACTED]

- [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

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- [REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

_____, _____

[REDACTED]

[REDACTED]

■ [REDACTED]

■ **_____**

[REDACTED]

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10 of 10

██████████

(b) (7)(C), (b) (7)(D)

[REDACTED]

[REDACTED]



SCHEDULE 6 : SCHEME FACILITY TYPE SCHEDULE: RCF SCHEME FACILITIES

1. What type of Scheme Facilities does this Scheme Facility Type Schedule apply to?

This Scheme Facility Type Schedule applies to committed and uncommitted revolving credit facilities that are made available by the Lender to an Applicant pursuant to the Scheme (each, an “RCF Scheme Facility”).

Revolving credit facilities offer a flexible way to manage liquidity and cashflow over the short-medium term. A borrower has the flexibility to drawdown and repay funds within an overall agreed limit, for the term of the facility; subject to any additional terms and conditions of the lender. A revolving credit facility will be made available by a lender to a borrower in consideration for the payment of interest and fees. Performance bonds, guarantees, business credit (or charge) cards and letters of credit are not eligible for RLS.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Guarantor may use any information obtained by it during any audit of the Lender to verify the amount claimed by the Lender under a Scheme Guarantee.

[REDACTED]

3. **What is the maximum term of an RCF Scheme Facility?**

The “**Maximum Guarantee Term**” of any RCF Scheme Facility will be three (3) years, subject to Clause 8.2(B)(3).

4. **What Eligibility Criteria does an RCF Scheme Facility need to comply with to be eligible under the Scheme?**

The RCF Scheme Facility must satisfy (in the determination of the Lender):

(A) the General Eligibility Criteria; and

The General Eligibility Criteria apply to all Proposed Scheme Facilities and are set out in Schedule 2 to this Agreement.

(B) the following additional eligibility criteria (the “**Type Specific Eligibility Criteria**”):

The Expiry Date of the Proposed Scheme Facility must fall on a date which would mean that the term of the Proposed Scheme Facility is a whole number of months.

5. **What notification obligations does the Lender have in respect of the Scheme Facility?**

Subject to Clause 4.2 of this Agreement, the Lender is required to include as a minimum the following wording in the Scheme Facility Letter for each RCF Scheme Facility:

“1. *RLS guarantee*

Your lender’s ability to provide you with this facility is dependent upon your lender receiving a guarantee from the UK Government under the Recovery Loan Scheme (“RLS”). The guarantee provides your lender with a partial guarantee, should you default on repaying this facility.

2. *You are responsible for the repayment of your facility*

The RLS guarantee is provided to your lender and not to you. You remain responsible for repaying the whole of this facility at all times.”

Provided that no material changes are made to the meaning of the above language, the Lender may change references to the Guarantor, the Lender, the Borrower and the description of the relevant RCF Scheme Facility to match the language in the offer letter for such RCF Scheme Facility.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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- [REDACTED]

- [REDACTED]

- [REDACTED]

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SCHEDULE 7 : SCHEME FACILITY TYPE SCHEDULE: INVOICE FINANCE SCHEME FACILITIES

1. What type of Scheme Facilities does this Scheme Facility Type Schedule apply to?

This Scheme Facility Type Schedule applies to all invoice finance facilities that are made available by the Lender to an Applicant pursuant to the Scheme (each, an “**Invoice Finance Scheme Facility**”).

An invoice finance facility may take the form of either a “factoring” or an “invoice discounting” facility, both of which involve the purchase of invoices by an invoice financier from a third-party seller for an agreed purchase price. Whilst practices vary, typically, a percentage of the purchase price will be paid to the seller upfront. Once the invoices have been repaid, the invoice financier will pay the remaining purchase price to the third party less certain charges. Invoice Finance Scheme Facilities must be made on the basis that they are not single invoice financing or selective invoice financing facilities and that the Lender has recourse to the Borrower for the facility. If a Borrower (or the Lender) purchases bad debtor protection or the Lender charges a Borrower a fee and assumes the risk of non-payment of an invoice due to insolvency of the underlying debtor this will be still be considered to be a full recourse facility.

The Scheme Lender Fee payable by the Lender in respect of an Invoice Finance Scheme Facility will be calculated based on the Maximum Guaranteed Amount, regardless of whether the facility utilisation is above or below this level.

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The Guarantor may use any information obtained by it during any audit of the Lender to verify the amount claimed by the Lender under a Scheme Guarantee.

3. **What is the maximum term of an Invoice Finance Scheme Facility?**

The “**Maximum Guarantee Term**” of any Invoice Finance Scheme Facility will be three (3) years, [REDACTED]

4. **What Eligibility Criteria does an Invoice Finance Scheme Facility need to comply with to be eligible under the Scheme?**

The Invoice Finance Scheme Facility must satisfy (in the determination of the Lender):

(A) the General Eligibility Criteria; and

The General Eligibility Criteria apply to all Proposed Scheme Facilities and are set out in Schedule 2 to this Agreement.

(B) the following additional eligibility criteria (the “**Type Specific Eligibility Criteria**”):

- (1) The terms of the Invoice Finance Scheme Facility shall not allow the Borrower to include within the Funded Debts any Excluded Debts.
- (2) The Invoice Finance Scheme Facility must comprise either a factoring or invoice discounting facility and be made on the basis that a Lender has full recourse to the Borrower for repayment of financing advanced by the Lender under such Invoice Finance Scheme Facility.

- (3) The Invoice Finance Scheme Facility is not a single invoice discounting facility or a selective invoice discounting facility.

5. **What notification obligations does the Lender have in respect of the Scheme Facility?**

Subject to Clause 4.2 of this Agreement, the Lender is required to include as a minimum the following wording in the Scheme Facility Letter for each Invoice Finance Scheme Facility:

“1. RLS guarantee

Your lender’s ability to provide you with this facility is dependent upon your lender receiving a guarantee from the UK Government under the Recovery Loan Scheme (“RLS”). The guarantee provides your lender with a partial guarantee, should you default on repaying this facility.

2. You are responsible for the repayment of your facility

The RLS guarantee is provided to your lender and not to you. You remain responsible for repaying the whole of this facility at all times.”

Provided that no material changes are made to the meaning of the above language, the Lender may change references to the Guarantor, the Lender, the Borrower and the description of the relevant Invoice Finance Scheme Facility to match the language in the offer letter for such Invoice Finance Scheme Facility.

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SCHEDULE 8 : SCHEME FACILITY TYPE SCHEDULE: ASSET FINANCE SCHEME FACILITIES

1. What type of Scheme Facilities does this Scheme Facility Type Schedule apply to?

This Scheme Facility Type Schedule applies to:

- (A) hire purchase agreements entered into by an Applicant with the Lender pursuant to the Scheme for the purpose of the Applicant acquiring an Approved Asset ("**Hire Purchase Agreements**"), other than Hire Purchase Back Arrangements;
- (B) leases entered into by an Applicant with the Lender pursuant to the Scheme, on terms which grant the Applicant use of an Approved Asset (title to which remains with the Lender) for a specified period in exchange for payment of rent ("**Leases**"), other than Sale and Leaseback Arrangements; and
- (C) for Sale and Leaseback and Hire Purchase Back Authorised Lenders only, Sale and Leaseback Arrangements and/or Hire Purchase Back Arrangements,

(each, an "**Asset Finance Scheme Facility**").

A "**Hire Purchase Back Arrangement**" is an arrangement that purports to record the sale of an asset by a Borrower to the Lender under terms which allow the Borrower to continue to use such asset with an option to repurchase such asset from the Lender upon payment in full of the purchase price, which shall be paid to the Lender in instalments over a specified time period.

A "**Sale and Leaseback Arrangement**" is an arrangement under which a Borrower sells an asset to the Lender and leases back the same asset from the Lender in exchange for the payment of rent.

Under a hire purchase agreement, the borrower will agree to purchase a specified asset or assets from the lender and will pay the purchase price for such assets over a specified time period. The borrower will not own the assets until it has paid for such assets in full.

Under a lease, the lender will agree to purchase an asset or assets required by the borrower and lease such asset to the borrower for a specified time period, in exchange for payment of rent. Title to the assets will not be transferred to the borrower and therefore the assets will be returnable to the lender at the end of the term of the applicable lease period.

References in this Scheme Facility Type Schedule to an asset, an Approved Asset and the Purchased Assets should be read to include one or more assets depending on the nature of the asset or assets being hired or leased.

The terminology used in this Scheme Facility Type Schedule reflects the terminology used in this Agreement and not that typically used in respect of hire purchase agreements or leases. For example:

- *the "Borrower" will typically be referred to as (in respect of a hire purchase agreement) the "hirer" or (in respect of a lease) the "lessee";*
- *the "Lender" will typically be referred to as (in respect of a hire purchase agreement) the "owner" or (in respect of a lease) the "lessor";*
- *the "Scheme Facility Letter" in respect of a hire purchase agreement or lease will typically be referred to as the "facility agreement";*

- a “demand in writing for repayment” of any hire purchase agreement or lease will typically be referred to as a “notice of termination”; and
- the “demand date” in respect of any hire purchase agreement or lease will typically be referred to as the “termination date”.

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The Guarantor may use any information obtained by it during any audit of the Lender to verify the amount claimed by the Lender under a Scheme Guarantee.

3. **What is the maximum term of an Asset Finance Scheme Facility?**

The “**Maximum Guarantee Term**” of any Asset Finance Scheme Facility will be six (6) years, subject to Clause 8.2(B)(3).

4. **What Eligibility Criteria does an Asset Finance Scheme Facility need to comply with to be eligible under the Scheme?**

The Asset Finance Scheme Facility must satisfy (in the determination of the Lender):

(A) the General Eligibility Criteria; and

The General Eligibility Criteria apply to all Proposed Scheme Facilities and are set out in Schedule 2 to this Agreement.

(B) the following additional eligibility criteria (the “**Type Specific Eligibility Criteria**”):

- (1) The rate of interest payable to the Lender in respect of such Asset Finance Scheme Facility must be a fixed rate.
- (2) The Asset Finance Scheme Facility will amortise on a monthly, quarterly, six-monthly or yearly basis or will have a “bullet” or “balloon” repayment profile where the full outstanding balance of the financing is repayable at or before maturity.
- (3) If the Asset Finance Scheme Facility is a Lease, it must not be used to provide a secondary lease period and the maximum rental period that can be guaranteed in respect of the Purchased Asset must be the primary term of the relevant Lease. If the primary term of a Lease that was previously an Asset Finance Scheme Facility is extended for reasons other than forbearance, such Lease shall not be eligible as an Asset Finance Scheme Facility.

The term of an Asset Finance Scheme Facility may be extended

If an Asset Finance Scheme Facility is extended for any other reason, it will only be covered by this Agreement if the Lender treats it as a new Proposed Scheme Facility, it complies with the Eligibility Criteria and the relevant application process is completed. If a Lease is extended for reasons other than forbearance it will not be possible for the Lease to continue to be an Asset Finance Scheme Facility.

- (4) If the Asset Finance Scheme Facility is a Lease, the financing provided by the Lender to the Borrower under such Lease must:
 - (a) be at least equal to the full capital or principal cost of the relevant Purchased Asset (excluding any VAT and advance rental payments) as described in the definition of “Original Balance Financed” above; and
 - (b) have a repayment profile such that the Lender does not expect the Purchased Asset to have any residual value remaining at the date that the Asset Finance Scheme Facility is scheduled to be repaid in full.
- (5) Unless the Lender is a Sale and Leaseback and Hire Purchase Back Authorised Lender, the Asset Finance Scheme Facility must not be a Sale and Leaseback Arrangement or a Hire Purchase Back Arrangement.
- (6) If the Asset Finance Scheme Facility is a Sale and Leaseback Arrangement or a Hire Purchase Back Arrangement, in the determination of the Lender the useful economic life of the Approved Asset(s) that are being financed through an Asset Finance Scheme Facility must be for a period lasting longer than the term of that Asset Finance Scheme Facility.

5. **What notification obligations does the Lender have in respect of the Scheme Facility?**

Subject to Clause 4.2 of this Agreement, the Lender is required to include as a minimum the following wording in the Scheme Facility Letter for each Asset Finance Scheme Facility:

"1. RLS guarantee

Your lender's ability to provide you with this facility is dependent upon your lender receiving a guarantee from the UK Government under the Recovery Loan Scheme ("RLS"). The guarantee provides your lender with a partial guarantee, should you default on paying amounts due under this facility.

2. You are responsible for the repayment of your facility

The RLS guarantee is provided to your lender and not to you. You remain responsible for paying all amounts under the whole of this facility at all times."

Provided that no material changes are made to the meaning of the above language, the Lender may change references to the Guarantor, the Lender, the Borrower and the description of the relevant Asset Finance Scheme Facility to match the language in the offer letter for such Asset Finance Scheme Facility.

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SCHEDULE 10 : QUESTION SETS

Part A – Location Question Set

- 1. Is your business (this is the legal entity proposing to borrow the RLS facility) established or registered in Northern Ireland?**

If the answer to this question is yes, the Applicant may be within scope of the Northern Ireland Protocol.

If the answer to this question is no, go to question 2.

- 2. Does your business have any active subsidiaries, an active parent company, a business in the same corporate group and/or operations in Northern Ireland? Or does your business have plans to operate any such entities, or establish other operations in Northern Ireland within the next three years?**

If the answer to this question is yes, the Applicant may be within scope of the Northern Ireland Protocol.

If the answer to this question is no, go to question 3.

- 3. Does your business provide a service or is it part of a supply chain¹ which is specifically tailored² to the needs of a customer or customers in Northern Ireland that manufacture or sell goods or participate in the NI wholesale electricity market?³**

If the answer to this question is yes, the Applicant may be within scope of the Northern Ireland Protocol.

If the answer to questions 1, 2 and 3 are no, the Applicant is outside scope of the Northern Ireland Protocol.

Your lender will use and rely on your answers in this questionnaire when processing your application.

¹ Supply chain includes operations both upstream and downstream of a goods or wholesale electricity business in Northern Ireland.

² The answer to this question will be “no” if your business provides a general service or is part of a supply chain that is used by, but is not targeted at, a specific NI customer(s) that manufactures or sell goods or participates in the wholesale electricity market. For example: if a business (Business A) manufactures widgets and those widgets are sold to a number of businesses including an NI customer(s), but the widgets are not specifically tailored to the needs of that customer(s) in NI that manufactures or sells goods or participates in the NI wholesale electricity market, Business A should not be in scope of the Northern Ireland Protocol.

³ This means the Northern Ireland/Ireland single Electricity market specifically in relation to the generation, transmission, distribution or supply of wholesale electricity.

Part B – Additional Questionnaire for Northern Ireland-based businesses that are potentially in scope of the NI Protocol

Introduction: A Lender's ability to provide a facility under the Scheme is dependent upon a guarantee from the UK Government. The assistance provided through RLS, like many Government-backed business support activities, is regarded as a subsidy and is deemed to benefit the Applicant.

Provision of subsidies is governed by the laws of the United Kingdom. If an Applicant is in scope of the Northern Ireland Protocol, the regulations made by the European Commission will be relevant. Under these rules the maximum amount of *de minimis* subsidy that may be received by an Applicant, or if it is part of a group, an Applicant's group, over any rolling three-year period is generally €200,000 (although lower ceilings apply in agriculture, fisheries and road freight haulage certain as detailed in the Annex). For RLS, €200,000 is calculated to equate to facility size of £1,000,000 over a six-year term. If an Applicant, or if it is part of a group, an Applicant's group, has received other *de minimis* aid during the "rolling three-year period" (as set out in the Annex), then this will need to be deducted from the €200,000 (or lower applicable threshold) and will impact the facility size they may be entitled to under State aid rules (potentially reducing it to zero).

Additionally, if an Applicant in scope of the Northern Ireland Protocol has received risk finance aid (either under the GBER or a specific aid approval decision) totalling more than €14.8 million,¹ there is a limit in terms of how much additional *de minimis* aid they can be granted in relation to the same risk finance measure (as they cannot go over a cap of €15 million of risk finance aid, or risk finance and *de minimis* aid combined). They should therefore be asked if they have received more than €14.8 million of risk finance aid and, if yes, the Applicant will not be eligible for aid under this scheme.

Finally, if an Applicant within scope of the Northern Ireland Protocol has received any other form of aid (apart from support under the Covid-19 Temporary Framework),² there may be a restriction on their ability to access additional *de minimis* aid in relation to the same eligible costs. They should therefore be asked if they are applying for a facility for a specific purpose (e.g. asset financing) and, if so, whether they have already received aid to support the same expenditure; if the answer is yes, they will also not be eligible for aid for the same costs under this scheme.

If an Applicant has been provided with *de minimis* aid, risk finance aid or aid in respect of the same eligible costs, it should have been informed in writing by the subsidy provider of the basis of the subsidy at the time the subsidy was granted

Note to Lenders: If an Applicant has been identified as potentially being in scope of the Northern Ireland Protocol on the basis of the Location Question Set in Part A and wishes to borrow an amount which (taking into account any aid already received from other sources) would take the gross grant equivalent of the State aid over the threshold relevant for its sector under *de minimis* aid (as set out in the Annex), the following additional questions (which can be self-certified by the Applicant) are designed to determine whether the Applicant is outside the scope of the Northern Ireland Protocol.

Note to Scheme Applicants: If you have been identified as potentially "in scope" of the Northern Ireland Protocol in the first part of this questionnaire, these additional questions are designed to obtain further information on the purpose of your facility and will be used to ascertain whether you could be considered to be "out of scope". Your lender will use and rely on your answers in this questionnaire when processing your application.

¹ Relevant risk finance schemes in the UK include the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

² This includes CBILS, CLBILS, RLS 1 and 2. Support under these schemes does not need to be taken into account. BBLS aid that was granted under the Temporary Framework can also be excluded. However, BBLS aid that was given in reliance on the *de minimis* regime would need to be factored in.

Following completion of this additional questionnaire, if it is determined that you are in scope of the Northern Ireland Protocol, the maximum amount of *de minimis* subsidy that you or if you are part of a group, your group may receive over any rolling three-year period is generally €200,000 (although lower ceilings apply in agriculture, fisheries and road freight haulage certain as detailed in the Annex). For RLS €200,000 is calculated to equate to facility size of £1,000,000 over a six-year term. If you or your group have received other *de minimis* aid or aid during the “rolling three-year period”, then this will be deducted from the €200,000 (or lower applicable sector threshold) and will impact the facility size you may be entitled to under State aid rules potentially to zero.

Additionally, if you have received aid for a risk finance measure under GBER or a European Commission decision totalling more than €14.8 million,³ there is a limit in terms of how much additional *de minimis* aid you can be granted in relation to the same measure. If you have received more than €14.8 million of risk finance aid to date, you will not be eligible for aid under this scheme.

Finally, if you are in scope of the Protocol and have received aid for the same eligible costs under GBER or a European Commission decision, there is also a limit in terms of how much additional *de minimis* aid you can be granted. If you are applying for a loan for the same specific purpose in respect of which you have already received aid, you will also not be eligible for aid under this scheme.

The reference below to your “business” refers to the legal entity proposing to borrow the RLS facility.

Please note, these questions are provided solely to determine whether you are inside or outside of the scope of the Northern Ireland Protocol to determine the relevant subsidy threshold relevant to you. Any lending decision is for your Lender to make and subject to your status and meeting all other scheme criteria.

1. Does your business, including any subsidiaries, parent company or other business in the corporate group based in NI:

(a) engage in the manufacture or sale of goods⁴ in NI? or

(b) participate in the NI wholesale electricity market, namely generation, transmission, distribution or supply of wholesale electricity?⁵

Please answer yes if your business, including any subsidiaries, parent company or other business in the corporate group based in NI, have plans to start manufacturing or selling such goods, or operating in the NI wholesale electricity market in the next three years.

If yes:

- *if it is your business (the legal entity proposing to borrow the RLS facility) that engages in those activities or plans to engage in that activity in the next three years, your business is within scope of the NI protocol as it is a NI-based company that is active in the manufacture or sale of goods or the NI wholesale electricity market.*

³ Relevant risk finance schemes in the UK include the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

⁴ The manufacturing and sale of goods would include the primary production of agricultural products or production, processing or marketing of fishery and aquaculture products.

⁵ This means the Northern Ireland/Ireland single Electricity market specifically in relation to the generation, transmission, distribution or supply of wholesale electricity.

- *If it is a subsidiary, parent or other part of the corporate group that engages in those activities or plans to engage in that activity in the next three years, go to question 2.*

If no – go to question 3.

2. Are your business and the subsidiary, parent or other business in the corporate group sufficiently segregated to ensure that any RLS facility taken by your business will not cross-subsidise your other business's activities or operations?

Evidence to support there being segregation might include:

- *Your business units in each location recording individual financial results.*
- *Processes within your business which are able to identify the specific funding arrangements for working capital/other requirements that relate to the business, separately between Great Britain and Northern Ireland points of supply.*
- *Arms-length, commercial transactions between your GB and NI based businesses.*

If yes – go to question 3.

If no – your business is within scope of the NI protocol as it has a NI-based subsidiary, parent or other business that is active in the manufacture or sale of goods or the NI wholesale electricity market and insufficient segregation of your business from the NI-based subsidiary, parent or other business exists to ensure that the RLS facility taken by your business will not cross-subsidise the other business's activities or operations.

3. Does your business provide a service or is it part of a supply chain⁶ which is specifically tailored to the needs of a customer or customers in Northern Ireland that manufacture or sell goods or participate in the NI wholesale electricity market?⁷

If your business provides general services that may be used by, but are not specifically targeted at, customers that manufacture or sell goods that are traded in Northern Ireland you should answer no to this question.

If yes – your business is within scope of the NI protocol as it supplies services tailored to a NI-based customer (s) active in the manufacture or sale of goods or carrying out activities in relation to the NI wholesale electricity market.

If no – your business is not within scope of the NI protocol as it is a NI-based company that is not active in the manufacture or sale of goods (or active in the wholesale electricity market) nor is it engaged in the supply of services tailored to a NI-based goods or wholesale electricity customer (or customers).

If you do not answer this questionnaire honestly and you are in scope of the NI Protocol and subsequently receive a RLS facility, your facility may have to be repaid and you may have to pay costs associated with the enforcement of any action in relation to your facility.

Signed by

⁶ Supply chain includes operations both upstream and downstream of a goods or wholesale electricity business in Northern Ireland

⁷ This means the Northern Ireland/Ireland Single Electricity Market specifically in relation to the generation, transmission, distribution or supply of wholesale electricity.

Part C – Additional questionnaire for Great Britain-based businesses that are potentially in scope of the NI Protocol

Introduction: A Lender's ability to provide a facility under the Scheme is dependent upon a guarantee from the UK Government. The assistance provided through RLS, like many Government-backed business support activities, is regarded as a subsidy and is deemed to benefit the Applicant.

Provision of subsidies is governed by the laws of the United Kingdom. If an Applicant is in scope of the Northern Ireland Protocol, the regulations made by the European Commission will be relevant. Under these rules the maximum amount of *de minimis* subsidy that may be received by an Applicant, or if it is part of group, an Applicant's group, over any rolling three-year period is generally €200,000 (although lower ceilings apply in agriculture, fisheries and road freight haulage certain as detailed in the Annex). For RLS, €200,000 is calculated to equate to facility size of £1,000,000 over a six-year term. If an Applicant, or if it is part of group, an Applicant's group, has received other *de minimis* aid during the "rolling three-year period" (as set out in the Annex), then this will be deducted from the €200,000 (or lower applicable threshold) and will impact the facility size they may be entitled to under State aid rules (potentially reducing it to zero).

Additionally, if an Applicant in scope of the Northern Ireland Protocol has received risk finance aid (either under the GBER or a specific aid approval decision) totalling more than €14.8 million,¹ there is a limit in terms of how much additional *de minimis* aid they can be granted in relation to the same risk finance measure (as they cannot go over a cap of €15 million of risk finance aid, or risk finance and *de minimis* aid combined). They should therefore be asked if they have received more than €14.8 million of risk finance aid and, if yes, the Applicant will not be eligible for aid under this scheme.

Finally, if an Applicant within scope of the Northern Ireland Protocol has received any other form of aid (apart from support under the Covid-19 Temporary Framework),² there may be a restriction on their ability to access additional *de minimis* aid in relation to the same eligible costs. They should therefore be asked if they are applying for a facility for a specific purpose (e.g. asset financing) and, if so, whether they have already received aid to support the same expenditure; if the answer is yes, they will also not be eligible for aid for the same costs under this scheme.

If an Applicant has been provided with *de minimis* aid, risk finance aid or aid for the same eligible costs, it should have been informed in writing by the subsidy provider of the basis of the subsidy at the time the subsidy was granted

Note to Lenders: If an Applicant has been identified as potentially being in scope of the Northern Ireland Protocol on the basis of the Location Question Set in Part A and wishes to borrow an amount which (taking into account any aid already received from other sources) would take the gross grant equivalent of the State aid over the threshold relevant for its sector under *de minimis* aid (as set out in the Annex), the following additional questions (which can be self-certified by the Applicant) are designed to determine whether the Applicant is outside the scope of the Northern Ireland Protocol.

Note to Scheme Applicants: If you have been identified as potentially "in scope" of the Northern Ireland Protocol in the first part of this questionnaire, these additional questions are designed to obtain further information on the purpose of your facility and will be used to ascertain whether you could be considered to be "out of scope". Your lender will use and rely on your answers in this questionnaire when processing your application.

¹ Relevant risk finance schemes in the UK include the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

² This includes CBILS, CLBILS, RLS 1 and 2. Support under these schemes does not need to be taken into account. BBLS aid that was granted under the Temporary Framework can also be excluded. However, BBLS aid that was given in reliance on the *de minimis* regime would need to be factored in.

Following completion of this additional questionnaire, if it is determined that you are in scope of the Northern Ireland Protocol, the maximum amount of *de minimis* subsidy that you or if you are part of a group, your group may receive over any rolling three-year period is generally €200,000 (although lower ceilings apply in agriculture, fisheries and road freight haulage certain as detailed in the Annex). For RLS €200,000 is calculated to equate to facility size of £1,000,000 over a six-year term. If you or your group have received other *de minimis* aid or aid during the “rolling three-year period”, then this will be deducted from the €200,000 (or lower applicable sector threshold) and will impact the facility size you may be entitled to under State aid rules potentially to zero. Additionally, if you have received aid for the risk finance measure under GBER or a European Commission decision totalling more than €14.8 million,³ there is a limit in terms of how much additional *de minimis* aid you can be granted in relation to the same measure. If you have received more than €14.8 million of risk finance aid to date, you will not be eligible for aid under this scheme.

Finally, if you are in scope of the Protocol and have received aid for the same eligible costs under GBER or a European Commission decision, there is also a limit in terms of how much additional *de minimis* aid you can be granted. If you are applying for a loan for the same specific purpose in respect of which you have already received aid, you will also not be eligible for aid under this scheme.

The reference below to your “business” refers to the legal entity proposing to borrow the RLS facility.

Please note, these questions are provided solely to determine whether you are inside or outside of the scope of the Northern Ireland Protocol to determine the relevant subsidy threshold relevant to you. Any lending decision is for your Lender to make and subject to your status and meeting all other scheme criteria.

- 1. Does your business have any active subsidiaries, parent company, company in the same corporate group and/or operations in Northern Ireland or have plans to operate any such entities, or establish other operations in Northern Ireland, within the next three years.⁴**

If yes – go to question 2.

If no – go to question 5.

- 2. Do your NI subsidiaries, parent company, company in the same corporate group and/or operations in Northern Ireland:**

(a) manufacture or sell goods⁵? or

(b) participate in the NI wholesale electricity market?

Please answer yes if any of those entities have plans to start manufacturing or selling such goods in NI or to participate in the wholesale electricity market in the next three years.

³ Relevant risk finance schemes in the UK include the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

⁴ Secondary economic effects, such as a general increase in the sale of goods to Northern Ireland does not constitute State aid and are therefore outside the scope of Article 10 of the Northern Ireland Protocol. Therefore, where a subsidy is provided to a GB business, and an NI business then simply places goods on the NI market alongside other markets then this subsidy will not be in scope of Article 10 of the Northern Ireland Protocol. However, subsidies that have the effect of channelling advantages to one or a select group of enterprises in Northern Ireland may be in scope of Article 10 of the Northern Ireland Protocol.

⁵ The manufacturing and sale of goods would include the primary production of agricultural products or production, processing or marketing of fishery and aquaculture products.

If yes – go to question 3.

If no – go to question 5.

3. Is the facility only to support your Great Britain-based business and not your Northern Ireland-based business or operations?

If yes – go to question 4.

If no – your business is in scope of the Northern Ireland Protocol because the facility will support NI based activities in relation to the trade or manufacture of goods or wholesale electricity market in NI.

4. Are your Great Britain-based and Northern Ireland-based businesses or operations sufficiently segregated to ensure that any RLS facility taken by your Great Britain-based business will not cross-subsidise your Northern Ireland-based business activities or operations?

Evidence to support there being segregation might include:

- *Your business units in each location recording individual financial results.*
- *Processes within your business which are able to identify the specific funding arrangements for working capital/other requirements that relate to the business, separately between Great Britain and Northern Ireland points of supply.*
- *Arms-length, commercial transactions between your GB and NI based businesses.*

Where it is your business that also has operations in Northern Ireland then your business must also have processes to allow you to identify the specific funding arrangements, working capital/other requirements that relate to both the NI and GB activities. Recording individual financial results for business units supplying goods or services will help to support this determination.

You may be required to supply evidence of this for up to 10 years from the date the facility is granted.

If yes – go to question 5.

If no – your company is in scope of the Northern Ireland Protocol because there is insufficient evidence that the facility will not support activities in relation to the manufacture or sale of goods in NI, or the trade in wholesale electricity.

5. Does your business (including any Great Britain and Northern Ireland entities) provide a service or is it part of a supply chain⁶ which is specifically tailored to the needs of a customer or customers in Northern Ireland that manufacture or sell goods or participate in the NI wholesale electricity market?⁷

⁶ Supply chain includes operations both upstream and downstream of a goods or wholesale electricity business in Northern Ireland.

⁷ This means the Northern Ireland/Ireland single Electricity market specifically in relation to the generation, transmission, distribution or supply of wholesale electricity.

If your business provides general services or is part of a supply chain that may be used by, but is not specifically targeted at, a customer(s) that manufactures or sells goods or participates in the wholesale electricity market, you should answer no to this question.

Secondary economic effects, for example an increase in economic output for your customer(s) will not be in scope. If you can demonstrate that the trading with your goods/wholesale electricity customer is entirely on a commercial arms-length basis and that the financial benefit of the subsidy cannot be passed on to your customer indirectly, you should answer no to this question.

If yes – your business is in scope of the NI protocol as your business supplies services or is part of a supply chain which is specifically tailored to a to the neds of a NI-based customer (or customers) that manufacture or sell goods or participated in the NI wholesale electricity market.

If no - your business is not in scope of the NI protocol as it is a business with NI branch/subsidiary with either a clear segregation between GB and NI businesses or a business that only supplies services and, in each case, that does not supplies services tailored to a NI-based customer (or customers) active in the manufacture or sale of goods or the trade in wholesale electricity.

If you do not answer this questionnaire honestly and you are in scope of the NI Protocol and subsequently receive a RLS facility, your facility may have to be repaid and you may have to pay costs associated with the enforcement of any action in relation to your facility.

Signed by

Annex

Sector	Maximum Permissible Aid (€)	Maximum Permissible Aid (£)	Relevant Regulation	Regulation Date
Primary production of agricultural products	20,000	17,000	1408/2013 as amended by Regulation 2019/316	18/12/13 as amended by Regulation 2019/316 of 21/02/2019
Fishery and aquaculture	30,000	25,500	717/2014 as amended by Regulation 2020/2008	27/6/14 as amended by Regulation 2020/2008 of 08/12/2020
Road Freight Transport	100,000	85,000	1407/2013 as amended by Regulation 2020/972	18/12/13 as amended by Regulation 2020/972 of 02/07/2020
All Other Eligible Sectors	200,000	170,000	1407/2013 as amended by Regulation 2020/972	18/12/13 as amended by Regulation 2020/972 of 02/07/2020

A “rolling three-year period” is defined as follows:

- (a) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (b) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “current fiscal year” being the fiscal year of the relevant enterprise or undertaking in which the date of the facility letter for the present facility falls.

Part D – NI Filter Questions

Filter Questions for Applicants potentially in scope of the NI Protocol (whether based in NI or GB)

Note to Lenders: If an Applicant is in scope of the Northern Ireland Protocol, the Applicant will be required to fall within the *De minimis* Regulations made by the European Commission. Under these rules the maximum amount of de minimis subsidy that may be received by an Applicant, or if it is part of a group, an Applicant's group, over any rolling three-year period is generally €200,000 (although lower ceilings apply in agriculture, fisheries and road freight haulage certain as detailed in the below). For RLS, €200,000 is calculated to equate to facility size of £1,000,000 over a six-year term. If an Applicant, or if it is part of a group, an Applicant's group, has received other de minimis aid during the "rolling three-year period" (as set out below), then this will need to be deducted from the €200,000 (or lower applicable threshold) and will impact the facility size they may be entitled to under State aid rules (potentially reducing it to zero).

If an Applicant has been identified as potentially being in scope of the Northern Ireland Protocol on the basis of the Initial Question Set in Part A, these questions are designed to help you determine whether to provide the Additional Questionnaire to the Applicant.

The Maximum Amount an NI Applicant is entitled to under the Scheme is capped at the lesser of (A) the Maximum Facility Size for that sector and (B) an amount that would not take the Applicant over the Maximum Permissible Aid amount for that sector (the **Maximum Amount**).

The Maximum Facility Sizes for each sector are set out in the table below.

Sector	Maximum facility size*
Primary production of agricultural products	£110,000
Fishery and aquaculture	£170,000
Road Freight Transport ¹	£570,000
All Other Eligible Sectors	£1,000,000

* Relevant sector cap

The Maximum Permissible Aid amounts that may be received by an NI Applicant operating in particular sectors over any "rolling three-year period" is set out in the table below.

Sector	Maximum Permissible Aid (€)	Maximum Permissible Aid (£)
Primary production of agricultural products	20,000	17,000
Fishery and aquaculture	30,000	25,500
Road Freight Transport	100,000	85,000
All Other Eligible Sectors	200,000	170,000

¹Generally speaking, a business performing road freight haulage would not be within scope of the Northern Ireland Protocol as this would typically be characterised as a service. However, this may potentially come back into scope of the Northern Ireland Protocol if it is specifically targeted at cross-border goods.

If an NI Applicant has received other Relevant Support, then this must be deducted from the Maximum Permissible Aid amount. This will impact the facility size an NI Applicant may be entitled to under State aid rules (potentially reducing it to zero).

Relevant Support means other *de minimis* aid received by an Applicant, or if it is part of a group, the Applicant's group² during the "rolling three-year period" (as defined in the Annex) received by the applicant or its group (as applicable). If an Applicant has been provided with *de minimis* aid, it should have been informed of this in writing by the subsidy provider at the time the subsidy was granted³.

If an Applicant does not wish to borrow an amount which, taken together with any other Relevant Support, would take them over the Maximum Permissible Aid amount, as capped by the relevant Maximum Facility Size for the sector (the **Maximum Amount**), you may treat the Applicant as an NI Applicant and the Additional Questionnaire will not be relevant.

If the Applicant does wish to borrow an amount which, taken together with any other Relevant Support, would take them over the Maximum Permissible Aid amount, as capped by the relevant Maximum Facility Size for the sector (the **Maximum Amount**), you may provide them with the Additional Questionnaire to determine whether the Applicant may be out of scope of the Northern Ireland Protocol. If the Applicant is outside of scope of the Northern Ireland Protocol, they may be entitled to a greater amount under Subsidy Control Regime.

Additionally, if an Applicant (including any company in the same group, parent company or subsidiary) has received risk finance aid totalling more than €14.8 million,⁴ there is a limit in terms of how much additional *de minimis* aid they can be granted in relation to the same risk finance measure (as they cannot go over a cap of €15 million of risk finance aid, or risk finance and *de minimis* aid combined). They should therefore be asked if they have received more than €14.8 million of risk finance aid and, if yes, will not be eligible for aid under this scheme.

Finally, if an Applicant has received any other form of aid (apart from support under the Covid-19 Temporary Framework),⁵ there may be a restriction in terms of how much additional *de minimis* aid they can be granted. They should therefore be asked if they are applying for a loan for a specific purpose (e.g. asset financing) and, if so, whether they have already received aid to support the same expenditure; if the answer is yes, they will also not be eligible for aid under this scheme.

You must ask the Applicant if it has received any other Relevant Support, risk finance aid or aid in respect of the same eligible costs. You may rely on an applicant's written self-certification of this amount unless you have actual knowledge to the contrary.

BBB have provided a subsidy calculator on the Scheme Portal and also provided a methodology to you, if you prefer to calculate this on your own systems, to calculate whether the amount which the Applicant wishes to borrow would, taken together with any other Relevant Support, take them over

² Note to Lenders: If the group has been split up during this period, the de merger rules would apply so the aid should be attributed between the various entities accordingly. See further the guidance on this point in the Lender Manual.

³ Subsidy granted under CBILS, CLBILS, RLS 1 and 2 does not need to be taken into account as these were aid measures under the Temporary Framework. BBLS aid that was granted under the Temporary Framework can be excluded. However, BBLS aid that was given in reliance on the *de minimis* regime would need to be factored in.

⁴ Examples of relevant risk finance schemes in the UK include the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

⁵ Subsidy granted under CBILS, CLBILS, RLS 1 and 2 does not need to be taken into account as these were aid measures under the Temporary Framework. BBLS aid that was granted under the Temporary Framework can be excluded. However, BBLS aid that was given in reliance on the *de minimis* regime would need to be factored in.

the Maximum Permissible Aid amount, as capped by the relevant Maximum Facility Size for the sector (the **Maximum Amount**). For further guidance see the Lender Manual.

Suggested filter questions for lenders to ask Applicants

1. Has the business (including any company in the same group, parent company or subsidiary) received any:

- Risk finance aid in excess of €14.8 million;⁶ or
- Aid in respect of the same specific costs that it is applying for funding for now?⁷

If the answer is yes, you may provide the Additional Questionnaire to determine if the Applicant is outside of scope of the Northern Ireland Protocol.

If no, continue to Question 2.

2. Has the business (including any company in the same group, parent company or subsidiary) received any *de minimis* aid⁸ in the relevant “rolling three-year period” (“**Relevant Support**”)?

Applicants should have been informed in writing by the subsidy provider of the basis of the subsidy at the time the subsidy was granted.

If the answer is yes, record the amount of Relevant Support granted and go to question 3.

If the answer is no, go to question 3.

3. Is the business (including any company in the same group, parent company or subsidiary) active in the production, processing and marketing of fishery and aquaculture products, performing road freight transport⁹ for hire or reward, and/or engaged in the primary production of agricultural products?

If the answer is yes, go to question 4.

If the answer is no, continue to question 5.

4. If the business has received other Relevant Support, is the business (including any company in the same group, parent company or subsidiary):

- (a) active in the fishery or aquaculture sector and proposing to borrow an amount which taken together with any other Relevant Support would take the Applicant above the Maximum Amount;

⁶ Examples of relevant risk finance schemes in the UK include the Enterprise Investment Scheme (EIS), Venture Capital Trusts (VCT), Seed Enterprise Investment Scheme (SEIS) and Social Investment Tax Relief (SITR).

⁷ Note to Lenders: If the loan is for general purposes and is not attached to specific eligible costs, the answer here will normally be no. This question is most likely to be relevant where loans are intended to finance specific assets.

⁸ Subsidy granted under CBILS, CLBILS, RLS 1 and 2 does not need to be taken into account as these were aid measures under the Temporary Framework. BBLS aid that was granted under the Temporary Framework can also be excluded. However, BBLS aid that was given in reliance on the *de minimis* regime would need to be factored in.

⁹ Generally speaking, a business performing road freight haulage would not be within scope of the Northern Ireland Protocol as this would typically be characterised as a service. However, this may potentially come back into scope of the Northern Ireland Protocol if it is specifically targeted at cross-border goods.

- (b) performing road freight transport for hire or reward and proposing to borrow an amount which taken together with any other Relevant Support would take the Applicant above the Maximum Amount; and/or
- (c) active in the primary production of agricultural products and proposing to borrow an amount which taken together with any other Relevant Support would take the Applicant above the Maximum Amount?

OR

If the business has **not** received any other Relevant Support, is the business (including any company in the same group, parent company or subsidiary):

- (a) active in the fishery or aquaculture sector and proposing to borrow more than [£170,000]
- (b) performing road freight transport for hire or reward and proposing to borrow more than [£570,000]; and/or
- (c) active in the primary production of agricultural products and proposing to borrow more than [£110,000]?

If the answer to the relevant question is no, you may treat the applicant as an NI Applicant as the amount it wishes to borrow is below the relevant Maximum Permissible Aid amount.

If the answer to the relevant question is yes go to question 6.

5. If the business has received any other Relevant Support, is the business (including any company in the same group, parent company or subsidiary) proposing to borrow an amount which taken together with any other Relevant Support would take the Applicant over the relevant Maximum Amount?

OR

If the business has not received any other Relevant Support in the relevant “rolling three-year” period, is the business (including any company in the same group, parent company or subsidiary) proposing to borrow an amount in excess of £1,000,000?

If the answer to the relevant question is no, you may treat the applicant as an NI Applicant as the amount it wishes to borrow is below the relevant Maximum Permissible Aid amount.

If the answer to the relevant question is yes, you may provide the Additional Questionnaire to determine if the Applicant is outside of scope of the Northern Ireland Protocol.

6. Is the business also active in sectors other than:
- (a) the production, marketing or processing of fishery or aquaculture products;
 - (b) road freight transport for hire or reward; or
 - (c) the primary production of agricultural products?

If the answer is yes, go to question 7.

If the answer to the relevant question is no, you may provide the Additional Questionnaire to determine if the Applicant is outside of scope of the Northern Ireland Protocol.

7. Can the business demonstrate that the RLS facility will not cross-subsidise any activities mentioned in question 6 above, e.g. by freeing up capital for use in any of those (actual or planned) activities.

To answer yes to this question, the business must have processes to allow it to show separation of activities or distinction of costs this means it should be able to identify the specific funding arrangements, working capital/other requirements that relate to each sector the business operates in. Recording individual financial results for business units operating in different sectors will support this determination but the business may be able to demonstrate this in other ways.

If the answer to the relevant question is no, you may provide the Additional Questionnaire to determine if the Applicant is outside of scope of the Northern Ireland Protocol.

If the Applicant has answered yes to this question, the lender may recalculate the Applicant's Maximum Permissible Aid Amount entitlement based on the relevant sector to determine whether to provide the Additional Questionnaire.

The Lender should notify the Applicant that it may be required to supply evidence of their processes for identifying this for up to 10 years from the date the facility is granted.

Annex

The “rolling three-year period” is defined as follows:

- (a) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (b) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “current fiscal year” being the fiscal year of the relevant undertaking in which the date of the facility letter for the present facility falls.

SCHEDULE 11 : FORM OF SUBSIDY CONTROL LETTER

Applicant Name:

Applicant Address:

Date:

RECOVERY LOAN SCHEME – NOTIFICATION OF SUBSIDY

Applicant:	[•]
Lender:	[•]
Scheme Facility Reference Number:	[•]
Scheme Facility amount (£):	[•]
Scheme Guarantee Term (months):	[•]
Northern Ireland Protocol:	[Yes/No]
Date of Subsidy:	[include Offer Date]

Dear borrower,

Our ability to provide you with this facility has been dependent upon a guarantee we have received from the UK Government under the Recovery Loan Scheme (**RLS**). The assistance provided through RLS, like many Government-backed business support schemes is regarded as a subsidy and is deemed to benefit you as it has enabled us to provide you with a facility which may not otherwise have been possible.

Provision of such subsidy is governed by the laws of the United Kingdom. If you are a borrower in scope of the Northern Ireland Protocol, the regulations made by the European Commission will be relevant to you (details of which may be found in the Annex at the end of this letter).

Under these rules the maximum amount of subsidy you may receive over any rolling three-year period is generally:

- [£315,000 if you are outside of the scope of the Northern Ireland Protocol; or]
- [€200,000/£170,000], if you are inside of the scope of the Northern Ireland Protocol (although lower ceilings apply in certain sectors as detailed in the Annex under the section titled “For Borrowers in Scope of the Northern Ireland Protocol”.] The EUR amount of the State aid has been converted to Sterling at a rate of [[€1 equals £[0.85]].]

[[If you are outside of the scope of the Northern Ireland Protocol, the value of the subsidy arising from this facility is £[•].]

[Include if issued prior to the entry into force of the Subsidy Control Act 2022: -

The subsidy arising from this facility is a subsidy under the Trade and Cooperation Agreement as incorporated into UK Law by the European Union (Future Relationships) Act 2020 and comprises small amounts of financial Assistance under that Act.]

[OR]

[Include if issued after the entry into force of the Subsidy Control Act 2022: -

The subsidy arising from this facility is a subsidy under the Subsidy Control Act 2022, and comprises Minimal Financial Assistance under that Act.]]

[If you are in scope of the Northern Ireland Protocol, the value of the *de minimis* aid arising from this facility is £[•].¹]

It is your responsibility to retain records of any subsidy arising from assistance received for a minimum of ten years (if you are within the scope of the Northern Ireland Protocol) or three years (if you are outside of the scope of the Northern Ireland Protocol) from the date of receipt and to ensure that you do not exceed the rolling three-year period. If you make any other application to a support scheme which is deemed to provide a subsidy the next three years you will be required to inform the operator of that scheme about the subsidy advised by this letter and any other applicable aid from other sources.

Please note that this letter is issued solely to advise you of the value of the subsidy arising from your facility and does not in any way alter any of the terms of our facility letter to you, nor is it a notice of further funding.

Yours sincerely,

¹ A lender may include both amounts, or delete the subsidy control regime that is not applicable

ANNEX – DETAIL OF RELEVANT SUBSIDY CONTROL PROVISIONS

This information is provided for clarification and guidance.

For those borrowers outside of the scope of the Northern Ireland Protocol:

An “**enterprise**” is (subject to subsections (2) and (3))—

- (a) a person who is engaged in an economic activity that entails offering goods or services on a market, to the extent that the person is engaged in such an activity, or
 - (b) a group of persons under common ownership or common control which is engaged in an economic activity that entails offering goods or services on a market, to the extent that the group is engaged in such an activity.
- (2) For these purposes, an activity is not to be regarded as an economic activity if or to the extent that it is carried out for a purpose that is not economic.
- (3) For these purposes, a person or group of persons is not to be regarded as an enterprise by virtue only of being a shareholder or shareholders in a body corporate which is to any extent an enterprise.
- (4) In this section, “person” includes a body corporate, a partnership and an unincorporated association.

Persons under common control

- (1) For these purposes, a group of persons is to be treated as being under common control if the group—
- (a) is a group of interconnected bodies corporate,
 - (b) consists of bodies corporate of which one and the same person or group of persons has control, or
 - (c) consists of one or more bodies corporate and a person who, or a group of persons which, has control of that or those bodies corporate.
- (2) A person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body corporate as regards carrying on an economic activity that entails offering goods or services on a market is to be treated as having control of that body corporate for the purposes of subsection (1)(b) and (c), even if the person or group of persons does not have a controlling interest in that body.
- (3) For these purposes, “group of interconnected bodies corporate” means a group consisting of two or more bodies corporate all of which are interconnected with each other.
- (4) For the purposes of this section, any two bodies corporate are interconnected if—
- (a) one of them is a body corporate of which the other is a subsidiary, or
 - (b) both of them are subsidiaries of one and the same body corporate; and “interconnected bodies corporate” is to be construed accordingly.

“person” includes a body corporate, a partnership and an unincorporated association;

“subsidiary” has the meaning given by section 1159 of the Companies Act 2006.

The “rolling three-year period” is defined as follows:

- (a) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (b) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “**current fiscal year**” the time elapsed in the fiscal year in which the relevant subsidy is given together with the two previous fiscal years preceding that year. Fiscal year means a period of 12 months ending with 31 March.

For those borrowers in scope of the Northern Ireland Protocol:

Sector	Maximum Permissible Aid (€)	Maximum Permissible Aid (£)	Relevant Regulation	Regulation Date
Primary production of agricultural products	20,000	17,000	Commission Regulation (EU) No 1408/2013 as amended by Commission Regulation (EU) 2019/316	18/12/13 and 21/02/2019
Fishery and aquaculture	30,000	25,500	Commission Regulation (EU) No 717/2014 as amended by Commission Regulation (EU) 2020/2008	27/6/14 and 08/12/2020
Road Freight Transport	100,000	85,000	Commission Regulation (EU) No 1407/2013 as amended by Commission Regulation (EU) 2020/972	18/12/13 and 02/07/2020

All Other Eligible Sectors	200,000	170,000	Commission Regulation (EU) No 1407/2013 as amended by Commission Regulation (EU) 2020/972	18/12/13 and 02/07/2020
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An “**undertaking**” is any entity engaged in economic activity, regardless of its legal status and the way in which it is financed. As more specifically set out in Article 2(2) of Commission Regulation (EU) 1407/2013 as amended by Commission Regulation (EU) 2020/972, all entities controlled (on a legal or de facto basis) by the same entity are considered to be a single undertaking and thus collectively subject to the same single maximum permissible aid ceiling.

The “rolling three-year period” is defined as follows:

- (a) when considering the impact of previous subsidy on the provision of the present facility, the current fiscal year and the two preceding fiscal years; or
- (b) when considering the impact of the subsidy attributable to the present facility on any future applications for aid, the current fiscal year and the two subsequent fiscal years.

With the “**current fiscal year**” being the fiscal year of the relevant enterprise which the date of the facility letter for the present facility falls.