

Guarantee Agreement

(Coronavirus Business Interruption Loan Scheme Supplement – Asset Finance Scheme Facilities: July 2020 Edition)

between

The Secretary of State for Business, Energy and Industrial
Strategy
as Guarantor

and

[•]
as Lender

relating to

The Coronavirus Business Interruption Loan Scheme



This CBILS Agreement Supplement 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. Agreement

The terms on which a Scheme Facility can be offered by the Lender will depend on the Scheme Facility Type being offered. This CBILS Agreement Supplement has been entered into by the Lender and the Guarantor in respect of Asset Finance Scheme Facilities and sets out the particular additional terms and variations to the CBILS Agreement that apply thereto.

This CBILS Agreement Supplement is dated [•] and will supplement and form part of the Guarantee Agreement dated [•] between [•] (company number [•]), as Lender, and The Secretary of State for Business, Energy and Industrial Strategy, as Guarantor (the “**CBILS Agreement**” and, together with this CBILS Agreement Supplement, the “**Agreement**”). This document may only be treated as having been executed and delivered if it has been dated by the Guarantor, and such date has been notified by the Guarantor to the Lender. Any capitalised terms which are used but not defined herein will have the meanings given to them in the CBILS Agreement.

2. What type of Scheme Facilities does this CBILS Agreement Supplement apply to?

This CBILS Agreement Supplement 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 CBILS Agreement Supplement 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 CBILS Agreement Supplement reflects the terminology used in the CBILS 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”.*

3. **What amounts in respect of Asset Finance Scheme Facilities will be guaranteed under the Scheme?**

The terms of the guarantee are set out in Clause 2 of the CBILS Agreement and state that the Guarantor guarantees 80% of the Outstanding Guaranteed Balance of the relevant Scheme Facility, subject to the cap described therein.

The “**Outstanding Guaranteed Balance**” of an Asset Finance Scheme Facility will, on any date, be equal to:

- (A) if such date falls prior to the Borrowing Facilities Demand Date, the Outstanding Balance Financed of such Asset Finance Scheme Facility on such date multiplied by the Guarantee Cover Percentage; and
- (B) if such date falls on or after the Borrowing Facilities Demand Date, the lesser of:
 - (1) the Outstanding Balance Financed of such Asset Finance Scheme Facility on the Borrowing Facilities Demand Date multiplied by the Guarantee Cover Percentage; and
 - (2) the Outstanding Balance Financed of such Asset Finance Scheme Facility on such date, as reduced by any recoveries applied to the principal or capital balance of the Asset Finance Scheme Facility in accordance with paragraph 7 below.

The “**Outstanding Balance Financed**” of an Asset Finance Scheme Facility will be equal to (i) on the date that the Asset Finance Scheme Facility is offered to the Borrower, the Original Balance Financed of that Asset Finance Scheme Facility, or (ii) on any subsequent date, the aggregate of all amounts comprised in the Original Balance Financed of such Asset Finance Scheme Facility that remain outstanding on such date.

The Original Balance Financed relates only to the capital or principal element of the cost of the Purchased Asset together with capitalised installation costs to the extent described below. The guarantee provided by the Guarantor does not cover any other charges made by the Lender to the Borrower, such as finance costs, interest, fees or VAT on the Purchased Asset.

For Hire Purchase Agreements, this amount is typically referred to as the “balance financed”.

For Leases, the Lender needs to calculate an equivalent to the balance financed (which will be capital or principal only in relation to the purchase cost of the asset which is being leased).

The “**Original Balance Financed**” of an Asset Finance Scheme Facility will be:

- (A) if such Asset Finance Scheme Facility is a Hire Purchase Agreement:
- (1) the aggregate of the purchase price of the relevant Purchased Asset to the extent that it relates to the capital or principal cost of that Purchased Asset (excluding any value added tax payable thereon), and any installation costs incurred in respect of the Purchased Asset which have been capitalised by the Lender, as recorded on its books and records; minus
 - (2) the aggregate of any deposit required to be paid by the Borrower to the Lender in respect of the relevant Purchased Asset, and the part exchange value (as determined by the Lender) of any asset transferred to the Lender by the Borrower in connection with that Asset Finance Scheme Facility; or
- (B) if such Asset Finance Scheme Facility is a Lease:
- (1) the purchase price of the relevant Purchased Asset to the extent that it relates to the capital or principal cost of that Purchased Asset (excluding, for the avoidance of doubt, any VAT); minus
 - (2) any advance rental payments paid to the Lender by the Borrower on or before the Initial Drawdown Date in respect of the relevant Purchased Asset.

“**Guarantee Cover Percentage**” means, in respect of an Asset Finance Scheme Facility, the percentage specified as such in the Scheme Website Application Process, provided that such percentage must not be lower than 10 per cent. or higher than 100 per cent..

The Lender can choose whether the Scheme Guarantee covers all or part of the principal or capital balance of an Asset Finance Scheme Facility, subject to (i) a minimum of 10% and (ii) a maximum of 100%. Each separate Asset Finance Scheme Facility can have a different level of guarantee cover. The part of an Asset Finance Scheme Facility which is covered by a Scheme Guarantee is referred to as the “Guaranteed Portion” and the part which is not covered by a Scheme Guarantee is the “Non-Guaranteed Portion”.

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.

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

The “**Maximum Guarantee Term**” of any Asset Finance Scheme Facility will be 6 years.

5. **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) on the date it is offered to the Borrower:

- (A) the General Eligibility Criteria; and

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

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

- (1) [Not Applicable].
- (2) The rate of interest payable to the Lender in respect of such Asset Finance Scheme Facility must be a fixed rate.
- (3) 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.
- (4) 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 such extension is due to forbearance on the part of the Lender in accordance with its usual arrears and default policy – see paragraph 9(C) below.

If an Asset Finance Scheme Facility is extended for any other reason, it will only be covered by the CBILS 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.

- (5) 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.
- (6) 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.

- (7) 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.

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

The Lender is required to include as a minimum the following wording in the Scheme Facility Letter for each Asset Finance Scheme Facility:

“1. CBILS 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 Coronavirus Business Interruption Loan Scheme (CBILS). 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 CBILS 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 Scheme Facility Letter for such Asset Finance Scheme Facility.

7. How will recoveries and Collateral be applied in respect of Asset Finance Scheme Facilities?

This section describes the recovery process to be followed by a Lender in respect of an Asset Finance Scheme Facility following the earliest date of demand for repayment of any Borrowing Facility entered into by the Borrower of such Asset Finance Scheme Facility. References in this paragraph to “the Borrower” are to that Borrower.

If the Lender has made available to a Borrower more than one Scheme Facility, the provisions of this paragraph will have effect and be construed as if all those facilities constituted a single Scheme Facility granted at the time the last such facility was made available.

If, at any time, the Lender has made available to, and has outstanding with, a Borrower at least one Asset Finance Scheme Facility and one or more Scheme Facilities of a different Scheme Facility Type, the recovery process to be followed by the Lender will be as set out in the CBILS Agreement Supplement that applies to the most recent CBILS Scheme Facility that is not an Asset Finance Scheme Facility made available by the Lender to that Borrower, except that:

- (1) *any CBILS Specific Collateral Proceeds relating to an Asset Finance Scheme Facility shall be applied, prior to the occurrence of the Claim Date in respect of such Asset Finance Scheme Facility, in accordance with paragraph 7(B)(1) below and, following the occurrence of the Claim Date in respect of such Asset Finance Scheme Facility, in accordance with paragraph 7(C)(1) below and may not be applied towards the repayment of any other Scheme Facility until the Asset Finance*

Scheme Facility has been repaid in full (and then only if the Lender is permitted to do so);

- (2) any Other Net Proceeds shall be applied, prior to the occurrence of a Claim Date in respect of any Asset Finance Scheme Facility, in accordance with paragraph 7(B)(2) below and, following the occurrence of a Claim Date in respect of any Asset Finance Scheme Facility, in accordance with paragraph 7(C)(2) below (and, for such purpose, the 'Guaranteed Portion' of any Scheme Facility that is not an Asset Finance Scheme Facility shall be deemed to be the entire Scheme Facility); and*
- (3) in determining what comprises "Collateral" or "Net Proceeds" in respect of a Scheme Facility, the terms of the CBILS Agreement Supplement applicable to that Scheme Facility will apply;*
- (4) if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Non-Scheme Facilities in respect of the relevant Asset Finance Scheme Facility and that are Subsequent Non-Scheme Facilities (for which Shared Collateral Proceeds are available to be applied) or other Borrowing Facilities (for which the Other Net Proceeds are available to be applied), the Lender should, when determining how Shared Collateral Proceeds and/or Other Net Proceeds are applied under paragraphs 7(B)(2) or 7(B)(3) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below; and*
- (5) if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Non-Scheme Facilities in respect of the relevant Asset Finance Scheme Facility and that are Subsequent Non-Scheme Facilities and paragraph 7(E)(2) applies, the Lender should, when determining how Shared Collateral Proceeds are applied under paragraph 7(B)(2) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below.*

Lenders should also ensure that Clause 40 (Personal guarantees) of the CBILS Agreement is complied with in relation to the use of personal guarantees and application of their proceeds.

(A) Categorise exposures, collateral and proceeds

- (1)** The Lender will determine, in respect of each Non-Scheme Facility that it has entered into with the Borrower, whether the Non-Scheme Facility was entered into:
 - (a)** before, or at the same time as, the Scheme Facility entered into with the Borrower (a "**Prior Non-Scheme Facility**"); or
 - (b)** after the Scheme Facility entered into with the Borrower (a "**Subsequent Non-Scheme Facility**").
- (2)** The Lender will categorise all Collateral in respect of Borrowing Facilities with the Borrower by:

- (a) identifying any Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower solely for the purposes of supporting that Scheme Facility (“**CBILS Specific Collateral**”); and

The Purchased Asset will be CBILS Specific Collateral for the purposes of this paragraph.

- (b) identifying any Collateral that is not CBILS Specific Collateral (“**Other Collateral**”).
- (3) The Lender will categorise all Net Proceeds received in respect of Borrowing Facilities with the Borrower by determining whether those Net Proceeds:
- (a) have been realised from CBILS Specific Collateral (“**CBILS Specific Collateral Proceeds**”); or
 - (b) are not CBILS Specific Collateral Proceeds (“**Other Net Proceeds**”).

To the extent that it is permitted to do so, the Lender must apply any Net Proceeds received by it in connection with a Borrowing Facility in accordance with the applicable priority of payments set out below. The applicable priority of payments will depend on whether such Net Proceeds comprise CBILS Specific Collateral Proceeds or Other Net Proceeds and whether such Net Proceeds are to be applied by the Lender prior to, or following, it making a claim under the relevant Scheme Guarantee.

(B) *Application of Net Proceeds prior to a Claim Date*

Prior to the occurrence of the Claim Date in respect of an Asset Finance Scheme Facility:

- (1) CBILS Specific Collateral Proceeds will be promptly applied:
 - (a) in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender under the Scheme Facility; and
 - (b) thereafter, to the extent that it is permitted to do so, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender in respect of the Borrowing Facilities.

The “Non-Guaranteed Portion” (or its equivalent) should include interest and other sums which accrue to the Lender on the whole of the Scheme Facility. The Lender should apply recoveries to the whole of the Non-Guaranteed Portion (including interest and other sums) prior to applying recoveries to the principal or capital balance of the Guaranteed Portion.

- (2) Other Net Proceeds will promptly be applied, to the extent that it is permitted to do so:
 - (a) firstly, pro rata, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender in respect of:
 - (i) any Prior Non-Scheme Facility; and

- (ii) the relevant Scheme Facility (up to a maximum amount equal to the Non-Guaranteed Portion of the Scheme Facility); and
- (b) secondly, pro rata, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender in respect of:
 - (i) the relevant Scheme Facility; and
 - (ii) any Subsequent Non-Scheme Facilities.

If Net Proceeds are applied under paragraph 7(B)(2), the pro rata split between subparagraphs 7(B)(2)(b)(i) and 7(B)(2)(b)(ii) will be determined by the Lender based on the principal amount due and payable under or (as applicable) the capital balance of (x) the relevant Scheme Facility and (y) all Subsequent Non-Scheme Facilities, in each case, on the date of application of those Net Proceeds.

(C) *Application of Net Proceeds on or following a Claim Date*

On or following the Claim Date in respect of an Asset Finance Scheme Facility:

- (1) CBILS Specific Collateral Proceeds will be promptly applied:
 - (a) firstly, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender under the Non-Guaranteed Portion of such Scheme Facility;
 - (b) secondly, pro rata:
 - (i) to repay to the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of that Scheme Facility as determined at the Borrowing Facilities Demand Date; and
 - (ii) in discharge of any principal or capital balance outstanding from the Borrower to the Lender under the Guaranteed Portion of that Scheme Facility as determined at the Borrowing Facilities Demand Date; and
 - (c) thereafter, to the extent that it is permitted to do so, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender in respect of the Borrowing Facilities.
- (2) Other Net Proceeds will promptly be applied, to the extent that it is permitted to do so:
 - (a) firstly, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender in respect of any Prior Non-Scheme Facility and the Non-Guaranteed Portion of the Scheme Facility; and
 - (b) secondly, pro rata:
 - (i) to repay the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of that Scheme Facility as determined at the Borrowing Facilities Demand Date; and

- (ii) in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender under (x) the Guaranteed Portion of that Scheme Facility as determined at the Borrowing Facilities Demand Date and (y) any other Borrowing Facilities,

provided that the maximum amount payable to the Guarantor pursuant to this paragraph 7(C) in respect of a Scheme Facility will be equal to the aggregate of all sums paid by the Guarantor to the Lender under the relevant Scheme Guarantee.

For the avoidance of doubt, where the Lender has taken security of Collateral in respect of any Non-Scheme Facility in accordance with the standard of care set out in Clause 3.1 of the CBILS Agreement, paragraph 7(B)(2) and 7(C)(2) shall only apply to any Other Net Proceeds available to the Lender after the secured obligations of the relevant borrower under that Non-Scheme Facility have been repaid in full, and to the extent that such Other Net Proceeds are available to be applied in repayment of any Borrowing Facility other than that Non-Scheme Facility.

Under Clause 3.1 of the CBILS Agreement, the Lender may not take any action which would unfairly prejudice any Scheme Facility. In particular, it is required to:

- (i) *take all action (or decide to take no action) in connection with any Scheme Facility, potential Scheme Facility and any Applicant, Borrower or related Scheme Guarantee in a manner consistent with that (a) which would be deemed to be reasonable by a prudent lender of a similar nature to the Lender in connection with facilities similar to that Scheme Facility and (b) taken by the Lender in respect of facilities similar to that Scheme Facility that are not covered by the CBILS Agreement, except as set out in the CBILS Agreement; and*
- (ii) *act in good faith and not behave in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute or which contravenes any applicable law or regulation.*

If Net Proceeds are applied under paragraph 7(C)(2), the pro rata split between subparagraphs 7(C)(2)(b)(i) and 7(C)(2)(b)(ii) will be determined by the Lender based on (x) the Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of the relevant Scheme Facility and (y) the principal amount due and payable under, or the capital balance of, (as applicable) the Guaranteed Portion of the relevant Scheme Facility and all other Borrowing Facilities for which the Other Net Proceeds are available to be applied, in each case, on the date of application of those Net Proceeds.

(D) *Use of a suspense or impersonal account*

(1) Condition to use

Notwithstanding paragraph 7(B) and 7(C) above, the Lender may credit any Net Proceeds to any suspense or impersonal account provided that the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future.

(2) Application on release

Upon release of any Net Proceeds from the suspense or impersonal account referred to above, the Lender will apply those Net Proceeds in accordance with paragraph 7(B) or 7(C) (as applicable), provided that any Net Proceeds comprised of payments made by the Guarantor under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower will, upon release, be applied promptly in or toward the discharge of the Guaranteed Amount due in respect of that Scheme Guarantee.

(E) *Payments to the Guarantor*

- (1) Subject to the Guarantor having paid to the Lender all sums due to the Lender and demanded on the Claim Date from the Guarantor, in accordance with the terms of the relevant Scheme Guarantee, in respect of the relevant Scheme Facility, the Lender will:
 - (a) pay to the Guarantor all amounts due by it to the Guarantor under paragraph 7(C) above; and
 - (b) as soon as reasonably practicable after determining that there are Surplus Proceeds, pay to the Guarantor an amount equal to the lesser of:
 - (i) the aggregate of all sums paid by the Guarantor in respect of all Scheme Guarantees in respect of the Borrower, less the aggregate of all amounts (if any) received by the Guarantor under paragraphs 7(B) and 7(C) above); and
 - (ii) the Surplus Proceeds.
- (2) Notwithstanding any other provision of this paragraph 7(D), the Lender is entitled to withhold payment of any amount that is due and payable to the Guarantor under such paragraphs, provided that any such withheld amount is paid to the Guarantor by the Lender within 12 months of its due date.

(F) *Personal Guarantee Settlements*

<p><i>This section is subject to the provisions set out in Clause 40.3 of the CBILS Agreement.</i></p>
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- (1) Subject to the Lender complying with Clause 40 (*Personal guarantees*) of the CBILS Agreement but notwithstanding any other provision of this CBILS Agreement Supplement, if:
 - (a) the Lender has the benefit of one or more personal guarantees from a single Personal Guarantor which support two or more separate Borrowing Facilities; and
 - (b) such personal guarantee or (if there is more than one such personal guarantee) at least one of such personal guarantees is specified in a Scheme Facility Letter as supporting a Scheme Facility (each such personal guarantee, a “**Linked Settlement Guarantee**”),

then (i) all Net Proceeds received, recovered or realised by the Lender under such Linked Settlement Guarantees will be treated as Shared Collateral Proceeds in respect of such Scheme Facility and (ii) any Borrowing Facilities

(other than such Scheme Facility) guaranteed under a Linked Settlement Guarantee shall comprise a Linked Non-Scheme Facility in respect of such Scheme Facility.

- (2) If the proceeds of any Linked Settlement Guarantee are applied under paragraph 7(B)(2), the pro rata split referred to in sub-paragraphs 7(B)(2)(b)(i) and 7(B)(2)(b)(ii) will be determined by the Lender based on:
- (a) if applied prior to the Claim Date for the relevant Scheme Facility:
 - (x) in relation to sub-paragraph 7(B)(2)(x), the aggregate amount of capital balance for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility; and
 - (y) in relation to sub-paragraph 7(B)(2)(y), the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Non-Scheme Facilities in respect of such Scheme Facility that are Subsequent Non-Scheme Facilities; or
 - (b) if applied on or after the Claim Date for the relevant Scheme Facility:
 - (x) in relation to sub-paragraph 7(B)(2)(b)(x), the aggregate amount of capital balance for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of such Scheme Facility, multiplied by 80%; and
 - (y) in relation to sub-paragraph 7(B)(2)(b)(y), the aggregate of (1) the aggregate amount of capital balance for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility, multiplied by 20%; and (2) the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Non-Scheme Facilities in respect of such Scheme Facility that are Subsequent Non-Scheme Facilities,

to the extent this is permitted under the terms of such Linked Settlement Guarantee(s).

If the Linked Settlement Guarantees do not specify how the liability of the Personal Guarantor is to be apportioned between the relevant Scheme Facility and Linked Non-Scheme Facilities that are Subsequent Non-Scheme Facilities then, for the purposes of this Paragraph 7(F)(2), such liabilities will be determined on the basis of the principal amount due and payable under such Scheme Facility and such Linked Non-Scheme Facilities.

(G) *Excluded Residential Net Proceeds*

(1) Exclusion of Excluded Residential Net Proceeds

The Lender must not apply any Excluded Residential Net Proceeds in the discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under a Scheme Facility.

If any surplus results from the application by the Lender of any Excluded Residential Net Proceeds in the discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of Non-Scheme Facilities then that surplus must not be used by the Lender to discharge any principal, interest or other sums outstanding in respect of any Scheme Facilities but must be returned by the Lender to the person entitled to the same.

(2) Timing

The Lender should use reasonable endeavours to ensure that the Borrower is not disadvantaged as a result of any effect that the restriction in paragraph 7(F)(1) above has on the timing of the Lender's application of Excluded Residential Net Proceeds or Net Proceeds (as applicable) in discharging Borrowing Facilities.

(3) Permitted Residential Net Proceeds

If a Borrower:

- (a) proposes, on its own initiative, to use proceeds derived from, or otherwise attributable to, the sale of, or release of equity in, a Principal Private Residence to repay a Scheme Facility; and
- (b) signs and returns to the Lender a declaration in the form set out in the Schedule to this CBILS Supplement (as may be amended by the Guarantor from time to time),

then the proceeds specified in that declaration will constitute "**Permitted Residential Net Proceeds**" and will not be subject to the restriction in paragraph 7(F)(1) above.

8. **What specific definitions apply to Asset Finance Scheme Facilities?**

Certain definitions used in this Agreement apply to Asset Finance Scheme Facilities only or have different meanings in relation to Asset Finance Scheme Facilities. These are set out below. Terms which apply to all Scheme Facilities are defined in Schedule 1 of the CBILS Agreement.

"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.

"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).

"Borrower" means, in respect of an Asset Finance Scheme Facility, the person that is the recipient of funding under that Asset Finance Scheme Facility.

"Borrowing Facilities Demand Date" means, in respect of an Asset Finance 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 Asset Finance Scheme Facility which is not subsequently waived by the Lender.

"Collateral" means, in respect of an Asset Finance Scheme Facility:

- (A) the Purchased Asset in respect of that Asset Finance Scheme Facility;
- (B) 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
- (C) 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.

“Eligible Purpose” means, in respect of an Applicant:

- (A) providing an economic benefit to the Business of that Applicant or its Group, including, but not limited to:
 - (1) investment; or
 - (2) [Not applicable]; and
- (B) which is accepted as eligible by the Guarantor on completion of the Scheme Website Application Process.

“Excluded Residential Net Proceeds” means any sums received, recovered or realised by the Lender:

- (A) in enforcing its rights in respect of any security over a Principal Private Residence; or
- (B) in circumstances where the Lender is aware, or ought reasonably to be aware, that such receipt, recovery or realisation derives from, or is otherwise attributable to, the proceeds of sale of, or the release of equity in, a Principal Private Residence,

other than Permitted Residential Net Proceeds.

“Guaranteed Portion” means, 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.

“Initial Drawdown” means, 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.

“Lender Manual” means the Coronavirus Business Interruption Loan Scheme Asset Finance Lender Manual 2020 Edition or such other version of the lender manual applicable to asset finance facilities as may be provided to the Lender by the Guarantor from time to time in accordance with Clause 25 (*Notices*) of the CBILS Agreement.

“Net Proceeds” means, in respect of a Borrowing Facility, all sums received, recovered or realised by the Lender following the Borrowing Facilities Demand Date in respect of any amounts outstanding from the Borrower to the Lender in respect of the Borrowing Facilities, including:

- (A) any Collateral which, according to its terms, is capable of being used as a means of repaying any Borrowing Facility of the Borrower;
- (B) any Collateral which is acquired by the Lender following the earliest date of demand for repayment of any Borrowing Facility, whether as a result of the taking of court proceedings or the voluntary granting of any such Collateral, in its pursuing the repayment of amounts outstanding to the Lender under Borrowing Facilities;
- (C) any repayments made to the Lender on a voluntary basis or as a result of the taking of court proceedings (including, but not limited to, as a result of the obtaining of judgment, a warrant of execution, an attachment of earnings order or a third party debt order);
- (D) any lump sum or ad hoc repayments or repayments made to the Lender by way of an agreed repayment plan;
- (E) any payments made to the Lender consequent on any bankruptcy or insolvency proceedings (including any payments made consequent on an individual or company voluntary arrangement);
- (F) any Permitted Residential Net Proceeds;
- (G) any sale of a Purchased Asset; and
- (H) any insurance policy in respect of a Purchased Asset,

in each case, after deduction of (on a full indemnity basis) all costs, charges and expenses incurred in relation to any such receipt, recovery or realisation and of such further sum, if any, as the Lender may think appropriate (acting reasonably) by way of provision (on such basis) for any such costs, charges and expenses.

If a Purchased Asset is hired to another borrower then the fair capitalised value of such asset (which shall not be less than the capital value of such asset used for calculating the hire cost for the new borrower) will, after deduction of the costs, charges and expenses referred to above, be deemed to constitute Net Proceeds.

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

“Proposed Scheme Facility Amount” means, in respect of a Proposed Scheme Facility which is an Asset Finance Scheme Facility, the balance of the financing to be provided by the Lender to the relevant Applicant under that Asset Finance Scheme Facility on its Offer Date, as specified in the Scheme Website Application Process.

If an Asset Finance Scheme Facility is offered to an Applicant, the Proposed Scheme Facility Amount of such Asset Finance Scheme Facility will be its Original Balance Financed.

“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.

“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 the CBILS Agreement, other than a Lender in respect of which such authorisation is currently withdrawn or suspended.

“Surplus Proceeds” means the aggregate of all amounts of:

- (A) Net Proceeds received, recovered or realised by the Lender after the Claim Date;
- (B) Net Proceeds held by the Lender in a suspense or impersonal account on the Claim Date; and
- (C) payments made by the Guarantor under any Scheme Guarantee relating to the relevant Borrower,

that has not and will not be applied by the Lender either in (x) discharging the Borrowing Facilities or (y) paying any amount to the Guarantor, in each case, pursuant to paragraph 7(C) above, because that amount represents a surplus recovery or realisation.

9. **What other amendments to the CBILS Agreement apply for Asset Finance Scheme Facilities?**

The following amendments and additions to the CBILS Agreement will apply to Asset Finance Scheme Facilities:

- (A) For the purposes of Clause 6.2 of the CBILS Agreement, the “Original Guaranteed Balance” of an Asset Finance Scheme Facility shall be equal to the Original Balance Financed of such Asset Finance Scheme Facility multiplied by the Guarantee Cover Percentage of such Asset Finance Scheme Facility.
- (B) Notwithstanding Clause 7.2 of the CBILS Agreement, the Lender may not amend the rate of interest payable in respect of an Asset Finance Scheme Facility to a variable rate.
- (C) If the Lender extends the term of an Asset Finance Scheme Facility for reasons other than forbearance, then the Scheme Guarantee in respect of such Asset Finance Scheme Facility will be cancelled and the Guarantor will be unconditionally and irrevocably released and discharged from all its obligations under such Scheme Guarantee. The Lender may elect to treat an Asset Finance Scheme Facility that has been extended as a new Proposed Scheme Facility, in which case the terms of Clause 7.4 of the CBILS Agreement shall apply.

Clause 7.4 of the CBILS Agreement requires the Lender to comply with all the provisions of the CBILS Agreement relating to eligibility and application processing where the Lender amends a Scheme Facility in such a way that it is deemed to be a new Proposed Scheme Facility.

- (D) Clause 17 (*General undertakings*) of the CBILS Agreement shall be amended by the addition of the following sub-paragraph at the end thereof:

17.8 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 17.3, 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.
- (E) Notwithstanding Clause 32 of the CBILS Agreement, the Lender may assign by way of security its rights in, or transfer its beneficial and legal title to, any Asset Finance Scheme Facility which is funded by the Lender by way of a block financing arrangement for the purposes of securing its payment obligations under such block financing arrangement, provided that the ultimate economic risk of the Asset Finance Scheme Facility must remain with the Lender.
- (F) Notwithstanding the definition of “Initial Drawdown Deadline” in Schedule 1 of the CBILS Agreement, the “**Initial Drawdown Deadline**” in respect of an Asset Finance Scheme Facility shall be the day falling 6 months after the Offer Date of such Asset Finance Scheme Facility, including where such Offer Date falls on or after 24 August 2020.
- (G) Paragraph 2(G) of Schedule 2 to the CBILS Agreement shall be amended by adding the words “proposed Guaranteed Portion of the” immediately before the words “Proposed Scheme Facility Amount” in the first line.
- (H) If the Lender is a Sale and Leaseback and Hire Purchase Back Authorised Lender, it shall comply at all times with any conditions to such authorisation imposed by the Guarantor.

Executed by:

The Guarantor

Signature:

Name:

Authorised signatory

Signature:

Name:

Authorised signatory

For and on behalf of **British Business Financial Services Limited**
as agent for **the Secretary of State for Business, Energy and Industrial Strategy**

The Lender

Signature:[Signature:]¹

Name:[Name:]

[Authorised Signatory/Director/Company
Secretary / Attorney]

[Authorised Signatory/Director/Company
Secretary / Attorney]

[Other:]² [Other:]

For and on behalf of

[●]

[Signature of witness:.....]

Name of witness:.....

Address of witness:.....]³

¹ To be deleted if this Agreement is signed by only one signatory on behalf of the Lender.

² Include if signing under power of attorney

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

SCHEDULE 1 : PRINCIPAL PRIVATE RESIDENCE DECLARATION

“I, [name of party giving declaration]:

- (A) I have proposed, on my own initiative, that proceeds derived from, or otherwise attributable to, the sale or re-mortgaging of my principal private residence be applied to repay the CBILS-supported facility [made available to me by the Lender/that I provided a guarantee in respect of]; and
- (B) neither the Lender nor any other person has demanded or otherwise requested that I sell or re-mortgage my principal private residence or apply any proceeds of such sale to repay the CBILS-supported facility [made available to me by the Lender/that I provided a guarantee in respect of].”

Signature

Signed	Signed
Print Name	Print name
Position	Position
Date	Date