

Guarantee Agreement

(Coronavirus Business Interruption Loan Scheme Supplement – RCF 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 RCF 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 [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 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 an SME’s liquidity and cashflow over the short-medium term. An SME 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 CBILS.

If a Scheme Guarantee covers only part of a revolving credit facility that is made available by the Lender to an Applicant, the part which is covered by the Scheme Guarantee will comprise the “RCF Scheme Facility” (as defined above) and the part which is not covered by the Scheme Guarantee will comprise the “**Related RCF Commercial Facility**” in respect of such RCF Scheme Facility. For the purposes of paragraph 7 of this CBILS Supplement, a Related RCF Commercial Facility will comprise a Prior Non-Scheme Facility in respect of that RCF Scheme Facility.

3. **What amounts in respect of RCF 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.

The Outstanding Guaranteed Balance of each RCF Scheme Facility on any date shall be equal to the lesser of the RCF Scheme Facility Limit and 100% of the principal amount outstanding under that RCF Scheme Facility, plus any other amounts outstanding from the relevant Borrower to the Lender in respect of that RCF Scheme Facility, in each case, on that date (as described in more detail below). This means that accrued interest and fees up to the limit described above that are due to a Lender will also be covered by a Scheme Guarantee.

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

- (A) if such date falls prior to the earlier of (1) the Borrowing Facilities Demand Date and (2) the Expiry Date, in each case of such RCF Scheme Facility, the amount outstanding from the relevant Borrower to the Lender in respect of such RCF Scheme Facility (including any amounts of interest or other costs, fees, expenses or charges which accrue in respect of such RCF Scheme Facility before the earlier of the dates in sub-paragraph (A)(1) and (2) above), as recorded in the books and records of the Lender; or
- (B) if such date falls on or after the earlier of the Borrowing Facilities Demand Date or the Expiry Date, in each case of such RCF Scheme Facility, the lesser of (1) the amount outstanding from the relevant Borrower to the Lender in respect of such RCF Scheme Facility (including any amounts of interest or other costs, fees, expenses or charges which accrue in respect of such RCF Scheme Facility to and including the earlier of the Expiry Date or the Borrowing Facilities Demand Date, in each case of such RCF Scheme Facility) as recorded in the books and records of the Lender (the “**Relevant Amount**”) and (2) the Relevant Amount as reduced by any recoveries applied to the balance of such RCF Scheme Facility in accordance with paragraph 7 and/or paragraph 9(D)(3) below,

in each case subject to:

- (A) a minimum of zero; and
- (B) a maximum of the RCF Scheme Facility Limit.

The “**RCF Scheme Facility Limit**” of an RCF Scheme Facility at any time is the original amount reflected as such in the books and records of the Lender (being the “**Original Guaranteed Balance**” of that RCF Scheme Facility), as updated in the books and records of the Lender from time to time to reflect any staged reductions in the relevant facility limit.

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.

*If the overall balance of the revolving credit facility is greater than the sum of the Related RCF Commercial Facility limit and the RCF Scheme Facility Limit at default, the excess sum (the “**Facility Excess Amount**”) is a Subsequent Non-Scheme Facility.*

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

The “**Maximum Guarantee Term**” of any RCF Scheme Facility will be three years.

5. **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) 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**”):

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.

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

Subject to Clause 33 of the CBILS Agreement, the Lender is required to include as a minimum the following wording in the Scheme Facility Letter for each RCF 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 repaying 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 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.

7. **How will recoveries and Collateral be applied in respect of RCF Scheme Facilities?**

This section describes the recovery process to be followed by a Lender following a demand made on a Borrower under an RCF 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 the Lender has made available to a Borrower Scheme Facilities of different Scheme Facility Types, the recovery process to be followed by a Lender will be as set out in the CBILS Agreement Supplement that applies to the most recent CBILS Scheme Facility made available by the Lender to that Borrower, except that:

- (1) 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;*
- (2) when the Scheme Facilities include an Asset Finance Scheme Facility, the principles set out in section 7 of the CBILS Agreement Supplement – Asset Finance Scheme Facilities; 2020 Edition Asset Finance shall take precedence in determining (A) the application of any CBILS Specific Collateral Proceeds relating to an Asset Finance Scheme Facility; and (B) the application of any Other Net Proceeds (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);*
- (3) 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 RCF 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*
- (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 RCF 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**”).

If the Scheme Guarantee covers only part of a revolving credit facility that is made available by the Lender to an Applicant, the Related RCF Commercial Facility in respect of the relevant RCF Scheme Facility will comprise a Prior Non-Scheme Facility.

*If the overall balance of the revolving credit facility was in excess of the sum of the Related RCF Commercial Facility limit and the RCF Scheme Facility Limit at default, the excess sum (the “**Facility Excess Amount**”) must be treated as 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**”);
- (b) 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 for the purposes of supporting both that Scheme Facility and any Non-Scheme Facility (any such Non-Scheme Facility, being a “**Linked Non-Scheme Facility**” in respect of that Scheme Facility) (“**Shared Collateral**”); and
- (c) identifying any Collateral that is neither CBILS Specific Collateral nor Shared 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**”);
- (b) have been realised from Shared Collateral (“**Shared Collateral Proceeds**”); or
- (c) are neither CBILS Specific Collateral Proceeds nor Shared 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, Shared

Collateral Proceeds or Other Net Proceeds.

(B) *Application of Net Proceeds*

(1) CBILS Specific Collateral Proceeds will be promptly applied:

(a) firstly:

(i) (if those amounts are applied prior to the Claim Date for the Scheme Facility) in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under the Scheme Facility; or

(ii) (if those amounts are applied on or after the Claim Date in respect of the Scheme Facility) pro rata:

(x) to repay the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of that Scheme Facility; and

(y) in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under that Scheme Facility; and

(b) thereafter, to the extent that it is permitted to do so, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of the other Borrowing Facilities.

(2) Shared Collateral Proceeds will be promptly applied, to the extent that it is permitted to do so:

(a) firstly, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of any Linked Non-Scheme Facilities in respect of that Scheme Facility that are the Prior Non-Scheme Facilities;

(b) secondly, if those amounts are applied:

(i) prior to the Claim Date for the relevant Scheme Facility, pro rata, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under:

(x) that Scheme Facility; and

(y) any Linked Non-Scheme Facilities in respect of that Scheme Facility that are Subsequent Non-Scheme Facilities; or

(ii) on or after the Claim Date in respect of the relevant Scheme Facility, pro rata:

(x) to repay the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of that Scheme Facility; and

- (y) in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under (x) that Scheme Facility and (y) any Linked Non-Scheme Facilities in respect of that Scheme Facility that are Subsequent Non-Scheme Facilities; and
 - (c) thirdly, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under any other Borrowing Facilities.
- (3) Other Net Proceeds will be promptly applied, to the extent that it is permitted to do so:
 - (a) firstly, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of any Prior Non-Scheme Facility; and
 - (b) secondly, if those amounts are applied:
 - (i) prior to the Claim Date in respect of the relevant Scheme Facility pro rata, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of:
 - (x) that Scheme Facility; and
 - (y) any Subsequent Non-Scheme Facilities; or
 - (ii) on or after the Claim Date in respect of the relevant Scheme Facility, pro rata:
 - (x) to repay the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of that Scheme Facility; and
 - (y) in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under (x) the Scheme Facility and (y) any other Borrowing Facilities,

provided that the maximum amount payable to the Guarantor pursuant to this paragraph 7(B) 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)(3) 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(B)(2) or 7(B)(3):

- (A) prior to the Claim Date for the Scheme Facility, the pro rata split between sub-paragraphs 7(B)(2)(b)(i)(x) and 7(B)(2)(b)(i)(y) or 7(B)(3)(b)(i)(x) and 7(B)(3)(b)(i)(y) above (as applicable) will be determined by the Lender based on all amounts due and payable under (x) the relevant Scheme Facility and (y) (in respect of paragraph 7(B)(2)) all Linked Non-Scheme Facilities in respect of the relevant Scheme Facility that are Subsequent Non-Scheme Facilities or (in respect of paragraph 7(B)(3)) all Subsequent Non-Scheme Facilities;
- (B) on or following the Claim Date for the Scheme Facility, the pro rata split between sub-paragraphs 7(B)(2)(b)(ii)(x) and 7(B)(2)(b)(ii)(y) or 7(B)(3)(b)(ii)(x) and 7(B)(3)(b)(ii)(y) above (as applicable) will be determined by the Lender based on (x) the Guaranteed Amount paid by the Guarantor to the Lender in respect of the relevant Scheme Facility and (y) all amounts due and payable under the relevant Scheme Facility and (in respect of 7(B)(2)) all Linked Non-Scheme Facilities in respect of the relevant Scheme Facility that are Subsequent Non-Scheme Facilities or (in respect of 7(B)(3)) 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, *provided that*, 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 RCF 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 Other Net Proceeds are available to be applied), the pro-rata split referred to in sub-paragraphs (A) and (B) immediately above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility, or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

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

(1) Condition to use

Notwithstanding paragraph 7(B) 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), 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.

(D) *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(B) 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 paragraph 7(B) 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.

(E) *Personal Guarantee Settlements*

This section is subject to the provisions set out in Clause 40.3 of the CBILS Agreement.

(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)(b)(i)(x), the aggregate amount 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)(b)(i)(y), the aggregate amount 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)(ii)(x), the aggregate amount 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)(ii)(y), the aggregate of (1) the aggregate amount 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 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) and *provided that*, 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 and that are Subsequent Non-Scheme Facilities, the pro-rata splits referred to in sub paragraphs 7(E)(2) above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

- (3) 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(E)(2), such liabilities will be determined on the basis of all amounts due and payable under such Scheme Facility and such Linked Non-Scheme Facilities.

(F) *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 RCF Scheme Facilities?**

Certain definitions used in this Agreement apply to RCF Scheme Facilities only or have different meanings in relation to RCF 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.

"Borrower" means, in respect of an RCF Scheme Facility, the person that is the borrower under such RCF Scheme Facility.

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

"Collateral" means, in respect of an RCF Scheme Facility:

- (A) 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
- (B) 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) working capital; or
 - (2) investment; and
- (B) a purpose 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.

“Expiry Date” means, 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:

- (A) 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; or
- (B) where the RCF Scheme Facility is an increase to an existing revolving credit facility made available by the Lender to the relevant Borrower, any outstanding utilisations of that existing revolving credit facility which are in excess of the authorised facility limit relating thereto,

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

“Initial Drawdown” means, 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.

“Linked Non-Scheme Facility” has the meaning given to it in paragraph 7(A)(2)(b).

“Lender Manual” means the Coronavirus Business Interruption Loan Scheme Term Loan Lender Manual 2020 Edition, as supplemented by the Coronavirus Business Interruption Loan Scheme RCF Manual Supplement – 2020 Edition or such other version of the lender manual applicable to revolving credit 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 earliest date of demand for repayment of any Borrowing Facility 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); and
- (F) any Permitted Residential Net Proceeds,

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.

“Proposed Scheme Facility Amount” means, in respect of a Proposed Scheme Facility which is an RCF Scheme Facility, the amount of such RCF Scheme Facility that is proposed to be made available at the time of the Initial Drawdown, as specified in the Scheme Website Application Process.

“Related RCF Commercial Facility” has the meaning given to it in paragraph 2.

“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(B) above, because that amount represents a surplus recovery or realisation.

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

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

- (A) The Lender may only deliver a Payment Claim to the Guarantor in respect of an RCF Scheme Facility if:
- (1) the Final Demand Date for that Scheme Facility falls no later than three months after:
 - (a) if a Repayment Demand is made in respect of only one Scheme Facility, the Expiry Date of that Scheme Facility; or
 - (b) if a Repayment Demand is made in respect of more than one Scheme Facility, the earliest Expiry Date to occur for those Scheme Facilities, (that date being, the “**Final Demand Cut-Off Date**”); and
 - (2) the Lender has used its reasonable endeavours to notify the Guarantor through the Scheme Website that it has made a Repayment Demand in respect of such RCF Scheme Facility by the earlier of:
 - (a) the date falling 10 Business Days following the Demand Date; and
 - (b) the Final Demand Cut-Off Date.

Paragraph 9(A) supplements and amends Clause 9.2 of the CBILS Agreement, which sets out certain conditions precedent to making a claim under a Scheme Guarantee. The Lender will not be entitled to make a claim under a Scheme Guarantee unless and until the conditions precedent to making a Payment Claim set out in Clause 9.2 of the CBILS Agreement (as amended in respect of RCF Scheme Facilities by paragraph 9(A)) have been satisfied.

- (B) 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.
- (C) If the Guarantor serves notice pursuant to Clause 19.2(C) (*Termination without cause*) of the closure of the Scheme to new Scheme Facilities, the Lender will be entitled to reassess each RCF Scheme Facility made available by the Lender, and where necessary, the Lender may make replacement Scheme Facilities (which, in the Lender’s opinion, are the most appropriate taking into account the requirements of the relevant Borrower) available to the Borrowers before the closure of the Scheme.
- (D) If the RCF Scheme Facility that is made available by the Lender to an Applicant forms part of a larger revolving credit facility, then, in circumstances other than where such action is taken as part of a Lender’s debt management processes to manage down debts ahead of or as an alternative to a Repayment Demand being issued:
- (1) if the Lender intends to cancel, withdraw or otherwise terminate in part, or reduce the authorised facility limit of that revolving credit facility, then the Lender will do so in the following way:
 - (a) first, it will cancel, withdraw, partially terminate or reduce the RCF Scheme Facility Limit of the RCF Scheme Facility; and
 - (b) second, (when the RCF Scheme Facility Limit of such RCF Scheme Facility has been reduced to zero) it will cancel, withdraw, partially terminate or reduce the authorised facility limit of, the Related RCF Commercial Facility relating to that RCF Scheme Facility;
 - (2) if that revolving credit facility is to be repaid by staged reductions to the authorised facility limit, then the Lender will apply the amount of each such staged reduction, at the relevant time:
 - (a) first, to reduce the RCF Scheme Facility Limit of such RCF Scheme Facility; and
 - (b) second, (when the RCF Scheme Facility Limit of such RCF Scheme Facility has been reduced to zero) to reduce the authorised facility limit of the Related RCF

Commercial Facility.

(3) the Lender will apply any credits which are made to the account relating to that revolving credit facility (but excluding any amounts which are to be applied in accordance with paragraph 7 above):

- (a) first, to reduce the Facility Excess Amount (if any);
- (b) second, to reduce the amount outstanding in respect of the RCF Scheme Facility; and
- (c) third, to reduce the amount outstanding in respect of the Related RCF Commercial Facility,

regardless of the order in which utilisations under that revolving credit facility may have occurred.

(E) Where a Lender is taking action under paragraph (D) as part of a Lender's debt management processes to manage down debts ahead of or as an alternative to a Repayment Demand being issued, the Lender will apply any credits which are made to the account relating to that revolving credit facility (but excluding any amounts which are to be applied in accordance with paragraph 7 above):

- (a) first, to reduce the Facility Excess Amount (if any);
- (b) second, to reduce the amount outstanding in respect of the Related RCF Commercial Facility; and
- (c) third, to reduce the amount outstanding in respect of the RCF Scheme Facility,

regardless of the order in which utilisations under that revolving credit facility may have occurred.

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