

TEMPLATE LEGAL AGREEMENT

Guarantee Agreement

between

The Secretary of State for Business, Energy and Industrial
Strategy

as Guarantor

and

[•]

as Lender

relating to

The Coronavirus Business Interruption Loan Scheme



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THIS AGREEMENT is dated

and made

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY**, (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 for the purpose of the Guarantor providing guarantees to the Lender in order to cover partially 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, 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 notified to the Lender by the Guarantor in the Effective Date Notice which shall be delivered to the Lender as soon as reasonably practicable following the execution of this Agreement.

1.4 **Form of this Agreement**

The terms on which a Scheme Facility can be offered by the Lender will depend on the Scheme Facility Type being offered. Upon becoming accredited for a particular Scheme Facility Type, the Lender and the Guarantor will enter into a CBILS Agreement Supplement relating to such Scheme Facility Type. The CBILS Agreement Supplement will set out particular additional terms and variations to this Agreement that apply for such Scheme Facility Type.

Each CBILS Agreement Supplement entered into by the Lender and the Guarantor will supplement, form part of and be 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 CBILS Agreement Supplement relating to the relevant Scheme Facility Type only and each other CBILS Agreement Supplement which has been entered into by the Lender and the Guarantor will be disapplied for the purposes of such Scheme Facility only.

1.5 **Precedence of this Agreement, the Scheme Guidance and the Scheme Website**

Under the terms of this Agreement, the Lender is required to comply with both the terms of this Agreement, the Scheme Website and the sections of the Scheme Guidance referred to in Schedule 5 hereto. In interpreting the terms of this Agreement and the Scheme Website, the Lender may refer to the Scheme Guidance.

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

- (1) the Scheme Guidance, the Scheme Website and this Agreement, this Agreement takes precedence; and
- (2) the Scheme Guidance and the Scheme Website, the Scheme Website takes precedence.

2. **Guarantee**

2.1 **Guarantee**

The Guarantor guarantees to the Lender the due and punctual payment of 80% of the Outstanding Guaranteed Balance of each Scheme Facility as at the date of any Payment Claim made in respect of such Scheme Facility, in each case on the terms of the remainder of this Agreement, such amount, the “**Guaranteed Amount**” in respect of such Scheme Facility.

Claims under this Scheme Guarantee must be made in accordance with Clause 9 (*Making a claim under a Scheme Guarantee*).

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.

Notwithstanding Clause 2.2 of this Agreement, 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 this Agreement (as may be amended in respect of certain Scheme Facility Types in the applicable CBILS Agreement Supplement) have been satisfied.

3. **Standard of care**

3.1 **Standard of care of the Lender**

The Lender agrees that it will:

- (A) 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 reasonable manner, taking into account the aims and purpose of the Scheme and the context in which it was established, including all action (or decisions to take no action) in respect of origination, servicing and enforcement; and

- (B) always 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 (including complying with all requirements applicable to it relating to treating customers fairly).

3.2 **Standard of care of the Guarantor**

Any discretion of the Guarantor will be exercised in a reasonable manner consistent with the status of the Guarantor as a UK government body.

4. **Eligibility criteria**

A Proposed Scheme Facility comprises an “**Eligible Facility**” if it complies, as at the relevant Offer Date, with each of:

- (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 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 CBILS Agreement Supplement for the relevant Scheme Facility Type.

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

5. **Offer of a Scheme Facility**

5.1 **Conditions relating to providing information on the Applicant or any Personal Guarantor to the Guarantor**

The Lender will:

- (A) provide a Data Protection and Disclosure Declaration in the form available on the Scheme Website and as set out in Schedule 3 in respect of an Applicant and, if relevant, each Personal Guarantor in respect of such Applicant; and
- (B) give any other permissions or approvals from the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant necessary or desirable to enable the Guarantor and each Guarantor Related Party to exercise its rights, or perform its obligations, under this Agreement (including, but not limited to, its rights under Clause 14.2 (*Monitoring and audit*)),

in each case no later than the date the Scheme Facility Letter is sent to the Applicant. The Lender will obtain a signed Data Protection and Disclosure Declaration in respect of the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant no later than the Initial Drawdown Date of the Scheme Facility.

A Lender may produce its own data protection and disclosure declaration on its own systems, provided it replicates the Data Protection and Disclosure Declaration available through the Scheme Website. 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.

5.2 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 Applicant has completed the Lender's Application Process on or before the Application Deadline Date;
 - (2) if such Proposed Scheme Facility and Applicant comply with the Eligibility Criteria on the Offer Date of such Proposed Scheme Facility; and
 - (3) if such Proposed Scheme Facility would not breach the Annual Lending Limit for the then current Annual Scheme Period.

The Annual Lending Limit applicable to the Lender is set out in Clause 6.

- (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) only make available to that Applicant a Scheme Facility of a Scheme Facility Type for which the Lender is Accredited; and
 - (4) comply with Clause 38.6 (*Conduct*) and Clause 40 (*Personal Guarantees*).

5.3 Offer of new Scheme Facilities

- (A) Subject to Clause 5.2 (*Conditions to making a Scheme Facility available to an Applicant*), the Lender can, in accordance with this Agreement, offer a Proposed Scheme Facility to the relevant Applicant on the terms of a Scheme Facility Letter.
- (B) If the Lender makes an offer of a Scheme Facility to an Applicant in accordance with Clause 5.3(A), it will send to the Applicant the following documents as soon as reasonably practicable thereafter:
- (1) the Scheme Facility Letter (or equivalent);
 - (2) [Not Applicable];
 - (3) the Business Interruption Payment Offer Letter;

A Lender may produce its own Business Interruption Payment Offer Letter on its own systems, provided it replicates the Business Interruption Payment Offer Letter available through the Scheme Website. 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.

- (4) an estimate of the Business Interruption Payment (the “**BIP Estimate**”);

The BIP Estimate may be contained in the Scheme Facility Letter, the Business Interruption Payment Offer Letter itself, or in other offer documentation or information provided by the Lender to the Applicant.

- (5) the Information Declaration;
- (6) any other documents to be issued by the Lender in connection with that offer;
- (7) 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; and
- (8) any other documents which the Guarantor and the Lender agree are to be issued in connection with that offer.

- (C) After sending the documents referred to in Clause 5.3(B) to the relevant Borrower, the Lender will:

- (1) use its reasonable endeavours to deliver to the Guarantor an offer notification in the form accessible through the Scheme Website within 10 Business Days (or such other period as may be agreed by the Guarantor and the relevant Lender); and
- (2) obtain the Information Declaration (duly signed, dated and completed) from the Applicant as soon as reasonably practicable without any amendments or variations having been made to the information contained therein.

- (D) The Lender will use its reasonable endeavours to:

- (1) [Not Applicable]; and
- (2) confirm to the Guarantor, through the Scheme Website, the date and the amount of the Initial Drawdown, and provide any other documentation as may be required by the Scheme Website, in respect of a Scheme Facility,

within 10 Business Days of the Initial Drawdown Date in respect of that Scheme Facility.

6. **Annual Lending Limit**

6.1 **Annual Lending Limit**

For each Annual Scheme Period:

- (A) the Annual Lending Total must not exceed the Annual Lending Limit; and
- (B) on any day during that Annual Scheme Period, the aggregate Original Guaranteed Balance of all Refinancing Facilities (other than Refinancing Facilities that are (1) entered into in order to refinance facilities made pursuant to the Bounce Back Loan Scheme (BBLs), or (2) Smaller Scheme Facilities) made available by the Lender to all Borrowers under the Scheme (calculated using the same principles as used in

calculating the Annual Lending Total, as set out in Clause 6.2) must not exceed 20% (or such other percentage as the Guarantor may from time to time notify for such purpose to the Lender) of the Annual Lending Total,

and any lending in excess of such Annual Lending Limit will not be covered by the guarantee provided to the Lender pursuant to Clause 2 (*Guarantee*).

6.2 Calculation of the Annual Lending Limit and the Annual Lending Total

- (A) In relation to an Annual Scheme Period or on any day during an Annual Scheme Period, the “**Annual Lending Total**” will be the aggregate Original Guaranteed Balance of each Scheme Facility in respect of which:
- (1) the Offer Date has occurred during, as the context requires:
 - (a) that Annual Scheme Period; or
 - (b) the period from and including the first day of that Annual Scheme Period to and including such day; and
 - (2) the Initial Drawdown Date has occurred before the Initial Drawdown Deadline.
- (B) Subject to Clause 6.3(C), the “**Annual Lending Limit**” for an Annual Scheme Period will be:
- (1) an amount notified to the Lender by the Guarantor before commencement of such Annual Scheme Period or (in respect of the first Annual Scheme Period) on or prior to the Effective Date, as may be increased or decreased from time to time by the Guarantor by written notice to the Lender (such notification, the “**Allocation Letter**”); or
 - (2) such other amount (if any) agreed by the Guarantor and the Lender to be the Annual Lending Limit, in respect of a particular Annual Scheme Period, as a remedial step pursuant to Clause 6.3(A)(2).

6.3 Breach of the Annual Lending Limit

- (A) If, at any time during an Annual Scheme Period, the Lender projects that it will or is likely to exceed the Annual Lending Limit then it will, as soon as reasonably practicable after having become aware of such matter:
- (1) notify the Guarantor accordingly and provide full details of its anticipated lending levels in respect of Scheme Facilities for that Annual Scheme Period and its proposals to manage the possibility of such an excess occurring; and
 - (2) discuss with the Guarantor what steps, if any, should be taken to manage the possibility of the Lender exceeding the Annual Lending Limit.
- (B) If, pursuant to this Clause 6.3, the Lender and the Guarantor reach agreement about the nature of any remedial steps under Clause 6.3(A)(2), then the Lender and the Guarantor will negotiate in good faith in order to agree and document any amendments or supplements to this Agreement which the Guarantor determines to be necessary to implement properly or record such remedial steps.

- (C) For the purposes of determining whether the Annual Lending Limit is exceeded under Clause 6.1(A) or for the purposes of Clause 6.3(A), if the actual or projected lending by the Lender does not exceed 105% of the amount of the Annual Lending Limit, then for the purposes of Clause 6.1(A) and Clause 6.3(A), the Lender will, in respect of the relevant Annual Scheme Period, be deemed to have met, or can consider itself to be projected to meet, its Annual Lending Limit.

7. **Terms of the Scheme Facilities and rights of the Lender**

7.1 **Scheme Facility Letter**

Any Scheme Facility Letter entered into by the Lender and an Applicant for a Scheme Facility or, if there is no separate Scheme Facility Letter associated with the Scheme Facility, the information package sent to the Borrower, will set out the terms of such Scheme Facility relating to:

- (A) [Not applicable]; and
- (B) the completion by the Borrower of the Information Declaration,

as well as such other terms as the Lender considers appropriate given the nature of that Scheme Facility and the relevant Applicant.

In particular, the Scheme Facility Letter must (among other things):

- (1) provide that the Borrower will not be permitted to make any drawdown under the Scheme Facility Letter until the Borrower returns the Information Declaration and the required Data Protection and Disclosure Declaration(s) to the Lender, each duly signed, dated and completed;
- (2) [Not applicable];
- (3) include the language set out in the relevant CBILS Agreement Supplement; and
- (4) include such other information as may be notified to the Lender by the Guarantor, acting reasonably, from time to time.

7.2 **Lender's rights**

Subject to Clause 5.2 (*Conditions to making a Scheme Facility available to an Applicant*), Clause 9.1 (*Process for making a claim under a Scheme Guarantee*) and Clause 11 (*Recoveries and security*), the Lender may at any time without discharging or otherwise affecting the Guarantor's obligations, in respect of any Scheme Facility:

- (A) vary the terms of or renew or determine any credit or other Borrowing Facilities made or to be made available to the relevant Borrower by the Lender whether under such Scheme Facility or otherwise;
- (B) subject to Clause 5.2(B)(1) and Clause 40 (*Personal guarantees*), take such Collateral for all or any of the relevant Borrower's liabilities for all or any such Borrowing Facilities as it may from time to time decide;
- (C) subject to Clause 17.6 (*Risk*), exchange, release, modify, refrain from perfecting or enforcing or otherwise deal with any such Collateral as it may hold;

- (D) grant time or indulgence to or compound with the relevant Borrower or any other person; and
- (E) do or omit to do any other act or thing which but for this provision would or might discharge or otherwise affect the obligations of the Guarantor set out hereunder.

7.3 Permitted Variations

Notwithstanding Clause 7.2 (*Lender's rights*), if the Lender agrees with the relevant Borrower any extension of the term of a Scheme Facility, the Lender will use its reasonable endeavours to notify the Guarantor thereof, via the Scheme Website, within 10 Business Days thereof.

No Scheme Facility may be amended to have a term which exceeds the Maximum Guarantee Term in respect of that Scheme Facility.

The Maximum Guarantee Term in respect of a Proposed Scheme Facility is set out in the related CBILS Agreement Supplement.

7.4 Variations comprising a new Proposed Scheme Facility

Any variation of a Scheme Facility in the manner contemplated below will be treated as a new Proposed Scheme Facility, such that all the provisions of this Agreement relating to eligibility and application processing must be complied with:

- (A) any renewal of the Scheme Facility;
- (B) any increase in the amount of that Scheme Facility; or
- (C) any variation of any authorised limit, percentage or other amount in respect of a Scheme Facility which would have the effect of increasing the Guarantor's exposure to such Scheme Facility under this Agreement.

7.5 Prepayment or repayment of the Scheme Facility in full

The Lender may, but is not required to, notify the Guarantor of any prepayment or repayment of a Scheme Facility in full, via the Scheme Website.

8. Terms of each Scheme Guarantee

8.1 Each Scheme Guarantee is a continuing security and continues in full force and effect notwithstanding:

- (A) the total or partial invalidity or unenforceability of or any irregularity or defect in any Collateral the Lender may hold in respect of the relevant Scheme Facility; and
- (B) the dissolution of the Borrower or any change in its status, constitution, functions, control or ownership.

For the avoidance of doubt, if a Scheme Facility is repaid, or treated by the Lender as repaid, as a result of the occurrence of any of the events referred to in Clause 8.1(B), the Scheme Guarantee relating thereto will terminate.

8.2 Each Scheme Guarantee is and will remain the property of the Lender.

- 8.3 The Guarantor consents to the registration in Scotland of each Scheme Guarantee for preservation and execution.
- 8.4 Notwithstanding any other provision of this Agreement, if any amount which has been received by the Lender in settlement of any Scheme Facility (in whole or in part) is avoided or reduced by virtue of any law or enactment relating to bankruptcy or liquidation for the time being in force (such amount, a “**Clawback Amount**”):
- (A) the Outstanding Guaranteed Balance of such Scheme Facility shall be calculated as if such Clawback Amount had not been received by the Lender;
 - (B) the relevant Scheme Guarantee shall be deemed to be a continuing security and in full force and effect, notwithstanding any prior discharge of such Scheme Guarantee as a result of the repayment in full of such Scheme Facility; and
 - (C) (if the Lender has already submitted a Payment Claim in respect of such Scheme Facility) the Lender shall be entitled to submit an additional Payment Claim (an “**Additional Payment Claim**”) in respect of any increase in the Outstanding Guaranteed Balance of such Scheme Facility as a result of such Clawback Amount.

For the avoidance of doubt, an Additional Payment Claim shall not cover any part of the Outstanding Guaranteed Balance of a Scheme Facility in respect of which a Payment Claim has already been made by the Lender to the Guarantor.

- 8.5 The Guarantor has not taken and will not take any Collateral from the Borrower in connection with the Scheme Guarantee or the Outstanding Guaranteed Balance of the related Scheme Facility.

9. **Making a claim under a Scheme Guarantee**

9.1 **Process for making a claim under a Scheme Guarantee**

The Guarantor agrees that, if:

- (A) a Borrower fails to make any payment of the Outstanding Guaranteed Balance of a Scheme Facility to the Lender when due; and
- (B) the Lender delivers to the Guarantor each of:
 - (1) a Payment Claim in respect of such failed payment; and
 - (2) a Claim Invoice in respect of such Payment Claim (and any other Payment Claims made by the Lender in respect of a Scheme Facility during the relevant Claim Period),

in each case, in accordance with this Clause 9,

it will, within 30 calendar days of receiving such Claim Invoice, pay to the Lender an amount equal to the Guaranteed Amount in respect of such Scheme Facility.

If the Lender intends to make a claim under a Scheme Guarantee, it must (i) make a Payment Claim in respect of that Scheme Guarantee in accordance with Clause 9.2 and (ii) at the end of the Claim Period in which such Payment Claim is made, submit a Claim Invoice in respect of all Payment Claims it has made during that Claim Period. If all relevant conditions have been met, the Guarantor will pay to the Lender the relevant

Guaranteed Amount within 30 calendar days of receipt of that Claim Invoice (as described in Clause 9.3 of this Agreement). Only one Claim Invoice may be submitted to the Guarantor in respect of any Claim Period.

The Guaranteed Amount payable by the Guarantor to the Lender will be calculated under Clause 2 of this Agreement.

9.2 Conditions to making a Payment Claim in respect of a Scheme Guarantee

- (A) The Lender may not deliver a Payment Claim in respect of a Scheme Facility unless the following conditions precedent have been satisfied:
- (1) that Scheme Facility was an Eligible Facility on the Offer Date thereof;
 - (2) the Initial Drawdown in respect of such Scheme Facility occurred before the Initial Drawdown Deadline;
 - (3) the Lender has demanded in writing from the relevant Borrower repayment in full of the principal amount or, as the case may be, the outstanding balance of the financing provided by the Lender under each Scheme Facility made by it to the Borrower, and any other sums then outstanding thereunder, (any such demand, a “**Repayment Demand**”, the date of a Repayment Demand, the “**Demand Date**” and the latest Demand Date being the “**Final Demand Date**” in respect of such Borrower);
 - (4) 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 Scheme Facility by the date falling 10 Business Days following the Demand Date in respect of that Scheme Facility;
 - (5) the Lender, in making such Scheme Facility available to the relevant Borrower, was not acting contrary to any applicable legislation or public or regulatory policies to be considered by the Lender pursuant to Clause 3.1 (*Standard of Care of the Lender*) at the relevant time; and
 - (6) [Not applicable].

If any one or more of these conditions precedent has not been satisfied on the date that a Payment Claim is delivered to the Guarantor and has not been waived in writing by the Guarantor, the Guarantor will be unconditionally and irrevocably released and discharged from all its obligations and liabilities under the Scheme Guarantee relating to that Scheme Facility.

- (B) Each Party agrees that:
- (1) subject to Clause 8.4(C), the Lender may only submit one Payment Claim to the Guarantor for each Scheme Guarantee;
 - (2) [Not Applicable]
 - (3) the Guarantor’s liability under a Scheme Guarantee will not exceed an amount equal to the Guaranteed Amount for the relevant Scheme Facility as at the date of the Payment Claim;

- (4) a Payment Claim must be delivered by the Lender to the Guarantor in respect of a Scheme Facility:
 - (a) within a reasonable time period following the first Demand Date in respect of such Scheme Facility; and:
 - (b) no later than the date that falls 18 months after the first Demand Date in respect of such Scheme Facility,

and the Guarantor will not be required to pay any amount to the Lender under Clause 2 (*Guarantee*) unless these conditions have been satisfied.

In relation to Clause 9.2(B)(4)(b) above, if a Demand Date occurs in respect of a Scheme Facility and the Scheme Facility subsequently becomes performing, with the Lender no longer requiring repayment in full of the sums outstanding under such Scheme Facility, then such Demand Date shall be ignored for the purposes of 9.2(B)(4)(b).

- (C) Where the Lender has made a Repayment Demand on a Borrower which it subsequently withdraws or waives or otherwise treats its rights as having been satisfied, it will not be precluded from making a Payment Claim in respect of any subsequent Repayment Demand it makes on such Borrower, provided the making of such Payment Claim complies with the provisions of this Agreement.
- (D) The Guarantor agrees that any Payment Claim will be effective notwithstanding the failure by the Lender in any particular case to include the information specified therein. The Lender will provide any outstanding information to the Guarantor as soon as reasonably practicable

9.3 **Submitting a Claim Invoice to the Guarantor**

The Lender will, as soon as reasonably practicable after the end of each Claim Period, submit to the Guarantor a combined invoice (a "**Claim Invoice**"), in form and substance satisfactory to the Guarantor, detailing (for each Scheme Facility in respect of which it made a Payment Claim during such Claim Period) those amounts claimed by the Lender under the terms of the relevant Scheme Guarantee and containing such other information as the Guarantor may from time to time require to be included therein.

10. **[Not Applicable]**

11. **Recoveries and security**

11.1 **Lender's recoveries process**

The Lender agrees to complete or waive its recoveries process in respect of each Scheme Facility for which a Repayment Demand has been made, in each case, in accordance with Clause 3.1 (*Standard of care of the Lender*).

11.2 **Recoveries and security**

The Lender will deal with Collateral and recoveries relating to a Scheme Facility in the manner set out in the relevant CBILS Agreement Supplement, as such provisions may be amended by the Guarantor from time to time with the consent of the Lender (such consent not to be unreasonably withheld or delayed), from the earliest date of demand for repayment of any Borrowing Facility entered into by the Lender of such Scheme Facility.

11.3 Restrictions on the Guarantor

In respect of a Scheme Facility, unless all liabilities of the relevant Borrower to the Lender in respect of Borrowing Facilities made available by the Lender to such Borrower have been paid in full or otherwise discharged, the Guarantor will not, unless it has been from time to time agreed between the Lender and the Guarantor:-

- (A) subject to the provisions of the relevant CBILS Agreement Supplement, be entitled to share in or succeed to or benefit from (by subrogation or otherwise) any rights or Collateral (or proceeds of either) the Lender has; or
- (B) exercise, enforce or seek to enforce without the prior written consent of the Lender any rights it has against the Borrower or any other person and arising because of the Lender's receipt or recovery of, or the payment and discharge of, part only of the Guaranteed Amount,

provided that,

if any sums are received, recovered or realised by the Guarantor in, or as a result of, the exercise (whether with or without the Lender's consent) of such rights, then, in the case of sums received, recovered or realised outside Scotland, those sums will be held by the Guarantor as trustee on trust to apply them as if they were sums received, recovered or realised by the Lender under the relevant Scheme Guarantee and, in the case of sums received, recovered or realised in Scotland, the Guarantor will promptly pay and account for such sums to the Lender and if it does not promptly pay and account for such sums to the Lender it will acknowledge that it holds such sums as trustee on trust to apply them as if they were sums received, recovered or realised by the Lender under the relevant Scheme Guarantee; and

- (C) prove or rank in any bankruptcy, sequestration, liquidation or other insolvency procedure of the relevant Borrower in competition with the Lender for any sums owed due or payable to the Guarantor by the relevant Borrower as because of any payment by the Guarantor under the relevant Scheme Guarantee.

12. Errors in payment

12.1 If the Guarantor makes a payment to the Lender under a Scheme Guarantee, but afterwards the Guarantor determines that the relevant Payment Claim was made:

- (A) [Not Applicable];
- (B) fraudulently or otherwise than in good faith; or
- (C) other than in compliance with Clauses 3.1, 9.2(A) and 9.2(B),

then, on the Guarantor's demand, the Lender will immediately reimburse that payment to the Guarantor.

12.2 If the Guarantor determines that the pricing of any Scheme Facility (including interest and other amounts charged to a Borrower under the Scheme Facility) does not satisfy the requirements of Clause 38.6 (*Conduct*), then the Lender will take such action as may be required by the Guarantor to rectify this, including paying to the Borrower in respect of such Scheme Facility such amount as would place that Borrower in the position that it would have been in had Clause 38.6 (*Conduct*) been complied with by the Lender.

12.3 If, in relation to a particular Scheme Facility or Scheme Guarantee, a Party (the “**Payer**”) makes payment to the other Party (the “**Payee**”) of any amount pursuant to the terms of this Agreement and it is subsequently determined that such amount:

- (A) exceeded the amount that the Payee was entitled to receive under the terms of this Agreement, the Payee will as soon as reasonably practicable following a demand by the Payer reimburse to the Payer the difference between the amount which was paid by the Payer in respect of such Scheme Facility or Scheme Guarantee (as applicable) and the amount which should have been paid; or
- (B) was less than the amount that the Payee was entitled to receive under the terms of this Agreement, the Payer will pay to the Payee as soon as reasonably practicable the additional amount owed to the Payee under such Scheme Facility or Scheme Guarantee (as applicable).

13. **[Not applicable]**

14. **Monitoring, audit and maintenance of records**

14.1

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

The Lender will establish and maintain, for so long as any Scheme Facility remains outstanding, effective internal processes for the administration of each Scheme Facility in accordance with Clause 3.1 (*Standard of care of the Lender*).

(B) **Administration by the Guarantor of the Scheme Guarantees**

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 the Scheme Guarantees (each such person, a “**Service Provider**”), including the Business Interruption Payments, 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 23 (*Data Protection*) and Clause 24 (*Confidentiality*), 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 the relevant Scheme Guarantee on the Guarantor’s behalf; and
- (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.

14.2 **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 (i) 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 (ii) that the information included in the Scheme Website 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 Guarantees and compliance with this Agreement, the Lender agrees that each of the Guarantor and any of its agents and auditors (including the British Business Bank plc, any affiliate of the British Business Bank plc and any of their advisers, agents or contractors) (the “**Guarantor Related Parties**”) has the right to carry out audits and controls and to request information about this Agreement and the Scheme Facilities. The Lender will permit monitoring visits and inspections of its business operations, books and records relating to this Agreement and the Scheme Facilities by any Guarantor Related Party, provided that it receives at least five 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 and agents 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 supply to the Guarantor Related Parties such information, documents, reports and records about the Scheme Guarantees and/or Scheme Facilities as the Guarantor Related Parties may from time to time require and investigate (where appropriate) and respond to any enquires made by the Guarantor Related Parties about the same (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 including, but not limited to, any operational difficulties or issues arising and needing to be addressed.

14.3 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, including, without limitation, the compliance of all Scheme Facilities with the Eligibility Criteria and Clause 38.6 (*Conduct*);
- (2) information necessary to verify the proper implementation of this Agreement into the Scheme Facility Letters;
- (3) information about the payment and recovery processes of the Lender; and
- (4) any other information reasonably required by any Guarantor Related Party,

in each case for such length of time as is consistent with Clause 3.1 (*Standard of care of the Lender*).

- (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 2 months after being informed of such deficiency (or such shorter period communicated to it by the Guarantor or 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 or 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 and any Scheme Facilities, to ensure this Agreement's legality, validity, enforceability and admissibility in evidence in the Lender's jurisdiction of incorporation and carry out its business.

14.4 Nothing in this Clause 14 requires the Lender to disclose or permit access to any information breaching its obligations under Clause 24 (*Confidentiality*) or any applicable law or regulation.

15. **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 Clause 15.6 (*No default*) and Clause 15.12 (*Proceedings*) which will be deemed to be made on the Effective Date only.

15.1 **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.

15.2 **Binding obligations**

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

15.3 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 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 15.3(A)-(C) above, the same would affect its ability to perform its obligations under this Agreement.

15.4 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 the transactions contemplated by this Agreement.

15.5 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
 - (2) make this 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.

15.6 No default

- (A) No Event of Default or Potential Event of Default relating to it is continuing or might reasonably be expected to result from entering into this Agreement.
- (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.

15.7 No misleading information

- (A) All information (including any factual information) provided by it for the purposes of or pursuant to this Agreement (including any information provided before the Effective Date) 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.

15.8 **Governing law and enforcement**

- (A) The choice of English law as the governing law of this 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 will be recognised and enforced in its jurisdiction of incorporation or, as the case may be, of establishment.

15.9 **Good faith**

It has entered into this Agreement in good faith.

15.10 **Compliance with Eligibility Criteria**

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

15.11 **Due enquiry**

It has made Due Enquiry about each Applicant.

15.12 **Proceedings**

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

16. **[Not applicable]**

17. **General undertakings**

17.1 **Scheme Guidance and Scheme Website**

The Lender acknowledges that it has received copies of the Scheme Guidance and agrees to:

- (A) comply with the sections of the Scheme Guidance referred to in Schedule 6 hereto; and
- (B) take account of all sections of the Scheme Guidance in complying with its obligations hereunder.

The Lender undertakes to comply with the requirements of the Scheme Website, as may be amended and/or updated from time to time by the Guarantor, provided that it receives reasonable prior notice thereof.

17.2 Probationary Lender

If the Lender is designated as a Probationary Lender, the Lender covenants and undertakes to comply with the terms of the Probationary Lender Side Letter throughout the Probationary Period. To the extent that there is any inconsistency between the Probationary Lender Side Letter and this Agreement, the Probationary Lender Side Letter prevails.

17.3 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.

17.4 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 17.4(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 advisors if they are unsure as to whether any funds are likely to constitute grant or grant-equivalent monies.

17.5 State aid

- (A) If the Lender becomes aware that any State aid requirements have not been complied with in respect of the Scheme or any Scheme Facility, the Lender will promptly:

- (1) notify the Guarantor; and
 - (2) cancel the relevant Scheme Facility (if applicable) on the Scheme Website.
- (B) If, in the opinion of the Guarantor, any State aid 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.

17.6 Risk

The Lender will not use the Scheme (including the making of an offer of a Scheme Facility or the servicing of a Scheme Facility) in a manner that reallocates to the Guarantor risk that it would otherwise hold itself, except where the Borrower has confirmed that it has been impacted by the Coronavirus (COVID-19), subject always to the Eligibility Criteria.

17.7 Allocation Letter

The Lender will comply, during each Annual Scheme Period, with the conditions (if any) set out in the Allocation Letter delivered to it by the Guarantor in respect of such Annual Scheme Period.

18. Events of Default

The Lender will notify, in writing, the Guarantor of any Potential Event of Default or Event of Default occurring in respect of it (and the steps, if any, being taken to remedy it) promptly upon the Lender becoming aware of its occurrence. Each of the events or circumstances set out in this Clause 18 is an “**Event of Default**”.

18.1 Breach of obligations

- (A) The Lender does not comply (in the determination of the Guarantor) in any material respect with any provision of this Agreement.
- (B) No Event of Default under Clause 18.1(A) will occur if:
- (1) the failure to comply is capable of remedy and is remedied within 10 Business Days of the Lender giving notice of the Event of Default to the Guarantor or the Guarantor becoming aware of the failure to comply; or
 - (2) such failure to comply occurs as a result of any action or inaction by the Guarantor under the terms of this Agreement.

18.2 Insolvency

- (A) The Lender is unable, or admits its inability, to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, or, by reason of actual or anticipated financial difficulties, suspends or threatens to suspend making payments on any of its debts or commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (B) The value of the assets of the Lender are less than its liabilities (taking into account contingent and, if applicable under relevant law, prospective liabilities).
- (C) A moratorium is declared in respect of any indebtedness of the Lender. If a moratorium occurs, the end of the moratorium will not remedy any Event of Default caused by that moratorium.

18.3 **Insolvency proceedings**

Any corporate action, legal proceedings or other procedure or step is taken in relation to:

- (A) a suspension of payments, moratorium of any indebtedness, bankruptcy, controlled management, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Lender;
- (B) a composition, assignment or arrangement with the creditors of the Lender;
- (C) an appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Lender or any of its assets;
- (D) an enforcement of any security over any material asset of the Lender; or
- (E) any analogous procedure or step is taken in any jurisdiction;

except this Clause 18.3 does not apply to a winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within 28 days of the earlier of (a) its commencement and (b) the date on which it is advertised.

18.4 **Repudiation and rescission of agreements**

The Lender rescinds or purports to rescind or repudiates or purports to repudiate this Agreement or evidences an intention to rescind or repudiate this Agreement.

18.5 **Unlawfulness**

It is or becomes unlawful for a Party to perform any of its obligations under this Agreement.

18.6 **Misrepresentation**

Any representation or statement made by the Lender to the Guarantor in this Agreement, or any other document delivered by or on behalf of the Lender to the Guarantor in connection with this Agreement or (to the knowledge of the Lender) through the Scheme Website, is or proves to have been incorrect or misleading in any material respect when made by the Lender.

18.7 **Change of control**

There is any change in the persons exercising Control over the Lender as compared to the position at the Effective Date without prior written confirmation from the Guarantor that this Clause 18.7 will not apply to the same.

19. **Cancellation of Scheme Guarantees and termination of the Agreement**

19.1 **Cancellation of Scheme Guarantee**

If, in respect of a Scheme Guarantee:

- (A) [Not applicable]
- (B) there occurs a breach by the Lender, as determined by the Guarantor, of its obligations under Clause 3.1 (*Standard of care of the Lender*) or the Lender has

acted fraudulently in participating in the Scheme and making available the related Scheme Facility or the related Scheme Facility does not comply with the Eligibility Criteria as at its Offer Date, then the Guarantor can, by notice to the Lender, immediately terminate such Scheme Guarantee, with effect from the date of such notice; or

- (C) the Initial Drawdown Date in respect of the relevant Scheme Facility does not occur before the Initial Drawdown Deadline, then that Scheme Guarantee will immediately terminate on such date,

and, in each case, the Guarantor will be unconditionally and irrevocably released and discharged from all its obligations under such Scheme Guarantee with effect from that date.

19.2 Early Termination of the Agreement

(A) **Suspension upon the occurrence of a Potential Event of Default or an Event of Default**

(1) On, and at any time after, the occurrence of:

- (a) a Potential Event of Default; or
- (b) an Event of Default,

which is continuing, the Guarantor may, by notice to the Lender, suspend performance of its obligations under this Agreement and the Lender's right under Clause 5 (*Offer of a Scheme Facility*) to enter into Scheme Facilities.

(2) If such Potential Event of Default or Event of Default is remedied within the relevant grace period (if any) or waived by the Guarantor, the notice served under Clause 19.2(A)(1) will be deemed revoked automatically.

(3) A suspension pursuant to this Clause 19.2(A) shall not affect:

- (a) any obligations of the Guarantor in respect of any Scheme Facilities offered by the Lender under the Scheme before such suspension;
- (b) any Scheme Guarantee issued by the Guarantor pursuant to Clause 2.1 (Guarantee) in respect of an offer already made of a Scheme Facility (notwithstanding that acceptance of any such offer may take place on or after such suspension);
- (c) any obligations on the part of the Lender to pay a recovery to the Guarantor under Clause 11 (*Recoveries and security*) in connection with any such Scheme Facilities; or
- (d) any rights which have accrued to one Party against the other before the suspension.

(B) **Early termination upon the occurrence of an Event of Default**

On, and at any time after, the occurrence of an Event of Default, that has not been remedied within the relevant grace period (if any), the Guarantor may (but will not be obliged to), by written notice (sent by email and by letter) to the Lender, immediately terminate this Agreement.

(C) **Termination without cause**

Either Party may at any time by notice in writing, and without the need to provide any reason therefor, specify to the other Party a date of termination which is not less than 1 month from the date on which such notice is given.

19.3 **Actions to be taken following a Non-Material Breach**

Upon the occurrence of a breach by the Lender of this Agreement which, in the opinion of the Guarantor, is a non-material breach (such that no Event of Default would occur under Clause 18 (*Events of Default*)), the Lender will discuss with the Guarantor what steps, if any, should be taken by the Lender to redress such breach and will take all such action as is required to put in place any remedial steps agreed between the parties.

19.4 **Termination of the Agreement**

(A) No Scheme Guarantee may be issued after the Termination Date and no Scheme Facility may be offered by the Lender after the Termination Date.

(B) On the occurrence of the Termination Date, the rights and obligations of the Parties under this Agreement will terminate except that a termination notice issued under Clause 19.2(B) and (C) and the occurrence of the Termination Date do not affect:

- (1) any Scheme Facilities offered by the Lender under the Scheme before the Termination Date;
- (2) any Scheme Guarantee issued by the Guarantor pursuant to Clause 2.1 (*Guarantee*) in respect of an offer already made of a Scheme Facility (notwithstanding that acceptance of any such offer may take place on or after the Termination Date);
- (3) any obligations on the part of the Lender to pay a recovery to Guarantor under Clause 11 (*Recoveries and security*) in connection with any such Scheme Facilities;
- (4) any rights which have accrued to one Party against the other before the Termination Date; nor
- (5) the provisions of the Clauses listed in Clause 20 (*Survival of rights*) which will, to the extent that the same are capable of continuing to apply, expressly survive the occurrence of the Termination Date.

19.5 **Additional termination rights in respect of Group Lenders**

(A) If the term "Lender" is comprised of more than one Group Lender, then the provisions of this Clause 19.5 will apply.

(B) If, at any time, any Group Lender is no longer part of the same Group as the other Group Lenders, then the Guarantor may, by notice to all Group Lenders, suspend performance of its obligations under this Agreement in respect of any one or more Group Lenders and the right of any one or more of the Group Lenders under Clause 5 (*Offer of a Scheme Facility*) to enter into Scheme Facilities (in each case, as determined by the Guarantor).

(C) Following any suspension pursuant to this Clause 19.5, each Group Lender will discuss in good faith with the Guarantor what steps, if any, should be taken by the

Group Lenders in respect of the continuation of this Agreement and/or the entry into one or more Group Lenders of a new guarantee agreement and will take all such action as is required to put in place any steps agreed between the Parties.

- (D) If no agreement is reached between the Guarantor and all Group Lenders pursuant to Clause 19.5(C) on or before the day falling 10 Business Days after the day that notice of any suspension pursuant to Clause 19.5(B) is given by the Guarantor to any Group Lender, then the Guarantor may (but will not be obliged to), by notice to each Group Lender, immediately terminate this Agreement in respect any one or more Group Lenders (as determined by the Guarantor).
- (E) Any suspension pursuant to Clause 19.5(B) and any termination pursuant to Clause 19.5(D) shall not affect:
 - (1) any obligations of the Guarantor in respect of any Scheme Facilities offered by any Lender under the Scheme before such suspension or termination;
 - (2) any Scheme Guarantee issued by the Guarantor pursuant to Clause 2.1 (*Guarantee*) in respect of an offer already made of a Scheme Facility (notwithstanding that acceptance of any such offer may take place on or after such suspension or termination);
 - (3) any obligations on the part of the Lender to pay a recovery to the Guarantor under Clause 11 (*Recoveries and security*) in connection with any such Scheme Facilities; or
 - (4) any rights which have accrued to one Party against the other before the suspension.

20. **Survival of rights**

The provisions of Clauses 3 (*Standard of care*), 7.2 (*Lender's rights*), 7.3 (*Permitted Variations*), 8.4(C) (*Terms of each Scheme Guarantee*), 9 (*Making a claim under a Scheme Guarantee*), 11 (*Recoveries and security*), 14 (*Monitoring and audit*), 17 (*General Undertakings*), 19 (*Cancellation of Scheme Guarantees and termination of the Agreement*), 20 (*Survival of Rights*), 21 (*Liability and indemnity*), Clause 23 (*Data protection*), 24 (*Confidentiality*), 25 (*Notices*), 26 (*Scheme Website rights*), 28 (*Remedies and Waivers*), 30 (*Further Assurances*), 31 (*Amendments and Waivers*), 32 (*Assignment and transfer*), 35 (*Contracts (Rights of Third Parties Act 1999)*), 36 (*Governing Law and Jurisdiction*), 38 (*Business Interruption Payment ("BIP")*), 39 (*Scheme Lender Fee*), 40 (*Personal guarantees*) and Schedule 1 Part 1 (*Definitions*) will survive termination of this Agreement. In addition, any other right accrued at the date of termination of this Agreement (including, without limitation, any rights of the Guarantor under Clause 11 (*Recoveries and security*) and any rights of the Parties under Clause 19.4 (*Termination of the Agreement*)) will survive such termination.

21. **Liability and indemnity**

21.1 **Liability and indemnity of the Lender**

The Lender will be liable for and will reimburse and indemnify the Guarantor and hold the Guarantor harmless from and against any and all damages, losses, claims, taxes, liability, costs and expenses and other amounts payable, incurred or suffered by the Guarantor, arising out of, as a result of, in connection with or related to this Agreement or being Guarantor hereunder as a result of any material breach by the Lender of any of its obligations arising from or in connection with this Agreement or any incorrectness of any

representation, warranty, or statement made by the Lender, or any gross negligence, wilful misconduct or fraud, provided that the Lender will not be liable for any indirect or consequential losses.

21.2 **Liability of the Guarantor**

- (A) Subject to Clause 23 (*Data protection*), the Guarantor will have no liability to the Lender (whether in contract, tort (including negligence or breach of statutory duty) or otherwise), save where such liability may not by law be effectively excluded or limited, for any costs, expenses, damages or losses (whether direct or indirect) in respect of loss of profit, contracts, opportunity, business or revenue, failure to realise anticipated savings or benefits, loss of goodwill, loss of operation time, loss of or corruption to data, wasted management or staff time or for any indirect, special or consequential cost, expense, damage or loss of any kind whatsoever and howsoever caused, even if reasonably foreseeable and even if it has been advised of the possibility of such costs, expenses, damages or losses, sustained or incurred by the Lender under or in connection with this Agreement, any other agreement or document entered into with the Lender, as contemplated in or ancillary to this Agreement or the Scheme, the Scheme or the operation of the Scheme Website. Nothing in this Agreement limits the liability of the Guarantor for death or personal injury caused by its negligence, or for fraudulent misrepresentation.
- (B) The Parties have considered the exclusions and limitations of liability in Clause 21.2(A) in the context of all the circumstances of the transaction to which this Agreement relates and all the factors referred to in Schedule 2 of the Unfair Contracts Terms Act 1977. The Parties consider that such exclusions and limitations of liability are fair and reasonable and that, but for such exclusions and limitations, the Parties would not have entered into this Agreement. For the purposes of the Unfair Contracts Terms Act 1977, each Party agrees that every provision of this Agreement has been the subject of negotiations between the Parties.

22. **Service Level Agreement**

The Guarantor will use its reasonable endeavours to enter into appropriate service level agreements with third party providers in connection with the operation of the Scheme.

23. **Data protection**

23.1 Each of the Parties will comply with its obligations under the Data Protection Legislation.

23.2 Subject to its obligations under Clause 23.1, the Lender agrees:

- (A) to provide to the Guarantor Related Parties all 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 23.2(B) below;
- (B) that any Personal Data may be used by the Guarantor Related Parties:
- (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) in order to contact the relevant Borrower or Applicant in connection with the Scheme;

- (3) to make enquiries about the relevant Applicant's application to the Scheme;
- (4) to take up references about the relevant Applicant and that Applicant's business;
- (5) 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
- (6) (in the case of a Borrower) in order to evaluate the effectiveness of the Scheme; and

(C) that any Guarantor Related Party may store any Personal Data relating to a Borrower or a Personal Guarantor for a minimum of ten (10) years after the Initial Drawdown Date of the relevant Scheme Facility.

23.3 The Lender undertakes 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 consent to the use of its Personal Data in the manner contemplated by this Clause 23, 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 Website or otherwise providing such information to any Guarantor Related Party.

23.4 The Lender undertakes to obtain all rights and consents (including in relation to the Guarantor and Guarantor Related Parties' processing of Personal Data) necessary to ensure that the Guarantor is able to fully exercise its audit rights under Clause 14.2.

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

24. **Confidentiality**

24.1 Each Party will, and will use all reasonable endeavours to ensure that any of its agents or sub-contractors will, keep confidential all Confidential Information supplied to it in accordance with this Agreement.

24.2 Notwithstanding this, each Party is entitled to disclose Confidential Information:

(A) where required under any applicable law or contemplated by the terms of this Agreement (including, without limitation, the visibility and promotion, reporting and monitoring obligations to be complied with by the Lender);

(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 either 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.

(C) to each of the Party's officers, directors, employees, Affiliates (if any) and professional advisers to the extent necessary for the purposes of this Agreement and to its auditors;

- (D) to any person to whom a Party is proposing to assign or transfer any of its rights or obligations under this Agreement pursuant to Clause 32 (*Assignment and transfer*);
- (E) where the information is already in the public domain through no fault of such Party;
- (F) with the prior written consent of the other Party 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;
- (G) for so long as the Secretary of State for Business, Energy and Industrial Strategy is acting as Guarantor, to the British Business Bank plc or any of its Affiliates and their advisers, the Guarantor Related Parties and their advisers
- (H) the Guarantor Related Parties and their advisers; and
- (I) with respect to disclosure by the Guarantor:
 - (1) to the UK Parliament (including any Committee of the House of Commons or the House of Lords) or to the European Commission;
 - (2) to any minister of the Crown, any UK government department, agency or authority, the Bank of England (including, without limitation, the Prudential Regulation Authority), the Financial Conduct Authority, the Financial Policy Committee or any other governmental, banking, taxation or regulatory agency or authority; and
 - (3) for the purpose of reporting on the establishment, performance or operation of, or compliance with, this Agreement.

24.3 If the Guarantor is requested to disclose any Confidential Information pursuant to the provisions of the FOI Act (an “**FOI Request**”) or the EIR (an “**EIR Request**”), the Guarantor will (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; and
- (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 considers there to be exceptional circumstances, such shorter period as the Guarantor 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 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 will take into account any representation from the Lender as to whether the 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 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 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.

24.4 Nothing in this Clause 24 restricts or prevents the publication by the Guarantor 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 in accordance with the FOI Act or EIR; or
- (B) in accordance with any model publication scheme (as defined in the FOI Act or EIR) applicable to the Guarantor as may be published from time to time by the Information Commissioner.

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 will have due regard to whether, in its sole opinion, such information would be exempt from disclosure under the FOI Act or EIR.

24.5 The Lender undertakes to maintain, and be able to produce, all documentation related to this Clause 24 to the Guarantor Related Parties for such length of time as is consistent with Clause 3.1 (*Standard of care of the Lender*).

24.6 As soon as reasonably practicable following a request from an Applicant or a Borrower, the Lender will make available to such Applicant or Borrower (as applicable) all information relating to it that has been provided by the Lender to a Guarantor Related Party and/or any Scheme Facility entered into by it whether pursuant to this Agreement or any Existing CBILS Agreement, other than where such disclosure is prohibited by applicable law or regulation.

24.7 This Clause 24 supersedes any previous confidentiality undertaking given by either Party before the Effective Date.

24.8 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.

25. **Notices**

25.1 Subject to Clause 25.2, 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 and will be deemed to be duly given (i) when delivered (if given by personal delivery) or (ii) three Business Days after posting (if given by first class letter post) and will be addressed as follows:

(A) if to the Guarantor:

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

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

(B) if to the Lender:

[•]

Email: [•]

For the attention of: [•],

or at such other address and/or to such other person as the relevant addressee may specify by at least 5 Business Days' notice.

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

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

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

25.3 The Guarantor will notify the Lender, via email in accordance with Clause 25.1, of:

(A) any change made by or on behalf of the Guarantor to the Scheme Website 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 Website by the Guarantor to the Lender in accordance with Clause 25.2 as soon as reasonably practicable following the delivery of such notice, request, demand or other communication.

26. **Scheme Website 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 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.

27. **Relationship between the Parties**

Save as may be expressly agreed between them from time to time, 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.

28. **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 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 are cumulative and not exclusive of any rights or remedies provided by law.

29. **Invalidity and severability**

If any provision of this 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
- (B) in any other jurisdiction of that or any other provision of this Agreement.

30. **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 and any Scheme Guarantee contemplated by this Agreement;
- (B) for the exercise or preservice of any rights, powers and remedies of the Guarantor provided by or pursuant to this 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 State aid or regulatory requirements;
- (D) to facilitate any amendments to this Agreement pursuant to Clause 31 (*Amendments and waivers*); and
- (E) to facilitate the transfer of this Agreement by the Guarantor in accordance with Clause 32.2(B) (*Assignment and transfer by the Guarantor*).

31. **Amendments and waivers**

31.1 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.

31.2 If the Guarantor decides that any other type of credit, financing or loan facility is to be an Eligible Facility for the purposes of this Agreement, then 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 decision.

32. **Assignment and transfer**

32.1 **Transfer of an individual Scheme Facility**

The Lender undertakes that it will not assign, novate or otherwise transfer its rights and obligations in respect of an individual Scheme Facility to any person, other than in

connection with a liquidity scheme provided by the UK Government or any other state, supranational or public body (including, but not limited to, the Term Funding Scheme), without the prior written consent of the Guarantor. If provided by the Guarantor, such consent may be subject to such conditions as the Guarantor decides.

32.2 **Assignment and transfer of rights and obligations under this Agreement**

(A) **Lender**

The Lender will not be entitled to assign, novate 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 32.2(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.

32.3 **Risk retention**

The Lender agrees that at all times while a Scheme Guarantee is outstanding, it will not, without the prior written consent of the Guarantor, transfer to any third party any of the credit risk of the related Scheme Facility that was held by the Lender on the Initial Drawdown Date of such Scheme Facility provided that nothing in this Clause 32.3 will prohibit a Lender from accepting Collateral in connection with the relevant Scheme Facility in accordance with Clause 3.1 (*Standard of care of the Lender*).

33. **[Not applicable]**

34. **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.

35. **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.

36. **Governing law and jurisdiction**

36.1 **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.

36.2 Jurisdiction

- (A) 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.
- (B) This Clause 36.2 is drafted for the benefit of the Guarantor and will not limit its right to take proceedings in any other court with jurisdiction.

37. Service of process

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

- (A) 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.

38. Business Interruption Payment (“BIP”)

38.1 Entitlement to BIP

- (A) In respect of each Scheme Facility, the Borrower of such Scheme Facility shall be entitled to a payment equal to the aggregate of:
 - (1) all amounts of interest (and in the case of a Scheme Facility that is an Asset Finance Scheme Facility, any equivalent finance costs or rental payments not forming part of the Original Balance Financed) payable on such Scheme Facility in respect of the period from, and including the Initial Drawdown Date to, but excluding, the earlier of (x) the day falling 12 calendar months after the Initial Drawdown Date or (y) if the Lender sends a Repayment Demand in respect of such Scheme Facility, the date of such Repayment Demand (the “BIP Period”), for the avoidance of doubt, this will include any fees payable by the Borrower in connection with the Application of the Proposed Scheme Facility; and
 - (2) all lender levied fees incurred in the ordinary course of granting and maintaining such Scheme Facility that would otherwise be payable by the Borrower in connection with such Scheme Facility during the BIP Period,but excluding any late payment or default interest or equivalent, VAT, extraordinary fees, early settlement fees or fees relating to any default, and any interest or fees in excess of the amounts that would otherwise be charged to the Borrower in the absence of this Clause 38 and subject to the maximum amount set out in the Business Interruption Payment Offer Letter for such Scheme Facility minus any Qualifying Payments (the “Business Interruption Payment” or “BIP”).

- (B) In respect of each Scheme Facility, the Guarantor agrees, at the direction of the Borrower in the Business Interruption Payment Offer Letter for such Scheme Facility, to pay to the Lender for the benefit of the Borrower under such Scheme Facility, the BIP for such Scheme Facility on the terms of this Clause 38.
- (C) The Lender shall apply each BIP received from the Guarantor under this Clause 38 in satisfaction of the interest and lender levied fees to which such BIP relates.
- (D) The Lender agrees that it shall have no recourse to the Borrower in respect of the amounts described in Clause 38.1(A) and that its only recourse in respect of the same shall be to the Guarantor for payment of the corresponding BIP on the terms of this Clause 38.

38.2 BIP Claim

The Lender will, as soon as reasonably practicable but in any event no later than 5 Business Days after the end of each BIP Claim Period, submit to the Guarantor a combined invoice (a “**BIP Claim Invoice**”), in form and substance satisfactory to the Guarantor, detailing those amounts claimed by the Lender under this Clause 38 in respect of each Scheme Facility with an Offer Date on or after 23 March 2020 where the Initial Drawdown Date has occurred during such BIP Claim Period and containing such other information as the Guarantor may from time to time require to be included therein.

The Guarantor shall only be required to pay any amount referred to in Clause 38.1, if the Lender has submitted to the Guarantor a valid BIP Claim Invoice in respect of such amount under this Clause 38.2.

38.3 Timing of payment

The Guarantor will endeavour, within 30 calendar days of receiving a valid BIP Claim Invoice, pay to the Lender the amount claimed by the Lender in such BIP Claim Invoice.

38.4 Errors in payment

Clause 12 (*Errors in payment*) shall apply to payments made under this Clause 38 as if each such payment is a payment to the Lender under a Scheme Guarantee and each claim made under this Clause 38 is a Payment Claim.

38.5 Statements

The Lender agrees to provide an Applicant under a Proposed Scheme Facility a written estimate of the amount of its BIP when the Proposed Scheme Facility is offered to the Applicant. The Lender further agrees to provide a Borrower under a Scheme Facility with a statement setting out the amount of the Borrower’s actual BIP at the end of the BIP Period.

38.6 Conduct

The Lender agrees that the pricing of the Scheme Facility (including interest and other amounts charged to a Borrower under the Scheme Facility) will be calculated to reflect the economic benefit to the Lender of the guarantee provided by the Guarantor under Clause 2.1 (*Guarantee*) of this Agreement, including any reduced costs to the Lender in respect of credit risk and regulatory capital. If the Lender’s regulatory capital costs are reduced as a result of the guarantee provided by the Guarantor, the Lender shall provide to the Guarantor a copy of its pricing matrix or methodology taking the reduced regulatory capital costs into account within 30 days of such reduction taking effect.

39. **Scheme Lender Fee**

39.1 **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 CBIL Scheme Facility Lender Fees in respect of all CBIL Scheme Facilities accruing during the CBIL Scheme Lender Fee Calculation Period that ended immediately prior to such Scheme Lender Fee Payment Date.

The Scheme Lender Fee is determined on the term of the relevant Scheme Facility. If the term of the relevant Scheme Facility is extended in accordance with Clause 7.3 (Permitted Variation), then the calculation of the Scheme Lender Fee payable in respect of such Scheme Facility should take such extension into account, with the fee payable during the period of such extension being based on the maturity of the Scheme Facility, inclusive of such extension.

39.2 **CBIL Scheme Facility Lender Fee**

The “**CBIL Scheme Facility Lender Fee**” in respect of a Scheme Facility and a CBIL Scheme Lender Fee Calculation Period, shall be an amount equal to the aggregate, for each day in such CBIL Scheme Lender Fee Calculation Period, of the product of the following:

- (A) The Relevant Balance of such Scheme Facility on such day;
- (B) the Applicable Margin; and
- (C) the Day Count Fraction.

39.3 **Definitions**

For the purposes of this Clause 39, the following terms shall have the meanings set out below:

“**Applicable Margin**” means the percentage set out in the table below:

Type of recipient	CBIL Facilities with a maturity of 1 year or less	CBIL Facilities with a maturity of over 1 up to 3 years	CBIL Facilities with a maturity of over 3 up to 6 years
SMEs ¹	25bps	50bps	100bps
Large Enterprises	50bps	100bps	200bps

“**CBIL Scheme Lender Fee Calculation Period**” means the period from and including one CBIL Scheme Lender Fee Calculation Period End Date to, but excluding, the next following CBIL Scheme Lender Fee Calculation Period End Date, provided that the first CBIL Scheme Lender Fee Calculation Period shall begin on and include 23 March 2020 and end on, but exclude, 1 July 2020 and the final CBIL Scheme Lender Fee Calculation

¹ SMEs are defined by the European Commission as having less than 250 persons employed. They should also have an annual turnover of up to EUR 50 million, or a balance sheet total of no more than EUR 43 million. The turnover calculation is based on that used for the definition of an SME by the European Commission contained in the Commission Recommendation.

Period shall end on the CBIL Scheme Lender Fee Calculation Period End Date immediately following the earlier of (A) the date on which the Outstanding Guaranteed Balance of all CBIL Facilities has been reduced to zero; 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.

“**CBIL Scheme Lender Fee Calculation Period End Date**” means 1 January, 1 April, 1 July and 1 October in each year.

“**Day Count Fraction**” means one divided by 365.

“**Relevant Balance**” means:

For RCF Scheme Facilities:	The RCF Scheme Facility Limit
For Invoice Finance Scheme Facilities:	The Maximum Scheme Facility Amount
For Asset Finance Scheme Facilities:	The Outstanding Guaranteed Balance
For Term Loan Scheme Facilities:	The Outstanding Guaranteed Balance

“**Scheme Lender Fee Payment Date**” means, in respect of each CBIL Scheme Lender Fee Calculation Period, 5 Business Days following the end of each CBIL Scheme Lender Fee Calculation Period End Date.

40. **Personal guarantees**

40.1 **Scheme Facility of £250,000 or less**

If the Original Guaranteed Balance of such Scheme Facility is £250,000 or less, the Lender agrees that:

- (A) it shall not require the Borrower or any other person to provide any Relevant Personal Guarantee in connection with such Scheme Facility; and
- (B) if, notwithstanding paragraph (A) above, the Scheme Facility would benefit from any Relevant Personal Guarantee, the Lender shall not make any demand on such Relevant Personal Guarantee or apply any proceeds from such Relevant Personal Guarantee, in connection with the Scheme Facility.

The Lender may, at its discretion, make available Scheme Facilities with an Original Guaranteed Balance of less than £250,000, subject to the terms of this Agreement.

40.2 **Scheme Facility of over £250,000**

If the Original Guaranteed Balance of the Scheme Facility is more than £250,000, the Lender agrees that:

- (A) it will only enforce or otherwise make any demand under any Relevant Personal Guarantee after it has recovered all Net Proceeds that it determines, acting in accordance with the general standard of care in Clause 3.1 of the Guarantee

Agreement, could be recovered by it under all other Collateral and applied by it in respect of the Scheme Facility; and

- (B) it shall not enforce or otherwise make any demand on or apply the proceeds of any Relevant Personal Guarantees in respect of the Scheme Facility for any amount that would exceed, in aggregate, the Scheme Facility Guarantee Cap in respect of such Scheme Facility.

40.3 **CBILS Agreement Supplements**

- (A) The provisions of each CBILS Agreement Supplement relating to recoveries and any related italicised guidance shall be construed in accordance with these principles, and in particular:
 - (1) each provision requiring Net Proceeds from a Relevant Personal Guarantee to be applied on a pro rata basis, shall be determined on the basis that the principal amount outstanding or equivalent of the Scheme Facility used to determine such pro rata split will be subject to any Scheme Facility Guarantee Cap applicable under this clause; and
 - (2) each pro rata split relating to the apportionment of a Linked Settlement Guarantee between the Scheme Facility and other facilities, shall be determined on the basis that the liability of the relevant Personal Guarantor in respect of the Scheme Facility, or the principal amount due and payable under such Scheme Facility as applicable, will be subject to any Scheme Facility Guarantee Cap applicable under this clause.

SIGNATORIES

Secretary of State for Business, Energy and Industrial Strategy

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, Energy and Industrial Strategy**

The Lender²

Signature: [Signature:]³

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:.....]⁴

² 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.

³ To be deleted if this Agreement is signed by only one signatory on behalf of the Lender.

⁴ 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, at any time, in respect of the Lender and a Scheme Facility Type, that such Lender has satisfactorily completed the Guarantor’s accreditation process for that Scheme Facility Type, has received a written confirmation from the Guarantor of accreditation for that Scheme Facility Type and that, at such time, such accreditation is not suspended and has not been withdrawn. Execution by the Lender and the Guarantor of an CBILS Agreement Supplement relating to a particular Scheme Facility Type shall constitute written confirmation from the Guarantor of accreditation for that Scheme Facility Type.

“Additional Payment Claim” has the meaning given to it in Clause 8.4(C).

“Additional Type of 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 25 (*Notices*).

“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.

“Allocation Letter” has the meaning given to it in Clause 6.2(B)(1).

“Annual Lending Limit” has the meaning given to it in Clause 6.2(B).

“Annual Lending Total” has the meaning given to it in Clause 6.2(A).

“Annual Scheme Period” means:

- (A) for the first Annual Scheme Period, the period running from (and including) the Effective Date (or, if the Lender has entered into an Existing CBILS Agreement, the date on which the Lender first commenced the Scheme Website Application Process in relation to a Proposed Scheme Facility) to and including 31 March in the next following year; and
- (B) thereafter, each period from (and including) 1 April in any year to and including 31 March in the next following year.

“Applicable Margin” has the meaning given to it in Clause 39.3.

“Application Deadline Date” means 31 March 2021 or such later date as is determined by the Guarantor and notified to the Lender in accordance with Clause 25 (*Notices*).

“Asset Finance Scheme Facility” has the meaning given to it in the CBILS Agreement Supplement relating to Asset Finance Scheme Facilities entered into by the Guarantor and the Lender (if any).

“BIP” has the meaning given to it in Clause 38.1.

“BIP Claim Invoice” has the meaning given to it in Clause 38.2.

“BIP Claim Period” means each period from and including one BIP Claim Period End Date to, but excluding, the next following BIP Claim Period End Date, provided that the first BIP Claim

Period shall begin on and include 23 March 2020 and end on, but exclude, 1 July 2020 and the final BIP Claim Period shall end on and include the final day of the Annual Scheme Period.

“BIP Claim Period End Date” means 1 January, 1 April, 1 July and 1 October in each year.

“BIP Estimate” has the meaning given to it in Clause 5.3.

“BIP Period” has the meaning given to it in Clause 38.1.

“Borrower” has, in respect of a Scheme Facility, the meaning given to it in the CBILS Agreement Supplement applying to that Scheme Facility.

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

“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 a business that is unable, whether through its own resources or with the funds it is able to obtain from its shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly result in it going out of business in the short or medium term.

“Business Interruption Payment” has the meaning given to it in Clause 38.1.

“Business Interruption Payment Offer Letter” means, in respect of an offer of a Scheme Facility to an Applicant, the letter to be issued to that Applicant offering the Applicant a BIP which is in substantially the form set out in Schedule 8 hereto or such other form as maybe notified to the Lender by the Guarantor from time to time.

“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.

“CBIL Scheme Facility Lender Fee” has the meaning given to it in Clause 39.2.

“CBIL Scheme Lender Fee Calculation Period” has the meaning given to it in Clause 39.3.

“CBIL Scheme Lender Fee Calculation Period End Date” has the meaning given to it in Clause 39.3.

“CBILS Agreement Supplement” means any supplement to this Agreement which may be entered into by the Guarantor and the Lender from time to time with respect to a certain Scheme Facility Type and which take the form of:

- (A) in respect of a Term Loan Scheme Facility, any Coronavirus Business Interruption Loan Scheme Guarantee: Legal Agreement Supplement (Term Loan Scheme Facilities);
- (B) an RCF Scheme Facility, any Coronavirus Business Interruption Loan Scheme Guarantee: Legal Agreement Supplement (RCF Scheme Facilities);
- (C) an Invoice Finance Scheme Facility, any Coronavirus Business Interruption Loan Scheme Guarantee: Legal Agreement Supplement (Invoice Finance Scheme Facilities); or
- (D) an Asset Finance Scheme Facility, any Coronavirus Business Interruption Loan Scheme Guarantee: Legal Agreement Supplement (Asset Finance Scheme Facilities),

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

“Claim Date” means, in relation to a Scheme Facility, the day when the Lender makes a Payment Claim on the Guarantor under the related Scheme Guarantee.

“Claim Invoice” has the meaning given to it in Clause 9.3 (*Claim Invoices*).

“Claim Period” means:

- (A) for the first such period, the period commencing on (and including) the Effective Date and ending on (but excluding) the earlier to occur of the next following 31 March, 30 June, 30 September or 31 December; and
- (B) thereafter, each successive quarter.

“Clawback Amount” has the meaning given to it in Clause 8.4.

“Collateral” has, in respect of a Scheme Facility, the meaning given to it in the CBILS Agreement Supplement applying to that Scheme Facility.

“Commission Recommendation” means Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

“Confidential Information” means any information relating to the Guarantor, either of the Lender or a Borrower 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 24 (*Confidentiality*);
- (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 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, other than from a source which is connected with the relevant Lender and which, in either case, as far as the Guarantor 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.

“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 if the Lender has received at least 30 calendar days’ notice of such change in accordance with Clause 25 (*Notices*)) obtained by the Lender as required by the Scheme Website Application Process.

“Data Protection Legislation” means:

- (A) the Data Protection Act 2018;
- (B) the European Union’s General Data Protection Regulation (Regulation (EU) 2016/679);
- (C) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426); and
- (D) all United Kingdom and European Union (with direct effect) laws relating to processing of Personal Data and privacy (including, where applicable, the guidance and codes of practice issued by the Information Commissioner) and any laws or guidance that replaces them, including but not limited to the European Union’s General Data Protection Regulation (Regulation (EU) 2016/679).

“Date of Application” means, in respect of a Scheme Facility, the date of completion of the Scheme Website Application Process for the relevant Applicant.

“Day Count Fraction” has the meaning given to it in Clause 39.3.

“Demand Date” has the meaning given to it in Clause 9.2(A)(3).

“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, taking into account that aims and purposes of the Scheme and in accordance with Clause 3.1 (*Standard of care of the Lender*).

“Effective Date” means the date specified as such in the Effective Date Notice delivered to the Lender in connection with this Agreement.

“**Effective Date Notice**” means the notice delivered by the Guarantor to the Lender substantially in the form set out in Schedule 6 (*Form of Effective Date Notice*).

“**EIR**” means the Environmental Information Regulations 2004;

“**EIR Request**” has the meaning given to it in Clause 24.3.

“**Eligibility Criteria**” has the meaning given to it in Clause 4 (*Eligibility Criteria*).

“**Eligible Facility**” has the meaning given to it in Clause 4 (*Eligibility Criteria*).

“**Eligible Purpose**” has the meaning given to it in the CBILS Agreement Supplement relating to the relevant Scheme Facility.

“**Event of Default**” has the meaning given to it in Clause 18 (*Events of Default*).

“**Existing CBILS Agreement**” means any agreement, other than this Agreement, entered into by the Lender prior to the Effective Date pursuant to which it made available facilities to Borrowers pursuant to the Scheme.

“**Expiry Date**” has, in respect of a Scheme Facility, the meaning given to it in the CBILS Agreement Supplement applicable to that Scheme Facility.

“**Final Demand Date**” has the meaning given to it in Clause 9.2(A)(3).

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

“**FOI Request**” has the meaning given to it in Clause 24.3.

“**General Eligibility Criteria**” has the meaning given to it 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 30 calendar days’ notice of such change in accordance with Clause 25 (*Notices*).

“**Group**” means, in respect of an Applicant, such Applicant and each of its Group Companies.

“**Group Company**” means, in respect of an Applicant, the Applicant and all partner enterprises and linked enterprises of the Applicant, as such terms are defined in the Commission Recommendation, except that for all purposes other than determining (1) compliance with the eligibility criterion in paragraph 1(G) of Schedule 2 (*Eligibility Criteria*), (2) the Maximum Amount, and (3) whether the Borrower is an SME or ‘large enterprise’ for the purposes of Clause 39 (*Scheme Lender Fee*), any partner enterprise or linked enterprise of the Applicant that is a private equity or venture capital entity shall be ignored.

The definition of Group Company refers back to the definition of an SME used by the European Commission contained in the Commission Recommendation. Lenders should also refer to the guidance produced by the British Business Bank setting out how this definition should be applied in the context of the Scheme. Lenders should also refer to the guidance produced by the British Business Bank on the meaning of “private equity or venture capital entity” for these purposes.

“**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*).

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

“Guarantor Related Party” has the meaning given to it in Clause 14.2(B).

“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).

“Information Declaration” means, in respect of a Scheme Facility, a declaration from the relevant Applicant substantially in the form set out in Schedule 4 (*Form of Information Declaration*) (as the same may be supplemented or amended from time to time by the Guarantor if the Lender has received at least 30 calendar days’ notice of such change in accordance with Clause 25 (*Notices*)).

“Initial Drawdown” has, in respect of a Scheme Facility, the meaning given to it in the CBILS Agreement Supplement applicable to that 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:

- (A) with an Offer Date falling prior to 24 August 2020, the day falling 6 months after such Offer Date; or
- (B) with an Offer Date falling on or after 24 August 2020, the day falling 3 months after such Offer Date.

“Invoice Finance Scheme Facility” has the meaning given to it in the CBILS Agreement Supplement relating to Invoice Finance Scheme Facilities entered into by the Guarantor and the Lender.

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

“Lender’s Application Process” means the application process for the Proposed Scheme Facility to be undertaken by an Applicant.

“Lender’s Group” means the Lender and any Affiliate of the Lender from time to time.

“Lender Manual” has, in respect of a Scheme Facility, the meaning given to it in the CBILS Agreement Supplement applicable to that Scheme Facility.

“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
- (B) the validity, legality or enforceability of this Agreement or the rights and remedies of the Guarantor hereunder.

“Maximum Amount” means, in respect of a Scheme Facility, the amount determined pursuant to one of the limbs of paragraph (A) or paragraph (B) below subject to a maximum of £5,000,000:

- (A) for a Proposed Scheme Facility with a proposed maturity falling after 31 December 2020:

- (1) double the annual wage bill of the Applicant (including social charges as well as the cost of personnel working on the undertaking's site but formally on the payroll of subcontractors) for 2019, or for the last year available. If the Applicant was established on or after 1 January 2019, the maximum loan must not exceed the estimated annual wage bill for the first two years in operation; or
 - (2) 25% of total turnover of the Applicant in 2019; or
 - (3) with appropriate justification and based on a self-certification by the Applicant of its liquidity needs, the liquidity needs of the Applicant from the moment of granting for the coming 18 months and for the coming 12 months for Large Enterprises (within the meaning of the Temporary Framework); or
- (B) for a Proposed Scheme Facility with a proposed maturity falling prior to 31 December 2020, the amount of the Proposed Scheme Facility may be higher than under (A) with appropriate justification and provided that there is a proportionate liquidity need; or

such other amount as may be notified to the Lender by the Guarantor from time to time.

Guidance on how the Maximum Amount is determined in the context of this Scheme is set out in the Scheme Guidance.

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

“Micro or Small Enterprise” has the meaning given to it in paragraph 1(G) of Schedule 2 (*Eligibility Criteria*).

“Minimum Amount” means:

- (A) in respect of an Asset Scheme Finance Facility or Invoice Finance Scheme Facility, £1,000;
- (B) in respect of a Term Loan Scheme Facility or RCF Scheme Facility:
 - (1) £1,000 if the Lender's Application Process has commenced before 9am on 4 May 2020; or
 - (2) £50,001 if the Lender's Application Process commences on or after 9am on 4 May 2020.

“Non-Scheme 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 persons from time to time by the Lender other than a Scheme Facility.

“Offer Date” means, in respect of a Scheme Facility, the date when the Lender makes the offer of such Scheme Facility, as set out in the relevant Scheme Facility Letter.

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

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

“Party” means a party to this Agreement.

“Payee” has the meaning given to such term in Clause 12.3.

“Payer” has the meaning given to such term in Clause 12.312.2.

“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 Website and containing the information specified therein, as such form may be amended, varied, supplemented or replaced from time to time.

“Personal Data” 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.

“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.

“Potential Event of Default” means any event which is or would become (with the passage of time, the giving of notice, the making of any determination hereunder or any combination thereof) an Event of Default.

“Pre-Personal Guarantee Loss” means, in respect of a Scheme Facility, either the principal amount outstanding (in respect of a Term Loan Scheme Facility), the capital balance outstanding (in respect of an Asset Finance Scheme Facility), or the aggregate of all amounts due and payable (in respect of an Invoice Finance Scheme Facility or an RCF Scheme Facility), in each case of such Scheme Facility following the application by the Lender of all Net Proceeds recovered by it under all Collateral that could be available to it in respect of the Scheme Facility other than Relevant Personal Guarantees calculated to exclude any payment in respect of such Scheme Facility made by the Guarantor under a Scheme Guarantee less any amount repaid to the Guarantor in respect of such payment.

“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.

“Probationary Lender” means, if the Guarantor so notifies in writing to the Lender on or before the Effective Date, the designation given to the Lender during the Probationary Period.

“Probationary Lender Side Letter” means, if the Lender is designated as a Probationary Lender, the side letter entered into on or before the Effective Date and made between the Lender and the Guarantor, as amended, varied, supplemented or replaced from time to time.

“Probationary Period” means, if the Lender is designated as a Probationary Lender, the period from and including the Effective Date until the date with effect from which the Guarantor notifies the Lender that its designation as a Probationary Lender is to cease (such determination to be in the discretion of the Guarantor).

“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” has, in respect of a Scheme Facility, the meaning given to it in the CBILS Agreement Supplement applicable to that Scheme Facility.

“Qualifying Payments” the aggregate amount set out by the Applicant in the Business Interruption Letter comprising (A) the amount of any BIP the Applicant has received in relation to any other facilities it has borrowed under the CBIL Scheme and (B) the amount of any direct grants, repayable advances, tax or payments advantages it has received under the Temporary Framework.

“RCF Scheme Facility” has the meaning given to it in the CBILS Agreement Supplement relating to RCF Scheme Facilities entered into by the Guarantor and the Lender (if any).

“Refinancing Facility” means any Scheme Facility entered into to refinance all or part of any existing facility of an Applicant with the Lender.

“Relevant Balance” has the meaning given to it in Clause 39.3.

“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.

“Repayment Demand” has the meaning given to it in Clause 9.2(A)(3).

“Scheme” means the scheme established in 2020 known as the Coronavirus Business Interruption Loan Scheme.

“Scheme Documents” means this Agreement, each Scheme Guarantee, any Probationary Lender Side Letter 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 Facility (as applicable), for the avoidance of doubt, whether made available by the Lender to a Borrower pursuant to the Scheme under this Agreement or an Existing CBILS Agreement.

“Scheme Facility Guarantee Cap” means, in respect of a Scheme Facility, an amount equal to the Pre-Personal Guarantee Loss on such Scheme Facility multiplied by 20%.

“Scheme Facility Letter” means, in respect of a Scheme Facility, the letter or agreement between the Lender and the relevant Borrower setting 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 Facility.

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

“Scheme Guidance” means the Lender Manual and such other scheme guidance in respect of which the Lender is provided reasonable prior notice in accordance with Clause 25 (*Notices*) from time to time.

“Scheme Lender Fee” has the meaning given to it in Clause 39.1.

“Scheme Lender Fee Payment Date” has the meaning given to it in Clause 39.3.

“Scheme Website” means the website maintained by the Guarantor at www.sflg.gov.uk (or such other world wide web internet address as the Guarantor may notify from time to time to the Lender as being the Scheme Website Address for the purposes of this Agreement) as amended, varied, supplemented or replaced from time to time.

“Scheme Website 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 Website, 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 14.1(B)(1) (*Administration by the Guarantor of the Scheme Guarantees*).

“Smaller Scheme Facility” means a Proposed Scheme Facility that satisfies the following conditions:

- (A) such Proposed Scheme Facility is a Refinancing Facility;
- (B) the Proposed Scheme Facility Amount of such Proposed Scheme Facility is £100,000 or less; and
- (C) the amount of the existing facility being refinanced by such Proposed Scheme Facility is less than 50% of the Proposed Scheme Facility Amount of such Proposed Scheme Facility.

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

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

“Temporary Framework” means the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak.

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

- (A) 31 May 2021, unless such date is extended by the Guarantor and notified to the Lender in accordance with Clause 25 (*Notices*); and
- (B) the date notified as being the date of termination under Clause 19.2(B) (*Early termination upon the occurrence of an Event of Default*) or 19.2(C) (*Termination without cause*) (as the case may be).

“Term Loan Scheme Facility” has the meaning given to it in the CBILS Agreement Supplement applicable to Term Loans entered into between the Guarantor and the Lender (if any).

“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 CBILS Agreement Supplement (as the same may be supplemented or amended from time to time by the Guarantor if the Lender has received at least 30 calendar days’ notice of such change in accordance with Clause 25 (*Notices*), provided that no such amendment or supplement shall have retrospective effect).

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

“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" or any other document will be construed as references to this 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 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;
- (I) 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);
- (J) the words "other" and "otherwise" will not be construed as the same as any foregoing words where a wider construction is possible;
- (K) 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;
- (L) references to "quarter" and "quarterly" will be construed, respectively, as being and relating to a period of 3 months;
- (M) references to the "Guarantor" will be construed, save as regards the use of such references in Clause 2.1 (*Guarantee*) and paragraph (A) of Clause 7.1 (*Scheme Facility Letter*), 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);

- (N) references to the “Lender” will be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (O) 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;
- (P) the Schedules will be treated as an integral part of this Agreement and references to “this Agreement” will include the Schedules;
- (Q) where the Applicant/Borrower comprises more than one person because the relevant Proposed Scheme Facility or Scheme Facility is to be, or has been, made available to more than one Group Company then references to “Applicant” and “Borrower” in the Scheme Documents will be construed, as the context requires, as though all such persons were a single person; and
- (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 Website (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.

2. Multiple Lenders

Unless otherwise notified to the relevant Group Lender in the Allocation Letter delivered to it by or on behalf of the Guarantor, where the term “Lender” comprises more than one person (as defined in Paragraph 1(N) of Part 2 of Schedule 1) (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:

(A) Definitions

The Annual Lending Limit and Annual Lending Total will apply as though the Lender were a single person (such that each Group Lender will not have separate limits and totals but instead there will be one amount in respect of each such limit or total applicable to all the Group Lenders on an aggregated basis) and any use of the term “Lender” (subject to the remaining provisos to this Schedule) in those definitions or in any related provision of a Scheme Document (including, but not limited to, in Clause 6 (*Annual Lending Limit*)) will, where the context requires, be construed accordingly.

(B) Notices

Any notice, request, demand or other communication given or made by the Guarantor in accordance with the provisions of Clause 25 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) Annual Lending Limit

Any notification to be given by the Lender under Clause 6.3(A) must be given by 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.

(E) Meetings with the Guarantor or any Guarantor Related Party

Any provision in a Scheme Document which requires a meeting between the Guarantor or any Guarantor Related Party and the Lender will be attended by those Group Lenders which the Guarantor or any Guarantor Related Party specifies as being required to attend such meeting and, in default of any such specification being made by the Guarantor or 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).

(F) 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.

(G) Payment Claims

In Clause 9.2(A)(3), references to the term "Lender" refer only to that Lender which is the beneficiary of the guarantee of the relevant Scheme Facilities made available by that Lender (and not any other Group Lender) to the relevant Borrower).

(H) [Not applicable]

(I) Cancellation of Scheme Guarantee

In Clause 19, each reference to "the Lender" will be construed as references to "the Group Lenders or any Group Lender".

(J) Termination

In Clause 19.2(C), references to "Either Party" and "the other Party" will be construed as references respectively to "The Group Lenders (or one Group Lender as agent for and on behalf of all the Group Lenders, each of whom will be bound by such notice) or the Guarantor" and " , as the case may be, the Guarantor or the Lender".

(K) Liability and Indemnity

In Clause 21 (*Liability and indemnity*), references to “the Lender” will be construed as a reference to “any Group Lender”.

(L) Assignment and Transfer

In Clause 32.2(A), the phrase “The Lender will not be entitled” will be construed as reading “Neither the Group Lenders nor any single Group Lender will be entitled”.

SCHEDULE 2 : GENERAL ELIGIBILITY CRITERIA

Each Proposed Scheme Facility must satisfy (in the determination of the Lender) each of the following criteria (the “**General Eligibility Criteria**”) at the relevant Offer Date:

1. The Applicant

- (A) The relevant Applicant is not (and, where the Applicant is a Group Company, 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;
 - (4) [Not Applicable]; or
 - (5) 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, 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:

- (A) £45,000,000; or
- (B) such other limit as may be advised to the Lender in accordance with Clause 25 (*Notices*) from time to time by the Guarantor.

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

The turnover calculation is based on that used for the definition of an SME by the European Commission contained in the Commission Recommendation, except that for these purposes any partner enterprise or linked enterprise of the Applicant that is a private equity or venture capital entity shall be ignored. Lenders should also refer to the guidance produced by the British Business Bank setting out how this should be applied in the context of the Scheme.

- (E) The relevant Applicant or Applicant's Group is or will be engaged in Trading Activity (or, in respect of Applicants that are registered charities or further education colleges, 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.

The income calculation is based on that used to determine turnover for the definition of an SME by the European Commission contained in the Commission Recommendation, except that for these purposes any partner enterprise or linked enterprise of the Applicant that is a private equity or venture capital entity shall be ignored. Lenders should also refer to the guidance produced by the British Business Bank setting out how this should be applied in the context of the Scheme.

- (G) If the Proposed Scheme Facility Amount is £30,000 or more:
 - (1) where the Offer Date is prior to 30 July 2020, the Applicant was not, on 31 December 2019, an "undertaking in difficulty" as defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 (an "**undertaking in difficulty**"), or
 - (2) where the Offer Date is on or after 30 July 2020, either:
 - (a) if the Applicant (together with its Group Companies) has fewer than 50 employees and less than £9,000,000 in annual turnover and/or annual balance sheet total (a "**Micro or Small Enterprise**"), such Applicant's "undertaking" was not, at the date on which the Applicant applied for a Scheme Facility, either (a) subject to collective insolvency proceedings under national law, or (b) in receipt of rescue aid (which has not been repaid) or restructuring aid (and are still subject to a restructuring plan); or
 - (b) if the Applicant is not a Micro or Small Enterprise, either:

- (i) if the Applicant's "undertaking" was an undertaking in difficulty as at the date on which the Applicant applied for a Scheme Facility, the Applicant's "undertaking" was not an undertaking in difficulty as at 31 December 2019; or
- (ii) the Applicant's "undertaking" was not an undertaking in difficulty as at the date on which the Applicant applied for a Scheme Facility.

For these purposes, the turnover of the Applicant and/or its Group Companies and number of employees shall be determined in accordance with the methodology set out in the Commission Recommendation.

Guidance on the interpretation of this sub-paragraph 1(G) in the context of the Scheme is set out in the Scheme Guidance.

- (H) [Not Applicable].
- (I) The relevant Applicant has completed the Lender's Application Process.
- (J) The Applicant has confirmed to the Lender that it has been impacted by the Coronavirus (COVID-19) and 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, without regard to any concerns over its short-to-medium term business performance due to the uncertainty and impact of Coronavirus (COVID-19).

For smaller value facilities (e.g. those of £30,000 or below) 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.

This Eligibility Criterion relates only to the eligibility of Proposed Scheme Facilities for the purposes of this Agreement. The Lender must comply with the other requirements of the Scheme Guarantee at all times, and its other legal and regulatory obligations.

The meaning of "Collateral" in respect of a Proposed Scheme Facility will be set out in the related CBILS Agreement Supplement.

2. The Scheme Facility

- (A) The Proposed Scheme Facility is a Term Loan Scheme Facility, an RCF Scheme Facility, an Invoice Finance Scheme Facility or an Asset Finance Scheme Facility or an Additional Type of Facility.
- (B) The provision by the Lender of the Proposed Scheme Facility will not breach any State aid restrictions.
- (C) The Scheme Website Application Process has been completed in respect of the Proposed Scheme Facility.
- (D) 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).

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 related CBILS Agreement Supplement.

- (E) The Proposed Scheme Facility will not (in whole or in part):
- (1) if the Proposed Scheme Facility Amount is less than £30,000, be provided to support export activities. A Lender may rely on self-certification by an Applicant in respect of ensuring its compliance with this Eligibility Criterion (E)(1);
 - (2) [Not Applicable];
 - (3) [Not Applicable];
 - (4) [Not Applicable];
 - (5) [Not Applicable];
 - (6) [Not Applicable] or
 - (7) be provided in connection with any other activity as may be advised to the Lender in accordance with Clause 25 (*Notices*) from time to time by the Guarantor.
- (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.
- (H) 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.
- (I) The Proposed Scheme Facility has a term of:
- (1) no less than 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 related CBILS Agreement Supplement.

- (J) 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 related CBILS Agreement Supplement.

- (K) Any economic benefit that the Guarantee provides to the Lender (including but not limited to any reduction in risk and capital requirements) is passed to the Applicant by way of a proportionate reduction in pricing of the Proposed Scheme Facility. This Eligibility Criterion shall only apply in respect of Proposed Scheme Facilities with an Offer Date on or after 27 April 2020.
- (L) [Not Applicable]
- (M) The relevant Applicant has confirmed to the Lender that neither it nor any member of its Group is currently using or applying for the Bounce Back Loan Scheme (BBL), the Coronavirus Large Business Interruption Loan Scheme (CLBILS) or the Bank of England's COVID Corporate Financing Facility (CCFF), unless the Scheme Facility will refinance the whole of the BBL, CLBILS or CCFF facility.

SCHEDULE 3 : FORM OF DATA PROTECTION AND DISCLOSURE DECLARATION

DATA PROTECTION AND DISCLOSURE DECLARATION - BORROWER

"I/We,

Insert full name of individual/s completing the form

acknowledge in relation to the CBIL application of

Name of Borrower

that personal data shall be used in the following ways:

- (1) being communicated to each of:
 - i. the Secretary of State for Business, Energy and Industrial Strategy its agents and auditors (the "**Guarantor**");
 - ii. the British Business Bank plc, any affiliate of the British Business Bank plc and any of their advisers, agents or contractors including professional advisers and consultants, auditors and advisers carrying out due diligence;
 - iii. processing agents, fund managers, delivery partners and companies providing services to the British Business Bank and its affiliates; and
 - iv. Government departments and Devolved Administrations (including but not limited to the National Audit Office, Office for National Statistics, HM Treasury and the Department for Business, Energy and Industrial Strategy) and other politicians or government members (i.e. ministers).

(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 Coronavirus Business Interruption Loan ("**CBIL**") Scheme facility);
 - (ii) to contact me in connection with the CBIL Scheme;
 - (iii) to make enquiries about the CBIL Application of;

Name of Borrower

- (iv) to take up references about me and the business;
- (v) 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 CBIL Scheme; and
- (vi) to evaluate the effectiveness of the CBIL Scheme; and

(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:

and otherwise being used in accordance with the British Business Bank Privacy Notice found at <https://www.british-business-bank.co.uk/privacy-notice/>.

I acknowledge that I have the right to request that any personal data held by or on behalf of any of the parties referred to in paragraph (1) above, 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 Coronavirus Business Interruption Loan 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:

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

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

I acknowledge that I may lodge a complaint with the Information Commissioner if I consider that my rights under (i) the Data Protection Act 2018, (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), (iii) any other United Kingdom or European Union laws (with direct effect) relating to processing of personal data and privacy or (iv) any laws or guidance that replaces them (including the European Union's General Data Protection Regulation (Regulation (EU) 2016/679)) have been infringed as a result of the processing of Personal Data by the parties referred to in paragraph (1) above.

[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 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 CBIL application



“The Coronavirus Business Interruption Loan programme is managed by the British Business Bank on behalf of, and with the financial backing of, the Secretary of State for Business, Energy and Industrial Strategy”

DATA PROTECTION AND DISCLOSURE DECLARATION – PERSONAL GUARANTOR

“I,

Insert full name of individual completing the form

acknowledge in relation to the CBIL application of

Name of Borrower

that personal data shall be used in the following ways:

- (1) being communicated to each of:
 - i. the Secretary of State for Business, Energy and Industrial Strategy its agents and auditors (the “**Guarantor**”);
 - ii. the British Business Bank plc, any affiliate of the British Business Bank plc and any of their advisers, agents or contractors including professional advisers and consultants, auditors and advisers carrying out due diligence;
 - iii. processing agents, fund managers, delivery partners and companies providing services to the British Business Bank and its affiliates; and
 - iv. Government departments and Devolved Administrations (including but not limited to the National Audit Office, Office for National Statistics, HM Treasury and the Department for Business, Energy and Industrial Strategy) and other politicians or government members acting in their official capacity (i.e. ministers).

(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 Coronavirus Business Interruption Loan (“**CBIL**”) Scheme facility);
 - (ii) to contact me in connection with the CBIL Scheme;
 - (iii) to make enquiries about the personal guarantee provided by me in respect of the CBIL application of

Name of Borrower

- (iv) to take up references about me and the business;

- (v) 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 CBIL Scheme; and
 - (vi) to evaluate the effectiveness of the CBIL Scheme; and
- (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:

and otherwise being used in accordance with the British Business Bank Privacy Notice found at <https://www.british-business-bank.co.uk/privacy-notice/>.

I acknowledge that I have the right to request that any personal data held by or on behalf of any of the parties referred to in paragraph (1) above, 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 Coronavirus Business Interruption Loan 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:

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

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

I acknowledge that I may lodge a complaint with the Information Commissioner if I consider that my rights under (i) the Data Protection Act 2018, (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), (iii) any other United Kingdom laws (with direct effect) relating to processing of personal data and privacy or (iv) any laws or guidance that replaces them, have been infringed as a result of the processing of Personal Data by the parties referred to in paragraph (1) above.

Signed
Print Name
Date

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

--

Name of Borrower



"The Coronavirus Business Interruption Loan programme is managed by the British Business Bank on behalf of, and with the financial backing of, the Secretary of State for Business, Energy and Industrial Strategy"

SCHEDULE 4 : FORM OF INFORMATION DECLARATION

[On Lender's letterhead]

Lender organisation:	[•]
Facility type	[•]
Business name:	[•]
CBILS reference:	[•]
Facility amount:	£[•]

System generated identification reference:	[•]
What is the legal name of the Applicant business:	[•]
What is the trading name of the Applicant if the Applicant trades under another business name?	[•]
What is the legal form of the Applicant?	[•]
What is the Applicant's company registration number (if applicable)?	[•]
What is the current (or where none, forecast) annual turnover of the Applicant (or, if the Applicant is a Group Company, the aggregate Group turnover)?	£[•]
Is (or will) more than 50% of the above turnover (be) generated by trading activity?	[•]
What is the commencement of trading date of the Applicant business?	[•]
What is the post code of the Applicant's main business address? <i>[In instances where the Applicant's postcode is not available please enter the lender's postcode]</i>	[•]
The initial value of the facility covered by the CBILS guarantee is:	[•]
What is the term of the facility for which the guarantee is required?	[•] years
At what frequency will the Applicant make repayments of the principal of the Scheme Facility?	[•]
What Standard Industrial Classification (SIC) code (from the UK Standard Industrial Classification	[•]

2007) best describes the business sector in which the Scheme Facility will be used?

SIC code activity description: [•]

Specify the type of Scheme Facility being applied for: [•]

What is the principal purpose for which the Scheme Facility will be used? [•]

To be completed by the Applicant

The Lender's ability to provide you with the Scheme Facility is dependent upon the Lender receiving a guarantee from or on behalf of the UK Government under the Coronavirus Business Interruption Loan Scheme ("**CBILS**")

I/we confirm to the Lender and the UK Government under the CBILS scheme that:

- all the answers I have given here are true and accurate
- I have not left any information out which is relevant to the above
- information in all other documents I may have given you is true and accurate
- I understand that:
 - the UK Government will provide a partial guarantee of my Scheme Facility in favour of the Lender
 - the guarantee is not provided to me and I remain fully liable for the repayment of the whole of this facility at all times and in the event that I default on the terms of the facility, the Lender is entitled to seek to recover the full amount outstanding from me

IMPORTANT: The information contained in this document forms part of the formal application for an CBILS facility. If any of the information contained in this declaration is incorrect the facility must be cancelled and a new application submitted. This document cannot be altered.

Subject to the application of certain exemptions, information you provide in this document may be subject to disclosure under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Signed _____

Print name _____

Position _____

Date _____

Signed _____

Print name _____

Position _____

Date _____

Signed _____

Print name _____

Position _____

Date _____

Signed _____

Print name _____

Position _____

Date _____

Signatories to be the same as those persons who are required to sign the Lender's Scheme Facility Letter.



"The Coronavirus Business Interruption Loan Scheme is managed by the British Business Bank on behalf of, and with the financial backing of, the Secretary of State for Business, Energy and Industrial Strategy"

SCHEDULE 5 : SCHEME GUIDANCE

The Lender will comply with the following sections of the Scheme Guidance (and/or such other sections of the Scheme Guidance as may be notified to the Lender from time to time):

- (1) [Not Applicable];
- (2) [Not Applicable];
- (3) Annex 8 (*Legal wording to be inserted into CBILS-supported Facility Letter*);
- (4) The Marketing Toolkit (including Partner Brand and Logo Usage Guidelines and Case Studies) provided on the Guarantor's website and referred to in the Scheme Guidance; and
- (5) [Not Applicable].

SCHEDULE 6 : FORM OF EFFECTIVE DATE NOTICE

[Date]

[Address of Lender]

Dear [•],

We refer to the guarantee agreement entered into between us, as Guarantor, and you, as Lender, dated [•], (the “**Guarantee Agreement**”).

Further to Clause 1.3 of the Guarantee Agreement, we hereby notify you that the Guarantee Agreement shall become effective on [*insert Effective Date of the Guarantee Agreement*] (which shall be the “**Effective Date**” of the Guarantee Agreement for the purposes of Clause 1.3 thereof).

All capitalised terms used but not defined herein shall have the meaning given to them in the Guarantee Agreement.

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

Yours sincerely,

Signed _____

Print name _____

Position _____

Date _____



SCHEDULE 7 : FORM OF BUSINESS INTERRUPTION PAYMENT OFFER LETTER

[Applicant Name: [To be included by the Lender]

[Applicant Address: [To be included by the Lender]

[Loan application number: [To be included by the Lender]]

Date:

CORONAVIRUS BUSINESS INTERRUPTION LOAN SCHEME (CBILS) – BUSINESS INTERRUPTION PAYMENT (BIP)

Dear Borrower,

You have applied for a loan (a **“CBIL Scheme Facility”**) under the Coronavirus Business Interruption Loan Scheme (**“CBILS”**). If your application is successful, you will also be entitled to a payment from the UK Government which is known as the Business Interruption Payment, or **“BIP”**.

The BIP is a payment by the UK Government to cover payments of the interest due under the loan agreement (or interest equivalent for Invoice Finance Scheme Facilities and Asset Finance Scheme Facilities) and other lender levied fees associated with the granting and maintenance of the CBIL Scheme Facility for a period of 12 months.

In order to apply for the BIP you must do so by signing and returning this letter. By applying for the BIP, you agree that the UK Government may pay amounts directly to us, the Lender, in respect of the interest on and fee amounts due (excluding third party fees) under the CBIL Scheme Facility when it is drawn down (or marked as available in the case of an overdraft) for a period of up to 12 months. The interest and fees amounts which will accrue during the initial 12 month period are as set out in your loan documentation.

You acknowledge that the BIP will not cover any default interest or equivalent or extraordinary fees.

The BIP is capped at the GBP equivalent of EUR800,000 if your business (or the group your business belongs to) operates in a sector other than fisheries and aquaculture or the primary production of agriculture. If you operate in the fisheries and aquaculture sector, this payment is capped at the GBP equivalent of EUR120,000. If you operate in the primary production of agricultural products, this payment is capped at the GBP equivalent of EUR100,000.

If you wish to apply for the BIP, we will send you a written statement setting out the total amount of the BIP that you have received.

The assistance provided through the payment of the BIP, like many Government-backed business support activities, is regarded as a State aid and is deemed to benefit you as it has provided you with a payment to reduce your financing costs under the CBIL Scheme Facility which would not otherwise have been possible.

Provision of such State aid is governed by regulations made by the European Commission under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the **“Temporary Framework”**). If you have received the benefit of a BIP under any other facility entered into by you under the CBILS, you must advise us of such amount. In

addition, you must advise us of any other direct grants, repayable advances, tax or payments advantages under the Temporary Framework (“**Qualifying Payments**”) that have been received by you. The total amount of BIP received by you across all of such facilities and each other Qualifying Payment must not exceed the maximum amount detailed above. To the extent that you have received a BIP previously or other Qualifying Payment, the total amount of such payments shall be deducted from the total capped amount permissible in respect of BIPs, to determine your entitlement under the BIP in respect of this CBIL Scheme Facility (to ensure that the total amount received from you, including the BIP in respect of this CBIL Scheme Facility does not exceed the GBP equivalent of EUR800,000 or any applicable lower amount).

For the avoidance of doubt, the cap will not operate to change the terms of your loan agreement with respect to interest and other fees associated with the granting and maintenance of the loan due in the first 12 months of the loan.

Yours sincerely,

[Lender]

Confirmations of Borrower:

1. We confirm that we: do/do not* wish to apply for a BIP

**Delete as applicable*

2. If we apply for a BIP we agree that you will receive the BIP on our behalf and use it to pay the interest on and fee amounts due (excluding third party fees) under the CBIL Scheme Facility when it is drawn down (or marked as available in the case of an overdraft) for a period of up to 12 months.

3. We confirm that we have not received a BIP in relation to any other facility under CBILS.*

Or

We confirm that we have received one or more BIPs in relation to another facility/other facilities under CBILS and that the total amount of such BIP or BIPs is [EUR/£XXXX].*

**Delete as applicable*

4. We confirm that we have not received a Qualifying Payment.*

Or

We confirm that we have received one or more Qualifying Payments in a total amount of [EUR/£XXXX].*

**Delete as applicable*

5. We confirm that as at the date of this letter our headcount is: less than 250 employees/250 employees or more.*

**Delete as applicable*

Signature of Applicant

Date:

**Receipt of the grant by companies active in agricultural processing or agricultural marketing is conditional on the benefit of the grant not being partly or wholly passed on to companies active in primary agricultural production (including where such companies form part of the same group as the recipient).

***Receipt of the BIP by companies active in the fishery and aquaculture sector is conditional on the benefit of the BIP not being partly or wholly used to contribute in any way to any of the categories of activities listed in in Article 1, paragraph (1) (a) to (k), of Commission Regulation (EU) No 717/2014.