

TEMPLATE LEGAL AGREEMENT

Guarantee Agreement

between

The Secretary of State for Business, Energy and Industrial
Strategy

as Guarantor

and

[•]

as Lender

relating to

The Recovery Loan Scheme

This form of Agreement has not been executed by the Secretary of State for Business, Energy and Industrial Strategy or any other person. The British Business Bank will contact lenders separately regarding accreditation under the Recovery Loan Scheme.

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

CONTENTS

1.	Definitions, interpretation and Effective Date of this Agreement	3
2.	Guarantee	4
3.	Standard of care	5
4.	Offer of a Scheme Facility	5
5.	Pricing of Scheme Facilities	8
6.	Lending Limit and Claim Limit	9
7.	Scheme Lender Fee	11
8.	Lender's rights, duties and permitted variations	12
9.	Terms of each Scheme Guarantee	17
10.	Making a claim in respect of a Scheme Facility	18
11.	Recoveries and security	22
12.	Errors in payment and set-off	24
13.	Reporting, monitoring, audit and maintenance of records.....	25
14.	Representations and warranties.....	30
15.	General undertakings	32
16.	Events of Default	35
17.	Cancellation of Scheme Guarantees and termination of the Agreement	38
18.	Survival of rights.....	41
19.	Liability and indemnity	42
20.	Data and data protection	42
21.	Confidentiality and disclosure.....	44
22.	Notices	47
23.	Scheme Portal rights	48
24.	Relationship between the Parties.....	48
25.	Remedies and waivers	48
26.	Invalidity and severability	49
27.	Further assurances	49

28. Amendments and waivers	49
29. Assignment and transfer	49
30. Counterparts.....	50
31. Contracts (Rights of Third Parties) Act 1999	50
32. Governing law and jurisdiction	50
33. Service of process.....	51
SCHEDULE 1 : DEFINITIONS AND INTERPRETATION	53
SCHEDULE 2 : GENERAL ELIGIBILITY CRITERIA	76
SCHEDULE 3 : FORM OF DATA PROTECTION AND DISCLOSURE DECLARATION	81
SCHEDULE 4 : FORM OF LENDING LIMIT LETTER.....	89
SCHEDULE 5 : SCHEME FACILITY TYPE SCHEDULE: TERM LOAN SCHEME FACILITIES	95
SCHEDULE 6 : SCHEME FACILITY TYPE SCHEDULE: RCF SCHEME FACILITIES	105
SCHEDULE 7 : SCHEME FACILITY TYPE SCHEDULE: INVOICE FINANCE SCHEME FACILITIES ..	116
SCHEDULE 8 : SCHEME FACILITY TYPE SCHEDULE: ASSET FINANCE SCHEME FACILITIES	128
SCHEDULE 9 : PRINCIPAL PRIVATE RESIDENCE DECLARATION	143
SCHEDULE 10 : QUESTION SETS	144

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

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

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

1.1 **Definitions**

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

1.2 **Interpretation**

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

1.3 **Effective Date of this Agreement**

This Agreement comes into effect on the Effective Date.

1.4 **Form of this Agreement**

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

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

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

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

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

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

2. **Guarantee**

2.1 **Guarantee**

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

Payment Claims under this Agreement must be made in accordance with Clause 10 (*Making a claim in respect of a Scheme Facility*).

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 or in respect of a Forbearance Amount unless and until the conditions precedent to making a Payment Claim set out in Clause 10.2 of this Agreement (as may be amended in respect of certain Scheme Facility Types in the applicable Scheme Facility Type Schedule) have been satisfied.

Where the Scheme constitutes aid for the purposes of the Temporary Framework, such aid is granted on the Offer Date of the relevant Scheme Facility.

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 and act with reasonable skill and care:

- (1) taking into account the aims and purpose of the Scheme and the context in which it was established and is carried on; and
- (2) in a manner consistent with how a prudent lender would be reasonably expected to act with respect to facilities with similar characteristics or commercial terms to the Scheme Facility (notwithstanding the fact that the Scheme Facility benefits from a government guarantee), except as set out in this Agreement (including, without limitation, paragraph 2(O) of Schedule 2 (*General Eligibility Criteria*)),

including, in each case, all action (or decisions to take no action) in respect of origination, servicing and enforcement; and

- (B) always act in good faith, including by not behaving in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute, and not contravening any applicable law or regulation (including complying with all requirements applicable to it relating to treating customers fairly).

This Agreement specifies certain matters in respect of which the Lender may rely on self-certification from Applicants and Borrowers. The Lender may also rely on self-certification in other circumstances, provided that, in so doing, the Lender is complying with the Standard of Care set out in Clause 3.1 (Standard of care of the Lender).

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. **Offer of a Scheme Facility**

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

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

- (A) The Lender will only offer a Proposed Scheme Facility to an Applicant:
 - (1) if the Lender is Accredited for the Scheme Facility Type of such Proposed Scheme Facility;
 - (2) if the Lender is not aware of any Event of Default having occurred and has not been notified of an Event of Default having occurred by the Guarantor, in each case which has not been waived in writing by the Guarantor;
 - (3) if no Suspension Notice has been delivered to the Lender which has not been revoked or otherwise waived in writing by the Guarantor;
 - (4) if the Applicant has commenced the Lender's Application Process on or before the Application Deadline Date;

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

- (a) the General Eligibility Criteria; 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 Scheme Facility Type Schedule for the relevant Scheme Facility Type.

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

- (6) if such Proposed Scheme Facility would not result in a breach of the Lending Limit for the then current Scheme Period;

The Lending Limit applicable to the Lender is defined in Clause 6.

- (7) the Offer Date of such Proposed Scheme Facility is a date falling on or prior to the Offer Deadline Date; and

- (8) if the Lender has complied with each Additional Condition to Offer set out in any Related Agreement (if any), to the extent such Additional Condition to Offer is required to be performed prior to the Lender offering a Scheme Facility to an Applicant.

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

- (1) not accept any security over any Principal Private Residence;
- (2) require the Initial Drawdown under such Proposed Scheme Facility to occur before the Initial Drawdown Deadline;
- (3) comply with Clause 5 (*Pricing of Scheme Facilities*), Clause 15.6 (*Lending Limit Letter*) and Clause 15.8 (*Personal guarantees*); and
- (4) ensure that if the amount of a Proposed Scheme Facility changes prior to the Scheme Facility being agreed between the Lender and the Borrower, then the requirements of this Agreement are complied with based on the Proposed Scheme Facility Amount of such Proposed Scheme Facility being equal to such changed amount, and the Lender shall update the Proposed Scheme Facility Amount in the Scheme Portal accordingly.

4.2 NI Applicants

- (A) A Lender must record whether an Applicant is an NI Applicant using the Location Question Set.
- (B) An Applicant may self-certify the answers to the Location Question Set and the Additional Questionnaire and the Lender may rely on such self-certification by the Applicant without further verification by the Lender.
- (C) If an Applicant is recorded as an NI Applicant and it subsequently fails to satisfy paragraph 1(G)(2) of Schedule 2 (*General Eligibility Criteria*), the Lender may provide the Applicant with the Additional Questionnaire, and may rely on the Applicant's answers as to whether it is an NI Applicant. If the Applicant is subsequently recorded as not being an NI Applicant, the Lender should apply the test in paragraph 1(H) of Schedule 2 (*General Eligibility Criteria*).

4.3 Offer process in respect of new Scheme Facilities

- (A) The Lender may, in accordance with this Agreement and any Related Agreement, offer a Proposed Scheme Facility to the relevant Applicant on the terms of a Scheme Facility Letter entered into by the Lender and an Applicant for a Scheme Facility, provided that the requirements in Clause 4.1 (*Conditions to making a Scheme Facility available to an Applicant*) have been met and the Lender has:
 - (1) provided, prior to or at the same time as such offer, a Data Protection and Disclosure Declaration in respect of an Applicant in the form available on the Scheme Portal (substantially in the form set out in Schedule 3 (*Form of Data Protection and Disclosure Declaration*), as the same may be supplemented or amended from time to time by the Guarantor) and, if relevant, each Personal Guarantor in respect of such Applicant; and
 - (2) obtained any other permissions or approvals from the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant necessary or desirable to enable each Guarantor Related Party to exercise its rights, or perform its obligations, under this Agreement and any Related Agreement (including, but not limited to, its rights under Clause 13.3 (*Monitoring and audit*), Clause 20 (*Data and data protection*) and Clause 21 (*Confidentiality and Disclosure*)).

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

- (B) The Scheme Facility Letter must (among other things):
 - (1) set out the terms of the relevant Scheme Facility relating to the completion by the Applicant of such terms as the Lender considers appropriate given the nature of that Scheme Facility and the relevant Applicant;
 - (2) provide that the Applicant will not be permitted to make any drawdown pursuant to the Scheme Facility Letter until the Applicant and, if relevant, each

Personal Guarantor in respect of such Applicant, returns the required Data Protection and Disclosure Declaration(s) to the Lender, each duly signed, dated and completed;

- (3) include any language that is required to be included in the Scheme Facility Letter pursuant to the applicable Scheme Facility Type Schedule (including, in respect of Proposed Scheme Facilities that are Term Loan Scheme Facilities, RCF Scheme Facilities, Invoice Finance Scheme Facilities and Asset Finance Scheme Facilities, the language set out in paragraph 5 of the relevant Scheme Facility Type Schedule); and
 - (4) include such other information as may be notified to the Lender by the Guarantor (acting reasonably) from time to time on not less than 30 calendar days' notice. Any such notice shall not have retroactive effect.
- (C) If the Lender makes an offer of a Scheme Facility to an Applicant in accordance with Clause 4.3(A), it will send to the Applicant the following documents as soon as reasonably practicable thereafter:
 - (1) the Scheme Facility Letter;
 - (2) any other documents to be issued by the Lender in connection with that offer; and
 - (3) any other documents required to be issued in connection with such offer in accordance with any applicable law or regulation as may from time to time be notified in writing by the Guarantor to the Lender.
- (D) The Lender must ensure it obtains a duly signed, dated and completed Data Protection and Disclosure Declaration from the Applicant and, if relevant, each Personal Guarantor in respect of such Applicant, as soon as reasonably practicable after sending the documents referred to in Clause 4.3(C) and in any event no later than the Initial Drawdown Date of the Scheme Facility.

5. Pricing of Scheme Facilities

5.1 Economic benefit

The Lender agrees that the full net economic benefit that the Scheme Guarantee provides to the Lender (including but not limited to any reduction in risk and capital requirements) shall be reflected in the pricing of the corresponding Scheme Facility provided to the Borrower (by way of a reduction in the pricing of such Scheme Facility). An indicative example of such pricing calculation shall be provided to the Guarantor by the Lender and will be set out in the applicable Lending Limit Letter or the pricing matrix annexed thereto.

5.2 Pricing restrictions

The Lender agrees that in respect of any Scheme Facility:

- (A) at the time that the pricing of the Scheme Facility is agreed between the Lender and the Borrower, and at any time when any aspect of the pricing of the Scheme Facility is amended, the Annual Effective Rate of the Scheme Facility shall not be greater than 14.99%;

- (B) without prejudice to Clause 5.2(A) and save where otherwise agreed with the Guarantor, if default interest or default fees have been charged to the Borrower, the Borrower Costs shall be no greater than 14.99% of the average Outstanding Guaranteed Balance calculated daily over a rolling 12-month period (with the initial 12-month period being the twelve (12) months immediately preceding the date on which such default interest or default fees are first charged);
- (C) any Upfront Fee payable by the Borrower shall be no greater than 5% of the Proposed Scheme Facility Amount; and
- (D) it shall comply with the requirements of the Scheme Guidance issued for the purposes of this Clause 5.2(D) and the extension of the Scheme beyond 31 December 2021.

6. **Lending Limit and Claim Limit**

6.1 **Lending Limit**

- (A) For each Scheme Period:
 - (1) the Lending Total must not exceed the Lending Limit; and
 - (2) on any day during that Scheme Period, the aggregate Refinancing Amounts of all Scheme Facilities made available by the Lender to all Borrowers under the Scheme (calculated using the same principles as used in calculating the 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 Lending Total (the “**Refinancing Limit**”),

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

If the Guarantor notifies the Lender that the Refinancing Limit is to change as contemplated in Clause 6.1(A)(2) above: (i) any such change shall not have retroactive effect and (ii) shall only have effect from the first day of the next succeeding Scheme Period following such notice.

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

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

- (A) In relation to a Scheme Period or on any day during a Scheme Period, the “**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 Scheme Period; or

- (b) the period from and including the first day of that 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, the “**Lending Limit**” for a Scheme Period will be:
- (1) the amount specified as such in the Lending Limit Letter or otherwise notified to the Lender by the Guarantor before commencement of such Scheme Period or (in respect of the first 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; or
 - (2) such other amount (if any) agreed by the Guarantor and the Lender to be the Lending Limit, in respect of a particular Scheme Period, as a remedial step pursuant to Clause 6.3.

6.3 **Increase requests in respect of the Lender’s Lending Limit**

If, at any time during a Scheme Period, the Lender would like to increase its Lending Limit and can demonstrate that the demand exists based on its current and anticipated lending for the Scheme Period, it may submit a request to the Guarantor and provide full details of its anticipated lending levels in respect of Scheme Facilities for that Scheme Period.

6.4 **Application of Claim Limit**

The maximum aggregate amount claimed by the Lender under any Payment Claim in respect of a Scheme Facility that is offered during a Scheme Period (and in respect of which the Initial Drawdown Date has occurred within six (6) months of the relevant Offer Date, whether or not during that Scheme Period), when aggregated with the total amount already claimed by the Lender under Payment Claims in respect of that Scheme Facility and other Scheme Facilities that were offered during the same Scheme Period, cannot exceed the Claim Limit for that Scheme Period. If the making of a Payment Claim would result in the relevant Claim Limit being exceeded, the Guarantor will have no obligation to pay any amount in respect of any such Payment Claim to the extent of any such excess.

6.5 **Calculation of Claim Limit**

The “**Claim Limit**” of the Lender for any Scheme Period will be an amount equal to the Lending Total in respect of such Scheme Period multiplied by 100% or such other percentage as the Guarantor may specify for any Scheme Period upon reasonable notice to the Lender.

Any notification under this Clause will not have retroactive effect and if this notification is made part way through a Scheme Period then the revised percentage only has effect in respect of Scheme Facilities offered during the next Scheme Period and subsequent Scheme Periods.

7. **Scheme Lender Fee**

7.1 **Lender to pay**

The Lender agrees to pay to the Guarantor a fee (the “**Scheme Lender Fee**”) on each Scheme Lender Fee Payment Date equal to the aggregate of the RL Scheme Facility

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

7.2 RL Scheme Facility Lender Fee

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

7.3 Definitions

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

“**Applicable Margin**” means:

- (A) 1.00% in respect of Invoice Finance Scheme Facilities;
- (B) 1.00% in respect of Scheme Facilities to be provided by Specified Lenders;
- (C) 2.00% in respect of Scheme Facilities to be provided to a Borrower which is not an SME (as determined during the Lender’s Application Process in respect of such Scheme Facility) and in respect of which the original tenor is greater than three (3) years (notwithstanding subclauses (A) or (B) of this definition); or
- (D) 1.50% in all other cases,

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

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

“**RL Scheme Lender Fee Calculation Period**” means, in respect of a Scheme Facility, the period from and including one RL Scheme Lender Fee Calculation Period End Date to, but excluding, the next following RL Scheme Lender Fee Calculation Period End Date, provided

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

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

“Scheme Lender Fee Payment Date” means, in respect of each RL Scheme Lender Fee Calculation Period, five (5) Business Days following the end of each RL Scheme Lender Fee Calculation Period End Date.

“SME” means any person or entity engaged in an economic activity, irrespective of its legal form, which employs fewer than 250 persons and which has an annual turnover not exceeding £45,000,000, and/or an annual balance sheet total not exceeding £38,750,000. For such purposes the turnover calculation and the annual balance sheet total calculation shall each be based on that used for the definition of an “SME” by the European Commission, as contained in the Commission Recommendation.

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

8. **Lender’s rights, duties and permitted variations**

8.1 **Lender’s rights**

The Guarantor expects that (a) for lending at or below £250,000, a Lender may offer unsecured lending under the Scheme at its discretion; and (b) for lending above £250,000 the Lender would take Collateral for lending under the Scheme (where security is available) if it is in line with the Lender’s own lending policy.

The relevant Scheme Facility Type Schedule for that Scheme Facility sets out how, following a demand for repayment on the Borrower, the proceeds of any Collateral that is available to support the Scheme Facility should be allocated as between the Scheme Facility, Other Scheme Facilities and Commercial Facilities.

Subject to Clause 4.1 (*Conditions to making a Scheme Facility available to an Applicant*), Clause 8.2 (*Permitted Variations*), Clause 10.1 (*Process for making a claim in respect of a Scheme Facility*) 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 4.1(B)(1) and Clause 15.8 (*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 15.5 (*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.

8.2 Permitted Variations

- (A) Subject to Clause 8.2(B) below, the Lender must not agree to any amendment or variation of a Scheme Facility which would have resulted in such Scheme Facility not complying with paragraph 2 (*The Scheme Facility*) of Schedule 2 (*General Eligibility Criteria*) (other than sub-paragraph (C) thereof) had such amendment or variation been effective on the Offer Date of such Scheme Facility, or that would have the effect of increasing the Guarantor's exposure to such Scheme Facility under this Agreement, except that the Lender may agree to:
 - (1) an extension to the term of a Scheme Facility that does not result in the overall term of the Scheme Facility exceeding the Maximum Guarantee Term;
 - (2) a capital repayment holiday in respect of the Scheme Facility;
 - (3) any variation of any amortisation schedule, repayment profile or revolving credit facility reduction instalments;
 - (4) the amendment or waiver of mandatory prepayment events; and/or
 - (5) a Notified Permitted Variation,

provided that, in each case, the Lender complies with Clause 3.1 (*Standard of care of the Lender*).

Clause 8.2(B) below sets out additional circumstances in which the Lender can make amendments to a Scheme Facility in connection with forbearance measures. Capital repayment holidays and term extensions up to the Maximum Guaranteed Term are permitted on the terms of Clause 8.2(A) above, even where these are not in connection with forbearance measures.

- (B) Clause 8.2(A) does not apply to any amendment or variation to a Scheme Facility agreed by the Lender in connection with any forbearance measures taken by it in respect of the relevant Scheme Facility if:
 - (1) each amendment or variation (as applicable) complies with Clause 3.1 (*Standard of care of the Lender*);
 - (2) in agreeing the amendment or variation (as applicable), the Lender acted consistently with the approach that it would have taken to a facility with similar

commercial terms with a similar Borrower but without the benefit of the Scheme Guarantee;

If a Scheme Facility and a Non-Scheme Facility are secured by the same security, any write-off, write-down or forgiveness of any amount of a Borrower's debt should be applied pari passu to the Scheme Facility and the Non-Scheme Facility. If the Lender, acting in accordance with the Standard of Care determines that there is a justifiable reason to treat the Scheme Facility and Non Scheme Facility in a different manner then it must document its reasoning accordingly, in case of subsequent audit.

- (3) where the term of the relevant Scheme Facility is extended pursuant to any amendment or variation beyond the Maximum Guaranteed Term:
 - (a) the term of such Scheme Facility will not be extended beyond ten (10) years from the Initial Drawdown Date;
 - (b) the proposed term extension conforms to the Lender's normal forbearance policies from time to time;
 - (c) the ability of the Borrower's businesses to repay the Scheme Facility would be severely compromised without the proposed term extension; and
 - (d) the probability of the Borrower repaying the Scheme Facility is significantly increased (and the level of potential loss is expected to be significantly reduced) as a result of the proposed term extension;
- (4) the amendment or variation does not result in the Borrower's repayment obligations in respect of the Scheme Facility, or the Lender's entitlement to the proceeds of any related Collateral, becoming pari passu or subordinated to the claims or entitlements of any other person or entity, to the extent such claims or entitlements were not pari passu or senior to the claims or entitlements of the Lender immediately prior to such amendment or variation; and
- (5) the Outstanding Guaranteed Balance of such Scheme Facility is not increased compared to the Outstanding Guaranteed Balance immediately prior to such amendment or variation, provided that:
 - (a) ordinary course interest and fees may accrue in respect of the relevant Scheme Facility at the rates applicable to the Scheme Facility prior to such amendment or variation (plus any increase to reflect any increase in the Scheme Lender Fee);

Although the interest and fee amounts described above may continue to accrue on the Scheme Facility and/or may be capitalised as described below, these amounts will not be covered by the Scheme Guarantee if the Scheme Facility is a Term Loan Scheme Facility, an Asset Finance Scheme Facility or a Scheme Facility of any other Scheme Facility Type for which the Outstanding Guaranteed Balance excludes interest and fees.

- (b) interest in respect of such Scheme Facility may be capitalised where there is no increase in the overall amount of any payment due from the Borrower (other than an increase as a result of (a) capitalisation of such interest and (b) the accrual of interest on such capitalised interest at the rates applicable to the Scheme Facility prior to such amendment or variation (plus any increase to reflect any increase in the Scheme Lender Fee)); and

Any amendment or variation to the Scheme Facility permitted by this paragraph, including capitalisation of interest, will not result in an increase in the maximum amount that can be paid by the Guarantor in respect of the relevant Scheme Facility. In the case of Invoice Finance Scheme Facilities and RCF Scheme Facilities, the RCF Scheme Facility Limit and the Maximum Guaranteed Amount will not increase as the result of any such amendment or variation.

- (c) the Lender may, subject always to Clause 3 (*Standard of care*), charge additional fees to the Borrower in connection with such amendments or variations to the Scheme Facility but these shall not be included in the Outstanding Guaranteed Balance for the purposes of this Agreement (and, for the avoidance of doubt, if the Outstanding Guaranteed Balance of the Scheme Facility does not include interest, as set out in the Scheme Facility Type Schedule for such Scheme Facility, then any capitalised interest shall be excluded when calculating the Outstanding Guaranteed Balance for all purposes under this Agreement),

(each such amendment or variation, a “**Forbearance Amendment**”). The Guarantor may amend or vary the definition of Forbearance Amendment via Scheme Guidance from time to time, provided that, to the extent that any such amendments or variations reduce the scope or Forbearance Amendments set out above, such amendments or variations shall take effect not less than 30 calendar days from the date on which such amendments or variations are made to the Scheme Guidance.

8.3 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 (other than as a result of a Forbearance Amendment or as permitted by Clause 8.2(A)); 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 (other than as a result of a Forbearance Amendment or as permitted by Clause 8.2(A)).

8.4 Notification of Forbearance Amendments

If the Lender agrees to any Forbearance Amendment which extends the term of the relevant Scheme Facility, then unless otherwise specified in Scheme Guidance, the Lender will use its reasonable endeavours to notify the Guarantor thereof, via the Scheme Portal, within ten

(10) Business Days thereof.

8.5 **Forbearance and renewals of Commercial Facilities**

(A) **Forbearance of Commercial Facilities**

If a Lender agrees a restructuring or refinancing of one or more Commercial Facilities as part of forbearance measures towards a Borrower and those Commercial Facilities would have been Prior Facilities, as determined in accordance with relevant Scheme Facility Type Schedule, but for such restructuring or refinancing (each a “**Commercial Forbearance Facility**”), then the Lender may continue to treat an exposure amount equal to the aggregate of the outstanding balance of the Commercial Forbearance Facilities that are restructured or refinanced and the amount of any interest and/or fees on such Commercial Forbearance Facilities that are capitalised as part of such restructuring or refinancing and/or accrues to the Commercial Forbearance Facilities from time to time as a Prior Facility. This will be the case whether or not new facility documentation is issued to the Borrower.

(B) **Renewals, restructures and term extensions - no new monies advanced**

If a Lender agrees a renewal, a restructure or a term extension of one or more Commercial Facilities outside of any forbearance activity and those Commercial Facilities would have been Prior Facilities, as determined in accordance with relevant Scheme Facility Type Schedule, but for the renewal, restructure or term extension (each a “**Commercial Restructured Facility**”), then the Lender may treat an exposure amount equal to the aggregate outstanding balance of the Commercial Restructured Facilities that are restructured or refinanced and the amount of any interest and/or fees on such Commercial Restructured Facilities that accrue from time to time (as recorded in the Lender’s books and records), as a Prior Facility. This will be the case whether or not new facility documentation is issued to the Borrower.

(C) **Forbearance, renewals, restructures and term extensions - new monies advanced**

- (1) Subject to Clauses 8.5(A) or (B), any new monies advanced as part of a Commercial Forbearance Facility and/or a Commercial Restructured Facility will not have priority over the Scheme Facility and will rank as a Subsequent Facility.
- (2) If the Commercial Forbearance Facility or Commercial Restructured Facility (as applicable) is a revolving credit facility or an invoice finance facility, the amount outstanding (up to the original facility limit) will retain priority and be treated as a Prior Facility. In the case of an amortising facility, the outstanding amount should be pro-rated between the Commercial Forbearance Facility or Commercial Restructured Facility that constitutes a Prior Facility pursuant to Clauses 8.5(A) or (B) and the Subsequent Non-Scheme Facility to ascertain the amount outstanding at default.

<i>Further guidance on the above provisions is set out in the Lender Manual.</i>
--

9. **Terms of each Scheme Guarantee**

- 9.1 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 9.1(B), the Scheme Guarantee relating thereto will terminate and the Guarantor shall have no further obligation to make any payment in respect of such Scheme Facility under this Agreement.

9.2 Each Scheme Guarantee is and will remain the property of the Lender, unless otherwise agreed by the Guarantor in accordance with this Agreement.

9.3 The Guarantor consents to the registration in Scotland of each Scheme Guarantee for preservation and execution.

9.4 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 Guaranteed Amount Payment Claim in respect of such Scheme Facility) the Lender shall be entitled to submit an additional Guaranteed Amount 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 Guaranteed Amount Payment Claim has already been made by the Lender to the Guarantor.

9.5 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.

10. **Making a claim in respect of a Scheme Facility**

10.1 **Process for making a claim in respect of a Scheme Facility**

The Guarantor agrees that if:

- (A) either:
 - (1) a Borrower fails to make any payment of the Outstanding Guaranteed Balance of a Scheme Facility to the Lender when due; or

- (2) the Lender agrees a Forbearance Amendment with a Borrower as a result of which a Forbearance Amount arises; and
- (B) the Lender delivers to the Guarantor each of:
 - (1) a Guaranteed Amount Payment Claim in respect of such failed payment or a Forbearance Amount Payment Claim in respect of such Forbearance Amendment (as applicable); 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 10,

it will, within thirty (30) calendar days of receiving such Claim Invoice, pay to the Lender an amount equal to the Guaranteed Amount or Applicable Guaranteed Percentage of the Forbearance Amount (as applicable) in respect of such Scheme Facility.

If the Lender intends to make a claim in respect of a Scheme Facility, it must (i) make a Payment Claim in respect of that Scheme Facility in accordance with Clause 10.2 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 or Applicable Guaranteed Percentage of the Forbearance Amount (as applicable) within thirty (30) calendar days of receipt of that Claim Invoice (as described in Clause 10.3 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 and will be subject to the Claim Limit.

10.2 Conditions to making a Payment Claim in respect of a Scheme Facility

- (A) The Lender may not deliver a Payment Claim in respect of a Scheme Facility unless the following conditions precedent have been satisfied:
 - (1) such Scheme Facility was an Eligible Facility on the Offer Date thereof;
 - (2) no amendment or variation has been made to such Scheme Facility in breach of Clause 8.2 (*Permitted Variations*);
 - (3) the Offer Date in respect of such Scheme Facility occurred before the Offer Deadline Date;
 - (4) the Initial Drawdown in respect of such Scheme Facility occurred before the Initial Drawdown Deadline;
 - (5) in respect of a Guaranteed Amount Payment Claim, 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 of the Scheme Facilities 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);

- (6) the Final Demand Date for such Scheme Facility falls no later than three (3) months after:
 - (a) the Expiry Date of such Scheme Facility, if a Repayment Demand is made in respect of such Scheme Facility only; or
 - (b) the earliest Expiry Date to occur of all Scheme Facilities made available by the Lender to the Borrower, if a Repayment Demand is made in respect of more than one Scheme Facility,

save where otherwise permitted in accordance with Scheme Guidance;

The Guarantor may vary this condition precedent via Scheme Guidance to account for circumstances in which Lenders cannot make a Repayment Demand in respect of a Scheme Facility.

- (7) the Lender has used its reasonable endeavours to notify the Guarantor through the Scheme Portal that it has made a Repayment Demand in respect of such Scheme Facility by the date falling ten (10) Business Days following the Demand Date in respect of such Scheme Facility, or if the Payment Demand relates to a Forbearance Amount, has used its reasonable endeavours to notify the Guarantor, through the Scheme Portal of the corresponding Forbearance Amendment (where required) within ten (10) Business Days thereof;
- (8) 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;
- (9) the Lender has paid in full to the Guarantor or to its order:
 - (a) the Scheme Lender Fee due and payable by the Lender to the Guarantor in respect of all Scheme Facilities as at the date of the Payment Claim is submitted; and
 - (b) any other fees, costs or charges relating to this Agreement or any Related Agreement due and payable by the Lender to the Guarantor as at the date on which the Payment Claim is submitted in relation to the entry into this Agreement or any Related Agreement (including, without limitation, any legal fees of the Guarantor payable by the Lender in relation to this Agreement and any Related Agreement); and
- (10) the Lender has complied with each Additional Condition to Claim set out in any Related Agreement (if any), to the extent such Additional Condition to Claim is required to be performed prior to the date on which a Payment Claim is submitted.

The term “Related Agreement” means any side letter, Lending Limit Letter or other agreement, letter or document entered into between the Lender and the Guarantor (and any other relevant third parties) in connection with this

Agreement and the Scheme, which has been designated as a Related Agreement.

If any one or more of these conditions precedent has not been satisfied on the date that a Guaranteed Amount 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 the Scheme Facility that is the subject of such Payment Claim and from any obligation to make any further payments in respect of such Scheme Facility, provided that such release and discharge shall not occur in respect of any failure to satisfy the conditions precedent set out in any of Clauses 10.2(A)(5), (7), (9) or (10) if such condition precedent is satisfied within thirty (30) calendar days of the Lender becoming aware that such condition precedent was not satisfied.

(B) Each Party agrees that:

- (1) subject to Clause 9.4(C), the Lender may only submit one Guaranteed Amount Payment Claim to the Guarantor for each Scheme Guarantee;
- (2) the aggregate amount claimed by the Lender under a Payment Claim in respect of a Scheme Facility that is offered during a Scheme Period (and in respect of which the Initial Drawdown Date has occurred within six (6) months of the relevant Offer Date, whether or not during that Scheme Period), when aggregated with the total amount already claimed by the Lender under Payment Claims in respect of other Scheme Facilities that are offered during the same Scheme Period, cannot exceed the Claim Limit in respect of that Scheme Period;
- (3) the Guarantor's liability in respect of a Scheme Facility will not exceed an amount equal to the sum of (a) the Applicable Guaranteed Percentage of all Forbearance Amounts in respect of the Scheme Facility, and (b) the Guaranteed Amount for the relevant Scheme Facility as at the date of the Guaranteed Amount Payment Claim, and is subject to the Claim Limit;
- (4) subject to Clause 10.2(C) below, a Payment Claim must be delivered by the Lender to the Guarantor in respect of a Scheme Facility within a reasonable time period following:
 - (a) if the Payment Claim is a Forbearance Amount Payment Claim, the date of the corresponding Forbearance Amendment, and no later than the date that falls eighteen (18) months after the Forbearance Amendment; or
 - (b) if the Payment Claim is a Guaranteed Amount Payment Claim, the first Demand Date in respect of such Scheme Facility, and no later than the date that falls eighteen (18) months after the first Demand Date in respect of such Scheme Facility; and
- (5) the Lender shall use its reasonable endeavours to notify the Guarantor through the Scheme Portal that it has made a Repayment Demand in respect of such Scheme Facility by the date falling ten (10) Business Days following the relevant Demand Date,

and the Guarantor will not be required to pay any amount to the Lender under Clause

2 (*Guarantee*) unless these conditions have been satisfied.

(C) In relation to Clause 10.2(B)(4) above:

- (1) 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 Clause 10.2(B)(5); and
- (2) if the Lender is not a credit institution permitted pursuant to Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits and an Event of Default pursuant to 16.3 (*Insolvency proceedings*) has occurred and is continuing in respect of the Lender, then no Guaranteed Amount Payment Claim may be delivered by the Lender to the Guarantor in respect of a Scheme Facility until the earlier of:
 - (a) the date that falls eighteen (18) months after the first Demand Date in respect of such Scheme Facility; and
 - (b) the date on which the Lender's recoveries process has completed in respect of such Scheme Facility,

unless the Lender has put in place processes, satisfactory to the Guarantor (and confirmed as such in writing by the Guarantor to the Lender), to ensure the Guarantor receives all amounts payable to it by the Lender pursuant to this Agreement in respect of the relevant Scheme Facility, including, without limitation, the proportion of any Net Proceeds due by the Lender to the Guarantor in respect of the relevant Scheme Facility.

- (D) 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 Guaranteed Amount Payment Claim in respect of any subsequent Repayment Demand it makes on such Borrower, provided the making of such Guaranteed Amount Payment Claim complies with the provisions of this Agreement and any Related Agreement.
- (E) Where a Lender has made a Payment Claim that is incomplete or has been completed incorrectly, then the Guarantor may, at its discretion, notify the Lender and require the Lender to make the relevant corrections and resubmit such Payment Claim. In such circumstances the Payment Claim shall be treated as being received by the Guarantor on the date on which the corrected Payment Claim is received by the Guarantor, and not at any prior date.

10.3 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 and containing such other information as the Guarantor may from time to time require to be included therein.

11. **Recoveries and security**

11.1 **Lender's recoveries process**

- (A) The Lender agrees to complete or waive its recoveries process in respect of each Scheme Facility including those for which a Repayment Demand has been made, in each case, in accordance with Clause 3.1 (*Standard of care of the Lender*).
- (B) Following payment by the Guarantor of a Guaranteed Amount Payment Claim in respect of a Scheme Facility, the Lender shall, until such time as the Guarantor notifies it otherwise, act as the agent of the Guarantor to exercise the Guarantor's rights for the recovery of amounts paid by the Guarantor in relation to such Scheme Facility (either by way of subrogation or otherwise), including without limitation, any right to be indemnified by the relevant Borrower or any other party, and to take the direct or indirect benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Scheme Facility. For the avoidance of doubt, any appointment of the Lender as agent of the Guarantor under this Clause 11.1(B), will not extend to or affect any arrangements the Lenders have with the Borrower other than in relation to the Scheme Facility.

11.2 **Recoveries and security**

- (A) The Lender will deal with Collateral and recoveries relating to a Scheme Facility in the manner set out in the relevant Scheme Facility Type Schedule, 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.
- (B) If, at any time when Net Proceeds are to be applied pursuant to the Scheme Facility Type Schedule in respect of a Borrower and a Scheme Facility, such Borrower has more than one Scheme Facility outstanding with the Lender, then to the extent Net Proceeds are to be applied to the Scheme Facilities in accordance with the relevant Scheme Facility Type Schedule, the Lender shall apply such Net Proceeds to each such Scheme Facility on a pari passu and pro rata basis based on the Outstanding Guaranteed Balance of each Scheme Facility.

If a Borrower also has one or more Other Scheme Facilities outstanding with the Lender, then the Lender must also comply with the guarantee agreement in respect of such Other Scheme Facilities when applying Net Proceeds. The effect of this will generally be that such Other Scheme Facilities will rank pari passu with the Scheme Facilities under this Agreement.

11.3 **Recoveries and Forbearance Amounts**

If the Lender:

- (A) has made a valid Forbearance Amount Payment Claim in respect of any Forbearance Amendment;
- (B) received Forbearance Amendment Assets in connection with such Forbearance Amendment;

- (C) had not disposed of all of those Forbearance Amendment Assets on or before the date on which the Forbearance Amount was determined; and
- (D) subsequently disposes of, or otherwise realises a financial gain from, the whole or any part of the Forbearance Amendment Assets;

then if the value received, or financial gain realised, by the Lender for those Forbearance Amendment Assets as referred to in Clause 11.3(D) (determined in accordance with the accounting standards applicable to the Lender) exceeds the book value of those Forbearance Amendment Assets as used in the calculation of the Forbearance Amount claimed under the Forbearance Amount Payment Claim referred to above, then the Lender shall pay to the Guarantor an amount equal to such excess multiplied by the Applicable Guaranteed Percentage. The total amount payable by the Lender to the Guarantor under this Clause in respect of any Forbearance Amount Payment Claim shall not exceed the total amount claimed from the Guarantor under such Forbearance Amount Payment Claim.

11.4 Trust interest in respect of recovery amounts

- (A) If the Guarantor has paid a Guaranteed Amount in respect of any Scheme Facility and the Lender receives any Net Proceeds in respect of such Scheme Facility, then the Lender shall hold on trust for the Guarantor an amount of such Net Proceeds equal to the amount repayable to the Guarantor pursuant to this Agreement (including the relevant Scheme Facility Type Schedule and as amended by any Related Agreement) (such amounts, the **"Recoveries Trust Amounts"**) and shall pay such Recoveries Trust Amounts to the Guarantor in accordance with the terms of this Agreement.
- (B) The Lender expressly agrees and declares that the interests and entitlements of the Guarantor in and to the Recoveries Trust Amounts shall be vested and indefeasible, such that the Guarantor is absolutely entitled to the Recoveries Trust Amounts as they are received.
- (C) Notwithstanding Clause 13.1 (*Administration*), the Lender (in its capacity as trustee of the Recoveries Trust Amounts) shall have no power to delegate to any other person any of the rights, powers, authorities, duties or obligations directed or authorised pursuant to this Clause 11.4.
- (D) The Lender (in its capacity as trustee of the Recoveries Trust Amounts) shall have no further or other powers of investment with respect to the Recoveries Trust Amounts and for the avoidance of doubt, the provisions of the Trustee Act 2000 relating to trustee investments shall not apply.
- (E) The Lender hereby acknowledges and declares that the trust constituted by this Clause 11.4 is not intended to create, nor does it create, any mortgage, charge, pledge, lien or other security interest in favour of any person over any property or assets of the Lender but rather is intended clearly to delineate the beneficial interest of the Guarantor in the Recoveries Trust Amounts.
- (F) Without prejudice to any rights and powers conferred on the Lender (in its capacity as trustee of the Recoveries Trust Amounts) pursuant to this Clause 11.4, the Lender (in its capacity as trustee of the Recoveries Trust Amounts) shall at no time be entitled to exercise any discretion in respect of the trust.

11.5 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 Scheme Facility Type Schedule, 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 and set-off**

- 12.1 If the Guarantor makes a payment to the Lender in respect of a Scheme Facility, but afterwards the Guarantor determines that the Lender acted, in connection with the relevant Scheme Facility:

- (A) fraudulently or otherwise than in good faith; or
- (B) in breach of any one or more of Clauses 3.1, 10.2(A) or 10.2(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 5 (*Pricing of Scheme Facilities*), 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 5 (*Pricing of Scheme Facilities*) 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 or any Related 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 or any Related 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 or any Related 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),

and, in each case, pending payment of the relevant amount, the Payee or Payer shall (where such Payee or Payer is the Lender only) hold such amount on trust for the Guarantor.

12.4 The Guarantor may, without prior notice to the Lender, set off any matured obligation due to it from the Lender (whether or not arising under this Agreement or any Related Agreement) including any amount paid to the lender by the Guarantor in error and any claim of the Guarantor for reimbursement under this Clause 12, against any matured obligation owed by the Guarantor to the Lender (whether or not arising under this Agreement or any Related Agreement). Notwithstanding the foregoing the Guarantor may not set off any matured obligation owed to the Guarantor by a Group Lender against any matured obligation owed by the Guarantor to a different Group Lender that is a “ring-fenced body” (within the meaning of Section 142A of the Financial Services and Markets Act 2000) to the extent such set off would breach any applicable ring-fencing rules, laws or regulations.

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

13.1 **Administration**

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

- (1) The Lender will establish and maintain effective internal processes for the entering into and administration of each Scheme Facility in accordance with Clause 3.1 (*Standard of care of the Lender*).
- (2) The Lender may sub-contract or delegate the performance of any of its functions in connection with a Scheme Facility, this Agreement or any Related Agreement to any Group Lender or third party (such Group Lender or third party and any further direct or indirect delegates or sub-contractors of such Group Lender or third party, a “**Lender Delegate**”) provided that the Lender Delegate has agreed:
 - (a) to perform its functions in accordance with Clause 3.1 (*Standard of care of the Lender*); and
 - (b) to be bound by the requirements of Clause 13.2 (*Monitoring and audit*), in each case, as if references in such provision to the “Lender” were to the “Lender Delegate”.

- (3) The Lender shall, upon receipt of written request by the Guarantor, notify the Guarantor in writing of the identity of each Lender Delegate appointed by the Lender and evidence that each Lender Delegate has agreed to the provisions described in 13.1(A)(2)(a) and (b) above.
- (4) The Guarantor shall have no liability to any Lender Delegate under or in connection with this Agreement or any Related Agreement.
- (5) Notwithstanding the appointment of any Lender Delegate, the Lender shall remain liable for each Lender Delegate's actions and omissions (including, without limitation, where such actions or omissions give rise to an Event of Default) in addition to all of the Lender's obligations under this Agreement and any Related Agreement and for the acts and omissions of each Lender Delegate as if they were act or omissions of the Lender.

(B) Administration by the Guarantor of this Agreement

The Lender hereby acknowledges and agrees that:

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

13.2 Regular reporting

The Lender undertakes:

- (A) to use its reasonable endeavours to provide to the Guarantor an offer notification in respect of each Scheme Facility (in the form accessible through the Scheme Portal) within ten (10) Business Days (or such other period as may be agreed by the Guarantor and the relevant Lender) of the Offer Date of the applicable Scheme Facility;
- (B) to use its reasonable endeavours to confirm to the Guarantor the date and the amount of the Initial Drawdown through the Scheme Portal, and provide any other documentation as may be required by the Scheme Portal, in respect of a Scheme

Facility within ten (10) Business Days of the Initial Drawdown Date in respect of that Scheme Facility;

- (C) to use reasonable endeavours to provide to the Guarantor notification of any Forbearance Amendment, capital repayment holiday or term extension, which extends the term of a Scheme Facility, through the Scheme Portal, within ten (10) Business Days thereof;
- (D) to use its reasonable endeavours to confirm to the Guarantor whether a Borrower is an NI Borrower, through the Scheme Portal, within ten (10) Business Days of the Offer Date in respect of that Scheme Facility;
- (E) to use reasonable endeavours to notify the Guarantor of any repayment of a Scheme Facility in full, through the Scheme Portal, within ten (10) Business Days of such repayment;
- (F) to use its reasonable endeavours to notify the Guarantor through the Scheme Portal that it has made a Repayment Demand in respect of a Scheme Facility by the date falling ten (10) Business Days following the relevant Demand Date;
- (G) to use its reasonable endeavours to provide any such additional information through the Scheme Portal as requested by the Guarantor from time to time on reasonable notice;
- (H) to supply to the Guarantor Related Parties such information, documents, reports and records about the Scheme Guarantees and/or Scheme Facilities, and any financial information regarding the Lender, as the Guarantor Related Parties may from time to time require including, without limitation:
 - (1) arrears data in respect of the Borrowers under each Scheme Facility, which shall be provided by the Lender on a monthly basis in the form agreed between the Lender and the Guarantor from time to time;
 - (2) any information, documents, reports or records required by the Guarantor Related Parties pursuant to any Subsidy Control Requirements; and
 - (3) records regarding the interest rate and other Borrower Costs applicable to each Scheme Facility, which shall be provided by the Lender as soon as practicable following the applicable Offer Date and prior to each date on which the interest rate has been varied.

13.3 Monitoring and audit

- (A) The Guarantor is not responsible for monitoring or verifying the use of any money advanced by the Lender to Borrowers or utilised from time to time by a Borrower, in each case, under the Scheme Facilities. Notwithstanding this, the Guarantor may, at any time, request information from the Lender to enable the Guarantor to verify:
 - (1) whether a facility was an Eligible Facility as at its Offer Date and whether its inclusion in the Scheme is in compliance with the terms of this Agreement and any Related Agreement; and/or
 - (2) that the information included in the Scheme Portal with respect to a Scheme Facility is accurate in all material respects. The Lender will supply to the Guarantor any such information requested by the Guarantor.

- (B) To enable the monitoring, control and auditing of the correct use of the Scheme and compliance with this Agreement and each Related Agreement, the Lender agrees that any Guarantor Related Party has the right to carry out audits and controls and to request information about this Agreement, any Related Agreement and the Scheme Facilities. The Lender will permit monitoring visits and inspections of its business operations, books and records relating to this Agreement, any Related Agreement and the Scheme Facilities by any Guarantor Related Party, provided that it receives at least five (5) Business Days' notice of such visit or inspection. For these purposes, the Lender will permit access to its premises to each Guarantor Related Party during normal business hours.
- (C) The Lender will, and will procure that its officers, employees, agents and delegates (including any Lender Delegate) will, give the Guarantor Related Parties all such reasonable assistance (including, but not limited to, investigating (where appropriate) and responding to any enquiries raised by the Guarantor Related Party in connection with an audit/monitoring) and disclose to the Guarantor Related Parties such documents, records and information maintained by the Lender about the Borrowers and/or the Scheme Facilities which are relevant to the audit/control as needed by the Guarantor Related Parties to enable them to complete an audit to their satisfaction (except where the Lender is prohibited from such disclosure by law (including by a court order)).
- (D) The Lender will investigate (where appropriate) and respond to any enquires made by the Guarantor Related Parties about the information, documents, reports and records provided to the Guarantor Related Parties pursuant to this Clause or pursuant to Clause 13 (except where the Lender is prohibited from such disclosure by law (including by a court order)).
- (E) At such frequency as the Guarantor Related Parties may reasonably determine, the Lender agrees to ensure that one or more of its officers or employees (in each case holding a senior position in the Lender) is available to meet with a representative of the Guarantor Related Parties, each such meeting to be:
- (1) held at a location and at a date and time agreed as being mutually convenient to both the Lender and the Guarantor Related Party; and
 - (2) used as a forum for discussing any relevant matters relating to the operation of this Agreement and any Related Agreement including, but not limited to, any operational difficulties or issues arising and needing to be addressed.
- (F) Any information, documents, reports and records requested by any Guarantor Related Party pursuant to Clauses 13.2 or 13.3 shall be provided by the Lender in whatever manner or form requested by such Guarantor Related Party. Each Guarantor Related Party has sole discretion as to the method it adopts to exercise its monitoring, control and auditing rights under this Clause 13.3 and the Lender may not refuse any request for information, monitoring visit, inspection or similar (each as contemplated in this Clause 13.3) on the basis that the Lender would prefer that the Guarantor exercises its monitoring, control and auditing rights using another method.
- (G) Where an audit or monitoring assessment has identified any remedial or management actions, the Lender will address such actions in a manner and within timeframes agreed with the Guarantor Related Party.

- (H) If the Lender fails to address the remedial or management actions to the satisfaction of the Guarantor within the agreed timeframes then this will constitute an “**Audit Default**” for the purposes of Clause 17.2 (*Suspension and early termination*).
- (I) Notwithstanding paragraph (H) above, where an audit or monitoring assessment indicates that:
- (1) the Lender is in breach of a significant number of rules in respect of the Scheme;
 - (2) the Lender is in breach of any rules in respect of the Scheme that would adversely impact more than one Scheme Facility;
 - (3) the Lender or its conduct represents a reputational risk to the Scheme or the Guarantor; or
 - (4) the Lender has not acted in accordance with the general standard of care in Clause 3.1 (*Standard of care of the Lender*),

then this may (if determined by the Guarantor in its absolute discretion) also constitute an Audit Default.

13.4 Maintenance of records

- (A) The Lender undertakes to prepare, update and at all times maintain and make available for the Guarantor Related Parties, the following documentation:
- (1) information necessary to verify that each Scheme Facility complies with the relevant requirements set by this Agreement and any Related Agreement, including, without limitation, the compliance of all Scheme Facilities with the Eligibility Criteria and Clause 5 (*Pricing of Scheme Facilities*);
 - (2) information necessary to verify the proper implementation of this Agreement and any Related Agreement into the Scheme Facility Letters;
 - (3) information about the payment and recovery processes of the Lender;
 - (4) information about the Lender’s standards, policies and procedures for managing fraud to the extent these are relevant to this Agreement or the Scheme; and
 - (5) any other information reasonably required by any Guarantor Related Party,

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 two (2) months after being informed of such deficiency (or such shorter period communicated to it by the Guarantor Related Party)), comply with the instructions given by the Guarantor or the Guarantor Related Party and provide any additional information reasonably requested by the Guarantor Related Party.

- (C) The Lender will promptly obtain, comply with and do all that is necessary to maintain in full force and effect and, on request supply certified copies to the Guarantor of, any authorisation required under applicable law or regulations to enable the Lender to perform its rights and obligations under this Agreement, any Related Agreement and any Scheme Facilities, to ensure this Agreement's and any Related Agreement's legality, validity, enforceability and admissibility in evidence in the Lender's jurisdiction of incorporation and carry out its business.

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

14. **Representations and warranties**

The Lender makes the following representations and warranties. These representations and warranties will be deemed to be repeated at all times except for the representations and warranties in Clause 14.6 (*No default*) and Clause 14.12 (*Proceedings*) which will be deemed to be made on the Effective Date only.

14.1 **Status**

- (A) It is duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (B) It has the power to own its assets and carry on its business as it is being conducted.

14.2 **Binding obligations**

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

14.3 **Non-conflict with other obligations**

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

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

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

14.4 **Power and authority**

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

Agreement and the transactions contemplated by this Agreement and any Related Agreement.

14.5 Authorisations and regulatory standards

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

14.6 No default

- (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 or any Related 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.
- (C) No event of default or potential event of default (however described) relating to it is continuing under the guarantee agreement or any related agreement, letter or other document in respect of any Other Scheme, or under any agreement, letter or other document between the Lender and (i) the Department for Business, Energy & Industrial Strategy and/or (ii) British Business Finance Limited and/or British Business Financial Services Limited in its own capacity or as agent.

14.7 No misleading information

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

14.8 Governing law and enforcement

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

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

14.9 Good faith

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

14.10 Compliance with Eligibility Criteria

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

14.11 Due enquiry

It has made Due Enquiry about each Applicant.

14.12 Proceedings

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

14.13 Government funding

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

14.14 Bribery and anti-corruption laws

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

15. General undertakings

15.1 Scheme Guidance and Scheme Portal

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

15.2 Visibility and promotion

- (A) The Lender will comply with the Visibility and Promotion Guidelines at all times during the term of this Agreement.

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

15.3 Other Government Schemes

The Lender may not fund any Scheme Facility using:

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

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

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

15.4 Subsidy Control Requirements

- (A) If the Lender becomes aware that any Subsidy Control Requirements have not been complied with in respect of the Scheme or any Scheme Facility, the Lender will promptly notify the Guarantor.
- (B) If, in the opinion of the Guarantor, any Subsidy Control Requirements have not been complied with in respect of the Scheme, the Lender agrees to take any remedial action required by the Guarantor in relation to the same.

15.5 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 that the Lender may offer a Proposed Scheme Facility in circumstances where it would not have been prepared to offer the relevant Applicant a Commercial Facility on similar terms or at similar pricing in the relevant Proposed Scheme Facility Amount.

15.6 **Lending Limit Letter**

The Lender will comply, during each Scheme Period, with the conditions set out in the Lending Limit Letter and delivered to it by the Guarantor in respect of such Scheme Period (including, without limitation, any conditions relating to the pricing of any Scheme Facility).

15.7 **Use of brokers and intermediaries**

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

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

15.8 **Personal guarantees**

(A) If:

- (1) in the case of a Term Loan Scheme Facility, the Original Guaranteed Balance;
- (2) in the case of an RCF Scheme Facility, the RCF Facility Limit;
- (3) in the case of an Invoice Finance Scheme Facility, the facility limit;
- (4) in the case of an Asset Finance Scheme Facility, the Original Balance Financed; or
- (5) in the case of any Additional Type of Scheme Facility, the amount specified by the Guarantor,

in each case in respect 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.

(B) If:

- (1) in the case of a Term Loan Scheme Facility, the Original Guaranteed Balance;
- (2) in the case of an RCF Scheme Facility, the RCF Facility Limit;

- (3) in the case of an Invoice Finance Scheme Facility, the facility limit;
- (4) in the case of an Asset Finance Scheme Facility, the Original Balance Financed; or
- (5) in the case of any Additional Type of Scheme Facility, the amount specified by the Guarantor,

in each case in respect of such 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 (*Standard of care of the Lender*), 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.

15.9 **Anti-fraud, anti-money laundering and know-your-customer policies**

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

16. **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 16 is an “**Event of Default**”.

16.1 **Breach of obligations**

(A) The Lender:

- (1) fails to pay any amounts which have become due and payable to the Guarantor under or in connection with this Guarantee Agreement and/or any Related Agreement including, without limitation, the Scheme Lender Fee; or
- (2) does not comply (in the determination of the Guarantor) in any material respect with any provision of this Agreement or any Related Agreement, other than where such failure to comply would be within the scope of Clause 16.1(A)(1) above.

(B) No Event of Default under Clause 16.1(A) will occur if:

- (1) in respect of Clause 16.1(A)(1), either

- (a) if the failure to pay is not caused by an administrative or technical error, the failure to pay is remedied within five (5) Business Days of the Lender becoming aware of the failure to pay, whether by receiving notice from the Guarantor or otherwise; or
 - (b) the failure to pay is caused by an administrative or technical error, the failure to pay is remedied within fifteen (15) Business Days of the Lender becoming aware of the failure to pay, whether by receiving notice from the Guarantor or otherwise; or
- (2) in respect of Clause 16.1(A)(2), the Lender's failure to comply is capable of remedy and is remedied within fifteen (15) 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
- (3) in respect of either Clause 16.1(A)(1) or 16.1(A)(2), the Lender's failure to pay or to comply occurs as a result of any action or inaction by the Guarantor under the terms of this Agreement or any Related Agreement.

16.2 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.

16.3 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 16.3 does not apply to a winding-up petition that is frivolous or vexatious and is discharged, stayed or dismissed within twenty eight (28) days of the earlier of (a) its commencement and (b) the date on which it is advertised.

16.4 Repudiation and rescission of agreements

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

16.5 Unlawfulness; Breach of regulation

- (A) It is or becomes unlawful for a Party to perform any of its obligations under this Agreement or any Related Agreement.
- (B) The Lender breaches any law, rule or regulation applicable to it (including as may be determined by any relevant regulatory body following the occurrence of a Regulatory Investigation in respect of the Lender) and such breach indicates, in the sole opinion of the Guarantor, that the Lender:
 - (1) has not acted in a manner consistent with how a prudent lender would be reasonably expected to act;
 - (2) has not acted in good faith; or
 - (3) has behaved in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute.

16.6 Misrepresentation

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

16.7 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 16.7 will not apply to the same.

16.8 Default under related arrangements

An event of default (however described) occurs in respect of the Lender or any Affiliate of the Lender under any Related Agreement or any funding arrangement described in any Related Agreement pursuant to which the Lender or any Affiliate obtains funding to be used to finance Scheme Facilities.

16.9 Cross default

An event of default (however described) occurs in respect of the Lender under any agreement or side letter entered into between the Lender and the Guarantor, including (without limitation) in respect of any Other Scheme.

17. Cancellation of Scheme Guarantees and termination of the Agreement

17.1 Cancellation of Scheme Guarantee

If, in respect of a Scheme Facility:

(A) the Guarantor determines that:

- (1) the Lender has breached its obligations under Clause 3.1 (*Standard of care of the Lender*);
- (2) the Lender has breached its obligations under Clause 7 (*Scheme Lender Fee*) and such breach has not been cured by the Lender on the date falling thirty (30) calendar days after the Lender receiving notice of such breach;
- (3) the Lender has breached its obligations under Clause 8.2 (*Permitted Variations*) or Clause 15.9 (*Anti-fraud, anti-money laundering and know-your-customer policies*) in any material respect;
- (4) the Lender has acted fraudulently in participating in the Scheme or making available such Scheme Facility; or
- (5) such Scheme Facility does not comply with the Eligibility Criteria as at its Offer Date,

then, in each case, the Guarantor can, by notice to the Lender, terminate the Scheme Guarantee relating to such Scheme Facility, with effect from the date of such notice; or

(B) the Initial Drawdown Date in respect of such Scheme Facility does not occur before the Initial Drawdown Deadline, then the corresponding 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 the Scheme Guarantee relating to such Scheme Facility and to make any further payments in respect of such Scheme Facility with effect from the date that the Scheme Guarantee is terminated.

For the purposes of Clause 17.1(A)(3), the Guarantor shall determine whether a breach is material by reference, among other things, to the size of the relevant Scheme Facility and, if there has been more than one breach of the Lender's obligations under Clause 8.2 (*Permitted Variations*), by reference to the cumulative effect of such breaches.

17.2 Suspension and early termination

(A) **Suspension upon the occurrence of a Potential Event of Default, an Event of Default, an Audit Default or a Regulatory Investigation**

- (1) On or at any time after:
 - (a) the occurrence of a Potential Event of Default, Event of Default or Audit Default; or
 - (b) the Lender is placed under investigation by any relevant regulatory body for any reason whatsoever, including in relation to activities, events or circumstances that are not connected to its lending activities (a "**Regulatory Investigation**") if, in the sole opinion of the Guarantor, such investigation indicates that the Lender:

- (i) may not have acted in a manner consistent with how a prudent lender would be reasonably expected to act;
- (ii) may not have acted in good faith; or
- (iii) may have behaved in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute,

then, provided such event or investigation is continuing, the Guarantor may, subject to Clause 17.2(C) below and by notice to the Lender (a “**Suspension Notice**”), suspend performance of its obligations under this Agreement and the Lender’s right under Clause 4 (*Offer of a Scheme Facility*) to enter into Scheme Facilities. A Suspension Notice may provide that a suspension made pursuant to this Clause 17.2(A)(1) is effective on a date later than the date on which the notice is delivered.

- (2) If such Potential Event of Default, Event of Default, Audit Default or Regulatory Investigation is remedied within the relevant grace period (if any) or waived by the Guarantor, the Suspension Notice will be deemed revoked automatically. For the purposes of the foregoing, a Regulatory Investigation shall be deemed to be remedied if the relevant Regulatory Investigation is discontinued or concludes without resulting in an Event of Default pursuant to Clause 16.5.
- (3) A suspension pursuant to this Clause 17.2(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) 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 one (1) month from the date on which such notice is given.

17.3 Actions to be taken following a breach of this Agreement or any Related Agreement

Upon the occurrence of a breach by the Lender of this Agreement or any Related Agreement, 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.

17.4 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 17.2(B) and (C) and the occurrence of the Termination Date do not affect:
 - (1) any Scheme Facilities offered by the Lender under the Scheme on or 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 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 on or before the Termination Date; nor
 - (5) the provisions of the Clauses listed in Clause 18 (*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.

17.5 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 17.5 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 4 (*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 17.5, 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 17.5(C) on or before the day falling ten (10) Business Days after the day

that notice of any suspension pursuant to Clause 17.5(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 17.5(B) and any termination pursuant to Clause 17.5(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.

18. **Survival of rights**

The provisions of Clauses 3 (*Standard of care*), 5 (*Pricing of Scheme Facilities*), 7 (*Scheme Lender Fee*), 8 (*Lender's rights, duties and permitted variations*) (other than 8.3 (*Variations comprising a new Proposed Scheme Facility*)), 9 (*Terms of each Scheme Guarantee*), 10 (*Making a claim in respect of a Scheme Facility*), 11 (*Recoveries and security*), 13 (*Reporting, monitoring, audit and maintenance of records*), 15 (*General undertakings*), 17 (*Cancellation of Scheme Guarantees and termination of the Agreement*), 18 (*Survival of rights*), 19 (*Liability and indemnity*), 20 (*Data and data protection*), 21 (*Confidentiality and disclosure*), 22 (*Notices*), 23 (*Scheme Portal rights*), 25 (*Remedies and waivers*), 27 (*Further assurances*), 28 (*Amendments and waivers*), 29 (*Assignment and transfer*), 31 (*Contracts (Rights of Third Parties Act 1999)*), 32 (*Governing law and jurisdiction*), 33 (*Service of process*), Schedule 1 (*Definitions and interpretation*) and Schedules 5 to 8 (inclusive) (containing the Scheme Facility Type Schedules) will survive termination of this Agreement. 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 17.4 (*Termination of the Agreement*)) will survive such termination.

19. **Liability and indemnity**

19.1 **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 any Related 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 Related 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.

19.2 **Liability of the Guarantor**

- (A) Subject to Clause 20 (*Data and 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 Related Agreement, or 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 Portal. Nothing in this Agreement or any Related 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 19.2(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.

20. **Data and data protection**

- 20.1 The Guarantor shall comply with its obligations under the UK Data Protection Legislation and the Lender shall comply with its obligations under the Data Protection Legislation.
- 20.2 Subject to its obligations under Clause 20.1, the Lender agrees:
 - (A) to provide to the Guarantor Related Parties (or at the request of any Guarantor Related Party, to a Guarantor Relevant Party) all Scheme Data (including any Personal Data relating to any Applicant, Borrower or Personal Guarantor) which a Guarantor Related Party may reasonably request in connection with the purposes set out in Clause 20.2(B) below;
 - (B) that any Scheme Data (including Personal Data) may be used by the Guarantor Related Parties or by any other Guarantor Relevant Party:
 - (1) for analytical and administrative purposes (including to keep a record of the types of Borrowers and/or Applicants applying for a Scheme Facility);
 - (2) for the prevention or detection of crime or the apprehension or prosecution of offenders, fraud prevention purposes, or in response to police or law enforcement requests and investigations;
 - (3) for reporting purposes to the UK Government or any other state, supranational or public body including the European Commission;

- (4) in order to meet any reporting requirements or as required whether under law or regulation or otherwise;
 - (5) in order to contact the relevant Borrower or Applicant in connection with the Scheme;
 - (6) to make enquiries about the relevant Applicant's application to the Scheme;
 - (7) to take up references about the relevant Applicant and that Applicant's business;
 - (8) to give information relating to the relevant Applicant and that Applicant's business, or any Personal Guarantor, to any other Guarantor Related Party or to any other official involved in running or monitoring the Scheme; and
 - (9) in order to evaluate the effectiveness of the Scheme; and
- (C) that any Guarantor Related Party (or where applicable any Guarantor Relevant Party) may store any Scheme Data (including Personal Data) relating to an Applicant, Borrower or a Personal Guarantor for a minimum of ten (10) years after the Initial Drawdown Date of the relevant Scheme Facility.

20.3 The Lender undertakes at no additional cost:

- (A) to assist the Guarantor Related Parties in obtaining information from each Applicant and each relevant Personal Guarantor and each Applicant's and each relevant Personal Guarantor's acknowledgment to the use of its information (including any Personal Data) in the manner contemplated by this Clause 20, by requiring the Applicant and any relevant Personal Guarantor to provide a Data Protection and Disclosure Declaration prior to inputting any information in respect of such Applicant and/or relevant Personal Guarantor into the Scheme Portal or otherwise providing such information to any Guarantor Related Party;
- (B) to obtain all rights and consents (including in relation to the Guarantor Related Parties' processing of Personal Data) necessary to ensure that the Guarantor is able to use the Scheme Data (including Personal Data) in the manner contemplated by Clauses 20 and 21 and to fully exercise its audit rights under Clause 13.2;
- (C) to promptly execute and deliver such documents and perform such acts as may be required by any Guarantor Related Party to ensure that any transfer of Scheme Data (including Personal Data), and any processing activities carried out by any Guarantor Related Party, complies with Data Protection Legislation; and
- (D) to assist the Guarantor Related Parties in: (i) collecting and processing information or data relevant to the Scheme, including relating to any Applicant, Borrower or Personal Guarantor; (ii) disseminating information or data relating to the Scheme, including (without limitation) by preparing and/or delivering any reports, letters or notices to Borrowers as may be requested by the Guarantor Related Parties; (iii) communicating and updating any data declarations or privacy notices applicable to Applicants, Borrowers or Personal Guarantors; (iv) communicating changes and/or updates to the Scheme (including any relevant privacy notices relating thereto); and (v) for the purposes of fraud prevention, disclosing information or data relevant to the Scheme and identified by the Guarantor to third parties and/or to other lenders under the Scheme or any Other Scheme.

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

However, in the event that:

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

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

21. **Confidentiality and disclosure**

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

21.2 Notwithstanding Clause 21.1:

- (A) the Guarantor is entitled to disclose any information or data permitted to be disclosed pursuant to Clause 20 (to the persons or entities contemplated therein) and any Scheme Data, including any Confidential Information, to the Guarantor Related Parties. Each Guarantor Related Party is entitled to disclose any Scheme Data, including any Confidential Information:
 - (1) where required under any applicable law or contemplated by the terms of this Agreement and any Related Agreement;
 - (2) where requested or required by any securities exchange, court of competent jurisdiction or any competent judicial, regulatory, governmental or supervisory body or administrative order to which any Guarantor Related Party is subject, wherever situated, whether or not the requirement for information has the force of law including, for the avoidance of doubt, disclosure by the Guarantor to Parliament to discharge his duty to report about the operation of the Scheme;
 - (3) to enable the Guarantor Related Party to comply with any reporting and/or publication requirements whether required under any law or regulation or otherwise;
 - (4) to any person to whom the Guarantor is proposing to assign or transfer any of its rights or obligations under this Agreement pursuant to Clause 29 (*Assignment and transfer*);
 - (5) where the information is already in the public domain through no fault of any Guarantor Related Party;
 - (6) with the prior written consent of the Lender or (if such information relates to an Applicant) such Applicant (whether pursuant to the Data Protection and

Disclosure Declaration or otherwise), in the case of the Lender, not to be unreasonably withheld;

- (7) to the Guarantor Relevant Parties and each other person or entity to which any Guarantor Related Party or Guarantor Relevant Party is required to disclose Scheme Data, including any Confidential Information, for the purposes of reporting on the establishment, performance or operation of, or compliance with the Scheme, this Agreement and any Related Agreement;
- (8) to any relevant regulatory body in respect of the Lender, to the extent such Scheme Data or Confidential Information relates to the Guarantor's (or any Guarantor Related Party's) monitoring or audit of the Lender; and
- (9) for the purposes of preventing, analysing or detecting fraud (including fraudulent behaviour, activities or patterns), to third parties and/or other lenders under the Scheme or any Other Scheme.

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

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

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

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

- (2) to each of the Lender's officers, directors, employees, Affiliates (if any) and professional advisers to the extent necessary for the purposes of this Agreement and any Related Agreement and to its auditors, provided such party is subject to professional duties of confidentiality or agrees to a confidentiality undertaking that requires it, and any of its agents, sub-contractors and delegates, to keep confidential all Scheme Data (including Confidential Information) that is supplied to it;
- (3) subject to obtaining the Guarantor's prior written consent, to any person to whom the Lender is proposing to assign or transfer any of its rights or

obligations under this Agreement pursuant to Clause 29 (*Assignment and transfer*);

- (4) where the information is already in the public domain through no fault of the Lender; and
- (5) with the prior written consent of the Guarantor or (if such information relates to an Applicant) such Applicant (whether pursuant to the Data Protection and Disclosure Declaration or otherwise).

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

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

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

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

21.4 Nothing in this Clause 21 restricts or prevents the publication by a Guarantor Related Party of any information (whether Confidential Information or otherwise):

- (A) in accordance with any publication scheme (as defined in the FOI Act or EIR) adopted and maintained by the Guarantor Related Party in accordance with the FOI Act or EIR;
- (B) in accordance with any model publication scheme (as defined in the FOI Act or EIR) applicable to the Guarantor Related Party as may be published from time to time by the Information Commissioner;
- (C) as required for the purposes of any reporting to any institution or other body of the European Union; or
- (D) as required for the purposes of reporting to HM Government including pursuant to any Subsidy Control Reporting Requirements.

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

- 21.5 The Lender undertakes to maintain, and be able to produce, all documentation related to this Clause 21 to the Guarantor Related Parties for such length of time as is consistent with Clause 3.1 (*Standard of care of the Lender*) and to comply with any reporting requirements notified to it by a Guarantor Related Party from time to time including but not limited to under any Subsidy Control Reporting Requirements.
- 21.6 This Clause 21 supersedes any previous confidentiality undertaking given by either Party in respect of the Scheme before the Effective Date.
- 21.7 Notwithstanding any other term of this Agreement, no Party is required to disclose any information to the other Party (or any other entity) if to do so would breach applicable law or regulation.

22. **Notices**

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

- (A) if to the Guarantor:

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

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

- (B) if to the Lender, to the postal address and/or email address specified in the applicable Lending Limit Letter,

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

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

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

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

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

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

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

23. **Scheme Portal rights**

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

24. **Relationship between the Parties**

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

25. **Remedies and waivers**

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

26. **Invalidity and severability**

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

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

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

27. Further assurances

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

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

28. Amendments and waivers

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

29. Assignment and transfer

29.1 Transfer of an individual Scheme Facility

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

29.2 Assignment and transfer of rights and obligations under this Agreement

(A) Lender

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

(B) Guarantor

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

29.3 Risk retention

The Lender agrees that at all times while a Scheme Guarantee is outstanding, it will, retain on an ongoing basis all of the credit risk of the related Scheme Facility save for the credit risk covered by the relevant Scheme Guarantee or where the prior written consent of the Guarantor is obtained. Notwithstanding the foregoing, nothing in this Clause 29.3 will prohibit a Lender from accepting Collateral in connection with the relevant Scheme Facility in accordance with Clause 3.1 (*Standard of care of the Lender*) or from complying with any risk retention requirements of the Lending Limit Letter.

30. Counterparts

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

31. Contracts (Rights of Third Parties) Act 1999

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

32. Governing law and jurisdiction

32.1 Governing law

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

32.2 Jurisdiction

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

33. Service of process

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

- (A) if incorporated outside of the United Kingdom, will notify the Guarantor of its agent for service of process in relation to any proceedings before the English courts in

connection with this Agreement within 5 (five) Business Days of the Effective Date;
and

- (B) agrees that failure by a process agent to notify the Lender will not invalidate the proceedings concerned.

SIGNATORIES

Secretary of State for Business, 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 Lender¹

Signature: [Signature:]²

Name: [Name:]

[Authorised Signatory] [Authorised Signatory]

[Director] [Director]

[Company Secretary] [Company Secretary]

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

[Other:] [Other:]

For and on behalf of [●]

[In the presence of:

Signature of witness:.....

Name of witness:.....

Address of witness:.....]³

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

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

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

SCHEDULE 1 : DEFINITIONS AND INTERPRETATION

PART 1: DEFINITIONS

“Accredited” means in respect of the Lender and a Scheme Facility Type, that such Lender has completed the Guarantor’s accreditation process for that Scheme Facility Type and has received an executed Lending Limit Letter relating to the relevant Scheme Facility Type.

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

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

“Additional Payment Claim” has the meaning given to it in Clause 9.4(C).

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

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

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

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

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

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

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

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

“Application Deadline Date” means 30 June 2022 or such later date as is determined by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*).

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

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

“Audit Default” has the meaning given to it in Clause 13.3(H) and 13.3(I).

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

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

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

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

“Borrower Specific Limit” means:

- (A) double the Applicant’s annual wage bill (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) or, if the Applicant was established on or after 1 January 2019, the estimated annual wage bill for the first two (2) years in operation; or
- (B) 25% of the Applicant’s total turnover in 2019; or
- (C) with appropriate justification and based on a self-certification by the Applicant of its liquidity needs, the Applicant’s liquidity needs from the moment of granting for the coming eighteen (18) months and for the coming twelve (12) months for Large Enterprises (within the meaning of the Temporary Framework) determined taking into account any CBILS / CLBILS Outstanding Amount,

minus, in each case, the CBILS / CLBILS Outstanding Amount and as otherwise permitted under the Temporary Framework.

In accordance with the Temporary Framework, individual entities within the Applicant’s Extended Group may obtain their own Scheme Facility with a Borrower Specific Limit based on the wage bill, turnover, or liquidity needs of each entity within such Extended Group (without taking account of the wage bill, turnover or liquidity needs of other members of the Extended Group). In this instance the combined total of these Scheme Facilities must not exceed the Borrower Specific Limit that would apply if it items (A) to (C) above were determined by reference to the Extended Group’s wage bill, turnover or liquidity needs, and the CBILS / CLBILS Outstanding Amount was determined by reference to the Extended Group.

Notwithstanding the foregoing, the Guarantor may notify the Lender of an alternative definition of Borrower Specific Limit from time to time, provided that any such alternative definition shall not have retroactive effect.

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

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

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

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

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

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

“CBILS / CLBILS Outstanding Amount” means the aggregate amount of outstanding principal and available but undrawn commitment under any scheme facilities provided to the Applicant by any Lender pursuant to the Coronavirus Business Interruption Loan Scheme (CBILS) or the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that will be outstanding or committed but undrawn upon drawdown of the Proposed Scheme Facility, as certified by the Borrower to the Lender.

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

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

“Claim Invoice” has the meaning given to it in Clause 10.3 (*Submitting a Claim Invoice to the Guarantor*).

“Claim Limit” has the meaning given to it in Clause 6.5 (*Calculation of Claim Limit*).

“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 9.4.

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

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

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

but excluding any security over a Principal Private Residence.

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

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

- (A) is or becomes public knowledge, other than as a result of any breach by a Party of Clause 21 (*Confidentiality and disclosure*);
- (B) in relation to information about Lenders and Borrowers only, is not marked as confidential by the relevant Lender at the time of delivery;
- (C) in relation to information about Lenders and Borrowers only, is known by the Guarantor or a Guarantor Related Party before the date the information is disclosed to it by the relevant Lender or any of its Affiliates or advisers; and

- (D) in relation to information about Lenders and Borrowers only, is lawfully obtained by the Guarantor or a Guarantor Related Party, other than from a source which is connected with the relevant Lender and which, in either case, as far as the relevant Guarantor Related Party is aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality.

“Control” means, in relation to a party:

- (A) that is a body corporate, the power of a person to secure:
- (1) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or
 - (2) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,
- that the affairs of such body corporate are conducted in accordance with such person’s wishes; or
- (B) in relation to a partnership, the right to a share of more than half the assets, or of more than half the income, of the partnership.

“Cut-Off Scheme Facility” means (1) if the Lender has one or more Other Scheme Facilities with the Borrower that remain outstanding in whole or in part, the most recent Other Scheme Facility entered into between the Lender and the Borrower (or, if such Other Scheme Facility is a BBL Scheme Facility that is a Topped-Up Scheme Facility, the related Scheme Facility Top-Up (each as defined in the BBL Guarantee Agreement)), or (2) if the Lender does not have any Other Scheme Facilities with the Borrower that remain outstanding in whole or in part, the most recent Scheme Facility entered into between the Lender and the Borrower under this Scheme that remains outstanding in whole or in part.

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

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

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

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

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

“Demand Date” has the meaning given to it in Clause 10.2(A)(5).

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

“Due Enquiry” means those enquiries, investigations and due diligence processes adopted by the Lender from time to time in assessing an Applicant and completing the Lender’s Application Process, 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 on which this Agreement is executed.

“EIR” means the Environmental Information Regulations 2004.

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

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

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

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

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

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

“Event of Default” has the meaning given to it in Clause 16 (*Events of Default*).

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

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

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

other than Permitted Residential Net Proceeds.

“Expiry Date” means:

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

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

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

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

“Extended Group” 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.

The definition of Extended Group 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.

“Final Demand Date” has the meaning given to it in Clause 10.2(A)(5).

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

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

“Forbearance Amendment” has the meaning given to it in Clause 8.2 (*Permitted Variations*).

“Forbearance Amendment Assets” means, in respect of a Forbearance Amendment, any assets that are received in lieu of principal, interest or fees permanently foregone in connection with such Forbearance Amendment.

“Forbearance Amount” means, in respect of a Scheme Facility:

- (A) the present value of any principal or, if the Outstanding Guaranteed Balance of such Scheme Facility includes interest and fees (as set out in the Scheme Facility Type Schedule for such Scheme Facility), principal, interest and/or fees (as applicable) that:
 - (1) would otherwise have been due to the Lender under the terms of such Scheme Facility;
 - (2) would have been of a type capable of constituting part of the Outstanding Guaranteed Balance of such Scheme Facility in accordance with the Scheme Facility Type Schedule for such Scheme Facility; and
 - (3) are permanently foregone by the Lender as a result of a Forbearance Amendment (including, without limitation, pursuant to any debt for equity conversion or similar arrangement); minus

- (B) if any Forbearance Amendment Assets are received, the higher of (A) the book value of those assets as at the date of receipt, or (B) if the Lender has disposed of those assets on or before the date on which the Forbearance Amount is determined, the value received by the Lender for those assets upon such disposal, in each case determined in accordance with the accounting standards applicable to the Lender.

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

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

“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 thirty (30) calendar days’ notice of such change in accordance with Clause 22 (*Notices*).

“Group” means, in respect of an Applicant or a Borrower, such Applicant or Borrower and all linked enterprises (as defined in the Commission Recommendation) of such Applicant or Borrower, provided that:

- (A) any linked enterprise of the Applicant or Borrower that is a private equity or venture capital entity shall be disregarded; and
- (B) any enterprise which is connected to the Applicant or Borrower through a natural person and would be a linked enterprise of the Applicant or Borrower pursuant to the Commission Recommendation but for the fact that they do not engage in the same or adjacent markets shall nonetheless be deemed a linked enterprise of the Applicant or Borrower.

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

“Group Maximum Amount” means £6,000,000. The Guarantor may notify the Lender of an alternative definition of Group Maximum Amount from time to time, which shall take effect from the future date specified in the relevant notice.

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

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

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

“Guaranteed Portion” means:

- (A) in respect of an Invoice Finance Scheme Facility, that part of the balance of the Invoice Finance Scheme Facility that the Guarantor has agreed to guarantee, which, at any time is equal to the lower of (1) the aggregate amount outstanding of the financing advanced by

the Lender under such Invoice Finance Scheme Facility at such time together with (without double-counting) any Accrued Amounts relating to the same at such time, and (2) the Maximum Guaranteed Amount; and

- (B) in respect of an Asset Finance Scheme Facility, that part of the principal or capital balance of that Asset Finance Scheme Facility that the Guarantor has agreed to guarantee, determined by multiplying the Outstanding Balance Financed of that Asset Finance Scheme Facility by the Guarantee Cover Percentage.

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

“Guarantor Related Party” means

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

“Guarantor Relevant Party” means:

- (A) each Guarantor Related Party;
- (B) processing agents, fund managers, delivery partners and companies providing services to the British Business Bank plc and its Affiliates;
- (C) UK Parliament (including any Committee of the House of Commons or the House of Lords);
- (D) all UK Government departments and Devolved Administrations (including but not limited to the National Audit Office, the office for National Statistics, HM Treasury, the Cabinet Office, the Public Accounts Committee, the Government Internal Audit Agency (GIAA) and the Department for Business, Energy and Industrial Strategy) and other politicians or government members (i.e. ministers);
- (E) all UK agencies and authorities including without limitation the Bank of England (including the Prudential Regulation Authority), the Financial Conduct Authority, the Financial Policy Committee, the Insolvency Service, Companies House, or any other governmental, banking, taxation or regulatory agency or authority;
- (F) the National Crime Agency the National Investigation Service, Cifas, the UK Financial Intelligence Unit, Action Fraud or any other UK agency, service or organisation involved in the detection of criminal behaviour or fraud prevention;
- (G) the Financial Ombudsman Service; and
- (H) the European Commission.

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

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

“Initial Drawdown” means:

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

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

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

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

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

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

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

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

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

“Lending Limit Letter” means:

- (A) the letter referred to on its face as the Initial Lending Limit Letter and executed by the Guarantor and delivered to the Lender (in the form substantially similar to the form set out in Schedule 4 of this Agreement); and

- (B) the letter referred to on its face as the Subsequent Lending Limit Letter and executed by the Guarantor and delivered to the Lender (in the form substantially similar to the form set out in Schedule 4 of this Agreement),

and, in the event more than one Subsequent Lending Limit Letter has been delivered, shall mean the later of such Subsequent Lending Limit Letters.

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

“Linked Facility” has the meaning given to it in the relevant Scheme Facility Type Schedule.

“Linked Settlement Guarantee” has the meaning given to it in the applicable Scheme Facility Type Schedule.

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

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

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

“Maximum Amount” means the lower of:

- (A) £2,000,000; or
- (B) the Borrower Specific Limit,

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

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

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

“Minimum Amount” means:

- (A) in respect of a Term Loan Scheme Facility or an RCF Scheme Facility, £25,001;
- (B) in respect of an Asset Finance Scheme Facility or an Invoice Finance Scheme Facility, £1,000; and
- (C) in respect of any Additional Type of Scheme Facility, the amount determined by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*).

“Net Proceeds” means, in respect of a Borrowing Facility, all sums received, recovered or realised by the Lender following the earliest date of demand for repayment of any Borrowing Facility in

respect of any amounts outstanding from the Borrower to the Lender in respect of the Borrowing Facilities, including:

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

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

“NI Applicant” means an Applicant determined to be potentially within scope of Article 10 of the NI Protocol in accordance with the Location Question Set or (if applicable) within scope by the Additional Questionnaire.

“NI Borrower” means a Borrower that is within scope or potentially within scope of Article 10 of the NI Protocol.

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

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

“Non-Guaranteed Portion” means:

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

“Notified Permitted Variation” means any variation that is expressly permitted by the Guarantor, as either published in Scheme Guidance or as determined by the Guarantor and notified to Lenders in accordance with Clause 22 (*Notices*).

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

“Offer Deadline Date” means the earlier of:

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

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

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

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

“Other Scheme Facility” means a BBLS Scheme Facility, a CBILS Scheme Facility or a CLBILS Scheme Facility.

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

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

“Party” means a party to this Agreement.

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

“Payer” has the meaning given to it in Clause 12.3.

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

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

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

“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 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.

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

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

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

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

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

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

“Refinancing” means the refinancing of all or any part of any existing facility of an Applicant or Borrower with the Lender or with a Group Lender or Affiliate of the Lender, other than a facility that is guaranteed under an Other Scheme.

“Refinancing Amount” means, in respect of a Scheme Facility, the amount of the Original Guaranteed Balance of such Scheme Facility that is applied to Refinancing.

“Refinancing Limit” has the meaning given to it in Clause 6.1.

“Regulatory Investigation” has the meaning given to it in Clause 17.2(A)(1).

“Related Agreement” means any side letter, Lending Limit Letter or other agreement, letter or document entered into between the Lender and the Guarantor (and any other relevant third parties) in connection with this Agreement and the Scheme, which has been designated as a Related Agreement.

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

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

“Relevant Insolvency Proceedings” means the following UK proceedings:

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

The ‘voluntary arrangements’ listed above include company voluntary arrangements and individual voluntary arrangements. The exception to this is where a business has entered into a company voluntary arrangement on or after 16 March 2020, this is not a Relevant Insolvency Proceeding.

Receiverships, members' voluntary liquidations, restructuring plans under Part 26A of the Companies Act 2006 and schemes of arrangement under Part 26 of the Companies Act 2006 are not Relevant Insolvency Proceedings.

“Repayment Demand” has the meaning given to it in Clause 10.2(A)(5).

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

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

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

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

“Scheme” means the scheme established in 2021 known as the Recovery Loan Scheme or “RLS”, including as extended.

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

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

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

“Scheme Facility 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 which commits the Lender to provide such Scheme Facility and sets out the terms of that Scheme Facility.

“Scheme Facility Type” means each of:

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

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

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

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

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

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

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

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

“Scheme Period” means the period running from (and including) the Effective Date to and including 30 June 2022 (or such later date as is determined by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*)).

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

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

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

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

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

“Subsidy Control Requirements” means subsidy control requirements arising from section 29 of the European Union (Future Relationship) Act 2020 and EU State aid law, in each case as applicable.

“Subsidy Control Reporting Requirements” means the UK’s subsidy reporting requirements arising under the UK-EU Trade and Co-operation Agreement, World Trade Organization Agreement on Subsidies and Countervailing Measures and other Free Trade Agreements; the European Union (Future Relationship) Act 2020 and/or EU State aid law, in each case as applicable.

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

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

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

that has not and will not be applied by the Lender either in (x) discharging the Borrowing Facilities or (y) paying any amount to the Guarantor, in each case, pursuant to paragraph 6(B) or 6(C) of the relevant Scheme Facility Type Schedule, because that amount represents a surplus recovery or realisation.

“Suspension Notice” has the meaning given to it in Clause 17.2(A)(1).

“Temporary Framework” means the Temporary Framework for State aid measures as adopted on 19 March 2020 (C(2020) 1863) (and its amendments C(2020) 2215 of 3 April 2020, C(2020) 3156 of 8 May 2020, C(2020) 4509 of 29 June 2020, C(2020) 7127 of 13 October 2020 and C(2021)564 of 1 February 2021, each as published in the Official Journal of the European Union) to support the economy in the current COVID-19 outbreak, as amended from time to time.

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

- (A) 30 June 2022, unless such date is extended by the Guarantor and notified to the Lender in accordance with Clause 22 (*Notices*); and
- (B) the date notified as being the date of termination under Clause 17.2(B) (*Early termination upon the occurrence of an Event of Default*) or 17.2(C) (*Termination without cause*) (as the case may be).

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

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

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

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

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

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

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

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

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

PART 2: INTERPRETATION

1. General

In this Agreement:-

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

in respect of any duties owed by or obligations of the Guarantor under this Agreement, will be construed, so as to include any person to whom the Guarantor has delegated authority to act on his behalf, or any person through whom the obligations and functions of the Guarantor are performed, under or in connection with this Agreement and/or the operation of the Scheme (including, but not limited to, the British Business Bank plc or any of its Affiliates);

- (O) references to the “Lender” will be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (P) references to anything being “remedied” or “unremedied” means remedied or not remedied (as the case may be) to the satisfaction of the Guarantor and references to anything being “waived” or “unwaived” means waived or not waived (as the case may be) in writing by the Guarantor;
- (Q) the Schedules will be treated as an integral part of this Agreement and references to “this Agreement” will include the Schedules;
- (R) if there is any inconsistency in the information provided to the Guarantor by the Lender pursuant to, or in connection with, this Agreement or the Scheme Portal (including any amount, limit or date in respect of a Scheme Facility) and the terms of a Scheme Facility as agreed with the relevant Borrower, then the information so notified to the Guarantor will be deemed to be correct for the purposes of any determination or calculation to be made pursuant to this Agreement; and
- (S) if an Applicant is recorded as an NI Applicant on the basis of the Location Question Set, this is without prejudice to any subsequent determination that the Applicant and the Scheme Facility is not an NI Transaction. The recording of an Applicant as an NI Applicant and any subsequent reporting of the Applicant as such, shall not be considered as a definitive determination by the Guarantor that an Applicant is subject to the NI Protocol for the purposes of the Subsidy Control Requirements.

2. Multiple Lenders

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

(A) Definitions

The Claim Limit, Lending Limit and 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 (*Lending Limit and Claim 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 22 will, unless otherwise specified by the Guarantor in the relevant notice, request, demand or other communication, be deemed to have been given or made to every Group Lender notwithstanding that any such notice, request, demand or other communication might not have been given, made, delivered or addressed to that Group Lender.

(C) **Scheme Document**

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

(D) **Lending Limit**

Any notification to be given by the Lender under Clause 6.3 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 any Guarantor Related Party**

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

(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 10.2(A)(5), 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) **Cancellation of Scheme Guarantee**

In Clause 17, each reference to “the Lender” will be construed as references to “the Group Lenders or any Group Lender”.

(I)

Termination

In Clause 17.2(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”.

(J)

Liability and Indemnity

In Clause 19 (*Liability and indemnity*), references to “the Lender” will be construed as a reference to “any Group Lender”.

(K)

Assignment and Transfer

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

3. Personal Guarantees

The provisions of each Scheme Facility Type Schedule relating to recoveries and any related italicised guidance shall be construed in accordance with the principles set out in Clause 15.8 (*Personal guarantees*), and in particular:

- (A) 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 Clause 15.8 (*Personal guarantees*); and
- (B) 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 Clause 15.8 (*Personal guarantees*).

SCHEDULE 2 : GENERAL ELIGIBILITY CRITERIA

Other than as specified below, 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 forms part of a Group, no other member of its Group is):
 - (1) a firm with a Part 4A permission to carry on the regulated activity of accepting deposits and which is a credit institution; or
 - (2) a building society; or
 - (3) an EEA bank; or
 - (4) a firm with permission to effect contracts of insurance or carry out contracts of insurance (other than a UK ISPV),as each term is defined in the Prudential Regulation Authority Rulebook as at 1st April 2020.
- (B) The relevant Applicant is not:
 - (1) an individual other than a sole trader;
 - (2) an individual other than a partner acting on behalf of a partnership;
 - (3) classified to the public sector by the Office of National Statistics; or
 - (4) a state funded primary or secondary school.
- (C) The relevant Applicant or Applicant's Group has a business proposition that can reasonably be expected to enable it to meet its repayment obligations under such Proposed Scheme Facility, which may, but is not required to, be determined without regard to any concerns over its short-to-medium term business performance due to the uncertainty and impact of Coronavirus (COVID-19).
- (D) Either:
 - (1) if the Business of the Applicant has been trading (or, in respect of a person that is a registered charity or further education college, conducting its activities) for fewer than twelve months as at the Date of Application, the turnover relating to the relevant Business of that Applicant in the twelve month period beginning on, and including, the date on which it commenced trading (as assessed and determined by the Lender) is not expected to; or
 - (2) if the Business of the Applicant has been trading for twelve months or more as at the Date of Application, the turnover relating to the relevant Business of that Applicant in the twelve month period immediately preceding the Date of Application (as assessed and determined by the Lender by reference to the latest management or statutory accounts), did not,

exceed:

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

If that Applicant is part of an Extended Group, its turnover will be the aggregate amount of that Applicant's turnover (calculated as provided in this paragraph) and the turnover of each other member of the Extended Group 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.
- (G) If the Applicant is an NI Applicant and the Proposed Scheme Facility Amount is £30,000 or more, either:
 - (1) if the Applicant (together with all other members of its Extended Group) 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
 - (2) if the Applicant is not a Micro or Small Enterprise, either:
 - (a) if the Applicant's "undertaking" was an undertaking in difficulty as defined in Article 2(18) of the Commission Regulation (EU) No 651/2014 of 17 June 2014 (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
 - (b) the Applicant's "undertaking" was not an undertaking in difficulty as at the date on which the Applicant applied for a Scheme Facility.

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

- (H) If the Applicant is not an NI Applicant and the Proposed Scheme Facility is £30,000 or more, such Applicant's "undertaking" was at the date on which the Applicant applied for a Scheme Facility not subject to Relevant Insolvency Proceedings under national law.

For these purposes, the turnover of the Applicant and/or the members of its Extended Group 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(H) in the context of the Scheme is set out in the Scheme Guidance.

- (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 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 save that for the purposes of such determination the Lender may, but is not required to, disregard any concerns over the Applicant's or the Applicant's Group's short-to-medium term business performance due to the uncertainty and impact of Coronavirus (COVID-19).

For smaller value facilities (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.

2. The Scheme Facility

- (A) The Proposed Scheme Facility is of a Scheme Facility Type in respect of which the Lender has been Accredited, as specified in the applicable Lending Limit Letter.
- (B) The provision by the Lender of the Proposed Scheme Facility will not breach any restrictions imposed by any Subsidy Control Requirements.
- (C) The Scheme Portal 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) and to support trading (or, in respect of Applicants that are registered charities or further education colleges, activities) in the United Kingdom.

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

- (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); or
 - (2) be provided in connection with any other activity as may be advised to the Lender in accordance with Clause 22 (*Notices*) from time to time by the Guarantor.
- (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 Lender has concluded, based on Due Enquiry, that the Proposed Scheme Facility Amount of the Proposed Scheme Facility, when aggregated with the original Proposed Scheme Facility Amounts of all outstanding Scheme Facilities or other Proposed Scheme Facilities to the same Applicant (including facilities with other lenders under the Scheme) would not exceed the Maximum Amount.
- (I) The Lender has concluded, based on Due Enquiry, that the Proposed Scheme Facility Amount of the Proposed Scheme Facility, when aggregated with the original Proposed Scheme Facility Amounts of all outstanding Scheme Facilities or other Proposed Scheme Facilities to the Applicant or any entities within the Applicant's Group (including facilities with other lenders under the Scheme) would not exceed the Group Maximum Amount.
- (J) 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.
- (K) The Proposed Scheme Facility has a term of:
- (1) no less than three (3) months; and
 - (2) no more than Maximum Guarantee Term.

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

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

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

- (M) The full net economic benefit that the Scheme Guarantee provides to the Lender (including but not limited to any reduction in risk and capital requirements) shall be reflected in the pricing of the corresponding Proposed Scheme Facility provided to the Applicant (by way of a reduction in the pricing of such Proposed Scheme Facility).
- (N) The terms of the Proposed Scheme Facility provide that in respect of such Proposed Scheme Facility:
- (1) at the time that the pricing of the Scheme Facility is agreed between the Lender and the Borrower, and at any time when any aspect of the pricing of the Scheme Facility is amended, the Annual Effective Rate of the Scheme Facility shall not be greater than 14.99%;
 - (2) without prejudice to (1) above and save where otherwise agreed with the Guarantor, if default interest or default fees have been charged to the Borrower, the Borrower Costs shall be no greater than 14.99% of the average Outstanding Guaranteed Balance calculated daily over a rolling 12-month period (with the initial 12-month period being the twelve (12) months immediately preceding the date on which such default interest or default fees are first charged); and
 - (3) any Upfront Fee payable by the Borrower shall be no greater than 5% of the Proposed Scheme Facility Amount.
- (O) In the absence of the Scheme, the Lender would either:
- (1) not have been prepared to offer the relevant Applicant a Commercial Facility on similar terms in the relevant Proposed Scheme Facility Amount; or
 - (2) would only have been prepared to offer the relevant Applicant a Commercial Facility on similar terms as the relevant Proposed Scheme Facility at pricing that is higher than the pricing applicable to the Proposed Scheme Facility.

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

“I/We,

Insert full name of individual/s completing the form

acknowledge in relation to the application of

(the “**Borrower**”)

Name of Borrower

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

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

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

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

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

Name of Borrower

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

(3) if a scheme facility is made available to

Name of Borrower

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

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

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

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

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

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

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

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

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

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

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

_____ Name of Borrower

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

Signature

Signed	Signed
Print Name	Print name
Position	Position
Date	Date

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



"The Recovery Loan Scheme 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 application of

(the “**Borrower**”)

Name of Borrower

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

(1) being communicated to each of:

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

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

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

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

Name of Borrower

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

(3) if a scheme facility is made available to

Name of Borrower

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

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

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

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

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

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

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

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

Signed
Print Name
Date

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

Name of Borrower



"The Recovery Loan Scheme 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 LENDING LIMIT LETTER

[Individual name]

[Position]

[Lender name]

[Lender address]

[Date]

Dear [Lender name],

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

We refer to the guarantee agreement relating to the Recovery Loan Scheme dated [on or around the date hereof]/[date] (the “**Scheme**”) entered into between the Secretary of State for Business, Energy and Industrial Strategy (the “**Secretary of State**” or the “**Guarantor**”) and you (the “**Lender**”) as amended from time to time (the “**Guarantee Agreement**”).

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

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

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

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

Section A: [Revised] Lending Limit

You have been allocated a [revised] Lending Limit of £[•] ([express in pounds]) for the Scheme Period ending 31 March 20[•] (or such later or earlier date as is notified to you by the Guarantor), subject always to the Application Deadline Date and the Termination Date. This limit has been implemented on the Scheme Portal. Where there is more than one Lender party to your Guarantee Agreement (each a “**Group Lender**”), this limit applies as an aggregate cap across all Group Lenders.

If, at any time during a Scheme Period, you would like to increase your Lending Limit and can demonstrate that your current and anticipated lending for the Scheme Period will, or is likely to, exceed your existing Lending Limit, you may submit a request to us and provide full details of your anticipated lending levels in respect of Scheme Facilities for the remaining Scheme Period. BBFSL will consider requests for an increased Lending Limit on a case by case basis.

Increases are granted in our discretion and the decision to increase your allocation and the amount of the increase is determined on a number of factors, including the evidence provided in connection with your application and the amount of lending by all lenders under the Scheme as a whole.

⁵ Include bracketed language where the letter includes additional terms

⁶ Include bracketed language where the letter is to be countersigned – see further footnotes below.

Equally, where you are not anticipated to fully utilise your Lending Limit (based on the rate of your current lending) and in order to redirect resources to where they are most likely to be used, or in other circumstances in our sole discretion, BBFSL may reduce your Lending Limit by written notice, provided that we shall not reduce your Lending Limit in respect of a Scheme Period below a level equal to the aggregate of your existing Scheme commitments for that Scheme Period.

[This Section A of this Letter supersedes the Lending Limit section of any prior Lending Limit Letter in relation to the Guarantee Agreement you have received from us.]⁷

[Section B: Scheme Facility Type]⁸

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

- (A) [Term Loan Scheme Facility;]
- (B) [RCF Scheme Facility;]
- (C) [Invoice Finance Scheme Facility;]
- (D) [Asset Finance Scheme Facility.]

[You have been accredited as a Sale and Leaseback and Hire Purchase Back Authorised Lender.]¹⁰

You may only offer Scheme Facilities for the Scheme Facility Type(s) for which you are accredited.]

[Subsection C: Notices]

For the purposes of Clause 22 (*Notices*) of the Guarantee Agreement we understand your address for the service of notices under the Guarantee Agreement is:

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

or such other address as you may specify by at least five (5) Business Days' notice to the Guarantor.]¹¹

[Section D: Additional Terms]¹²

[*Subsection (i): Pricing*

The Lender agrees that the full net economic benefit that the Scheme Guarantee provides to the Lender (including but not limited to any reduction in risk and capital requirements) shall be reflected in the pricing of the corresponding Scheme Facility provided to the Borrower (by way of a reduction in the pricing of such Scheme Facility), as required pursuant to in Clause 5 (*Pricing of Scheme Facilities*) of the Guarantee Agreement.

⁷ Include this language only for Subsequent Lending Limit Letters.

⁸ Delete Section B for Subsequent Lending Limit Letters where the Scheme Facility Type has not changed.

⁹ Delete Scheme Facility Types as applicable.

¹⁰ Delete if not applicable.

¹¹ Delete Section C for Subsequent Lending Limit Letters where the notice details have not changed.

¹² Include relevant subsections as applicable. For Subsequent Lending Limit Letters, do not include provisions if unchanged from the Initial Lending Limit Letter.

An indicative example of such pricing calculation shall be provided to the Guarantor by the Lender and will be set out in the applicable Lending Limit Letter or the pricing matrix annexed thereto.]

[Subsection (ii): Service of Process

For the purposes of Clause 33 (*Service of process*) of the Guarantee Agreement) the Lender's agent for service of process is:

[•]

Email: [•]

For the attention of: [•]^{13]}

[Subsection (iii): Specified Lender

We hereby confirm we shall treat the Lender as a Specified Lender for the purposes of Clause [7] (*Scheme Lender Fee*) of the Guarantee Agreement.]¹⁴

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

[•]

[Subsection (v): Financial Reporting]

[•]

[Subsection (vi): Other]

[•]

* * *

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

Yours sincerely,

Signature:

Signature:

Name:

Name:

¹³ Delete if not applicable.

¹⁴ Delete if not applicable.

¹⁵ Delete if not applicable.

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

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

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**

[Agreed and acknowledged on behalf of Lender by:

.....

Name:

Position:

Date:]¹⁸

¹⁸ Include signature block in Initial Lending Limit Letters and for Subsequent Lending Limit Letters if pricing terms have changed or material additional terms are included, otherwise remove.

Annex
Pricing Matrix
[•]

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

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

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

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

2. What amounts in respect of Term Loan Scheme Facilities will be guaranteed under the Scheme?

The terms of the guarantee are set out in Clause 2 of this Agreement and state that the Guarantor guarantees the Applicable Guaranteed Percentage of the Outstanding Guaranteed Balance of the relevant Scheme Facility.

The Outstanding Guaranteed Balance of each Term Loan Scheme Facility on any date shall be equal to 100% of the principal amount outstanding under that Term Loan Scheme Facility on that date (as described in more detail below). This means that the entire principal balance of a Term Loan Scheme Facility will be covered by a Scheme Guarantee.

The “**Original Guaranteed Balance**” of a Term Loan Scheme Facility is the principal amount of such Scheme Facility on the Initial Drawdown Date of such Scheme Facility (including any principal that is not yet drawn on such date).

The “**Outstanding Guaranteed Balance**” of a Term Loan Scheme Facility will, on any date, be equal to:

- (A) if such date falls prior to the earlier of (1) the Borrowing Facilities Demand Date and (2) the Expiry Date, in each case of such Term Loan Scheme Facility, the principal amount outstanding from the relevant Borrower to the Lender in respect of such Term Loan Scheme Facility, as recorded in the books and records of the Lender (excluding, for the avoidance of doubt, any Forbearance Amount); or
- (B) if such date falls on or after the earlier of the Borrowing Facilities Demand Date or the Expiry Date, in each case of such Term Loan Scheme Facility, the lesser of (1) the principal amount outstanding from the relevant Borrower to the Lender in respect of such Term Loan Scheme Facility as recorded in the books and records of the Lender (the “**Relevant Amount**”) and (2) the Relevant Amount as reduced by any recoveries applied to the balance of such Term Loan Scheme Facility in accordance with paragraph 6 below,

subject to a minimum of zero.

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

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

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

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

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

(A) the General Eligibility Criteria; and

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

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

None.

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

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

“1. RLS guarantee

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

2. You are responsible for the repayment of your loan

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

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

6. **How will recoveries and Collateral be applied in respect of Term Loan Scheme Facilities?**

This section describes the recovery process to be followed by a Lender following a demand made on a Borrower under a Term Loan Scheme Facility. References in this paragraph to “the Borrower” are to that Borrower.

If the Lender has made available to a Borrower Scheme Facilities of different Scheme Facility Types, the recovery process to be followed by a Lender will be as set out in the Scheme Facility Type Schedule that applies to the most recent Scheme Facility made available by the Lender to that Borrower, except that:

(1) *when the Scheme Facilities include an Asset Finance Scheme Facility, the*

principles set out in section 6 of the Scheme Facility Type Schedule – Asset Finance Scheme Facilities shall take precedence in determining (A) the application of any RLS Specific Collateral Proceeds relating to an Asset Finance Scheme Facility; and (B) the application of any Other Net Proceeds (and, for such purpose, the “Guaranteed Portion” of any Scheme Facility that is not an Asset Finance Scheme Facility shall be deemed to be the entire Scheme Facility);

- (2) *if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant Scheme Facility and that are Subsequent Facilities or other Borrowing Facilities (in each case, for which Other Net Proceeds are available to be applied), the Lender should, when determining how Other Net Proceeds are applied under paragraph 6(B)(2)) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below; and*
- (3) *if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant Scheme Facility and that are Subsequent Facilities and paragraph 6(J)(2) applies, the Lender should, when determining how Other Collateral Proceeds are applied under paragraph 6(B)(2) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below.*
- (4) *Lenders should also ensure that Clause 15.8 (Personal guarantees) of this Agreement is complied with in relation to the use of personal guarantees and application of their proceeds.*

(A) *Categorise exposures, collateral and proceeds*

- (1) The Lender will determine, in respect of each Commercial Facility that it has entered into with the Borrower, whether the Commercial Facility was entered into:
 - (a) before, or at the same time as, the Cut-Off Scheme Facility (a “**Prior Facility**”); or
 - (b) after the Cut-Off Scheme Facility (a “**Subsequent Facility**”).
- (2) The Lender will categorise all Collateral in respect of Borrowing Facilities with the Borrower by:
 - (a) identifying any Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower solely for the purposes of supporting that Scheme Facility (“**RLS Specific Collateral**”); and
 - (b) identifying any Collateral that is not RLS Specific Collateral (“**Other Collateral**”).

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

Lenders must determine, in a manner consistent with the Lender’s standard internal policies, the Collateral, if any, that must be provided by the Borrower to support the Scheme Facility.

This paragraph 6 sets out how, following a demand for repayment on the Borrower, the proceeds of any Collateral that is available to support the Scheme Facility should be allocated as between the Scheme Facility, Other Scheme Facilities and Commercial Facilities. It does not require any Scheme Facility to have access to the proceeds of particular Collateral other than where this would typically be required by the Lender’s standard internal policies.

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

(B) *Application of Net Proceeds*

This paragraph 6(B) is subject to paragraphs 6(C), 6(D), 6(E), 6(F), 6(G) and 6(H) below.

If the Borrower and the Lender have an existing facility under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that remains outstanding, then this paragraph 6(B) applies subject to the amendments set out in paragraph 6(F) below.

- (1) RLS Specific Collateral Proceeds will be promptly applied:
- (a) firstly:
 - (i) (if those amounts are applied prior to the Claim Date for the Scheme Facility) in discharge of any principal, interest or other sums (other than default interest) outstanding from the Borrower to the Lender under the Scheme Facility; or
 - (ii) (if those amounts are applied on or after the Claim Date in respect of the Scheme Facility) pro rata:
 - (x) to repay the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of that Scheme Facility; and

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

provided that the maximum amount payable to the Guarantor pursuant to this paragraph 6(B) in respect of a Scheme Facility will be equal to the aggregate of all sums paid by the Guarantor to the Lender in respect of the relevant Scheme Facility.

(C) *Application of proceeds of Shared Collateral*

If the Other Net Proceeds to be applied under paragraph 6(B)(2) arise from Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower for the purposes of supporting both that

Scheme Facility and any Commercial Facility or Other Scheme Facility (any such Commercial Facility or Other Scheme Facility, being a “**Linked Facility**” in respect of that Scheme Facility) (“**Shared Collateral**”), then references to Prior Facilities, Subsequent Facilities and Borrowing Facilities shall be deemed to refer only to such facilities to the extent that they are Linked Facilities. Net Proceeds arising from Shared Collateral may only be applied to Borrowing Facilities that are not Scheme Facilities or Linked Facilities after all such Scheme Facilities and Linked Facilities have been repaid.

(D) *Application to Other Scheme Facilities*

To the extent that any sums would be applied under paragraph 6(B)(2) to any Other Scheme Facility, references to “discharge of any principal, interest or other sums outstanding” when applied to such Other Scheme Facility shall include any discharge of an obligation of the Lender to repay a guaranteed amount due to the Guarantor under the terms of the guarantee agreement in respect of such Other Scheme Facility.

(E) *Coronavirus Business Interruption Loan Scheme and Bounce Back Loan Scheme*

If the Lender and the Borrower have entered into any BBLS Scheme Facility or CBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraph 6(B)(2):

- (1) all BBLS Scheme Facilities and CBILS Scheme Facilities, shall be Subsequent Facilities; and
- (2) if the Borrower has more than one CBILS Scheme Facility, then each such CBILS Scheme Facility shall be treated as a single CBILS Scheme Facility entered into at the time of the most recent such CBILS Scheme Facility.

(F) *Coronavirus Large Business Interruption Loan Scheme*

If the Lender and the Borrower have entered into any CLBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraph 6(B)(2):

- (1) references to Prior Facilities shall be disregarded; and
- (2) references to Subsequent Facilities shall be deemed to be references to all Borrowing Facilities that are not Scheme Facilities.

(G) *Secured Commercial Facilities and Other Scheme Facilities*

For the avoidance of doubt, where the Lender has taken security of Collateral in respect of any Commercial Facility or Other Scheme Facility in accordance with the standard of care set out in Clause 3.1 of this Agreement, paragraph 6(B)(2) shall only apply to any Other Net Proceeds available to the Lender after the secured obligations of the relevant Borrower under that Commercial Facility or Other Scheme Facility (as applicable) have been repaid in full, and to the extent that such Other Net Proceeds are available to be applied in repayment of any Borrowing Facility other than that Commercial Facility or Other Scheme Facility (as applicable).

<p><i>Under Clause 3.1 of this Agreement, the Lender may not take any action which would unfairly prejudice any Scheme Facility. In particular, it is required to:</i></p>
--

- (i) *take all action (or decide to take no action) in connection with any Scheme Facility, potential Scheme Facility and any Applicant, Borrower or related Scheme Guarantee in a reasonable manner and act with reasonable skill and care:*
 - (1) *taking into account the aims and purpose of the Scheme and the context in which it was established and is carried on; and*
 - (2) *in a manner consistent with how a prudent lender would be reasonably expected to act with respect to facilities with similar characteristics or commercial terms to the Scheme Facility (notwithstanding the fact that the Scheme Facility benefits from a government guarantee), except as set out in this Agreement (including, without limitation, paragraph 2(O) of Schedule 2 (General Eligibility Criteria)),*
including, in each case, all action (or decisions to take no action) in respect of origination, servicing and enforcement; and
- (ii) *always act in good faith, including by not behaving in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute, and not contravening any applicable law or regulation (including complying with all requirements applicable to it relating to treating customers fairly).*

(H) *Calculation of pro rata splits*

If Net Proceeds are applied under paragraph 6(B)(2):

- (1) prior to the Claim Date for the Scheme Facility, then the pro rata split between sub-paragraphs 6(B)(2)(b)(i)(x) and 6(B)(2)(b)(i)(y) will be determined by the Lender based on the principal amount due and payable under (x) the relevant Scheme Facility and (y) all Subsequent Facilities (or if the relevant Net Proceeds arise from Shared Collateral, all Linked Facilities in respect of the Scheme Facility that are Subsequent Facilities);
- (2) on or following the Claim Date for the Scheme Facility, then the pro rata split between sub-paragraphs 6(B)(2)(b)(ii)(x) and 6(B)(2)(b)(ii)(y) will be determined by the Lender based on (x) the Guaranteed Amount paid by the Guarantor to the Lender in respect of the relevant Scheme Facility and (y) the principal amount due and payable under the relevant Scheme Facility and all other Borrowing Facilities for which the Other Net Proceeds are available to be applied (or if the relevant Net Proceeds arise from Shared Collateral, all Linked Facilities in respect of the relevant Scheme Facility that are Subsequent Facilities),

in each case on the date of application of those Net Proceeds, *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are other Borrowing Facilities (for which Other Net Proceeds are available to be applied), the pro-rata split referred to in sub-paragraphs (1) and (2) immediately above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility, or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

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

(1) Condition to use

Notwithstanding paragraph 6(B) above, the Lender may credit any Net Proceeds to any suspense or impersonal account provided that the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future.

(2) Application on release

Upon release of any Net Proceeds from the suspense or impersonal account referred to above, the Lender will apply those Net Proceeds in accordance with paragraph 6(B), provided that any Net Proceeds comprised of payments made by the Guarantor under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower will, upon release, be applied promptly in or toward the discharge of the Guaranteed Amount due in respect of that Scheme Guarantee.

(J) *Payments to the Guarantor*

(1) Subject to the Guarantor having paid to the Lender all sums due to the Lender and demanded on the Claim Date from the Guarantor, in accordance with the terms of the relevant Scheme Guarantee, in respect of the relevant Scheme Facility, the Lender will:

(a) pay to the Guarantor all amounts due by it to the Guarantor under paragraph 6(B) above; and

(b) as soon as reasonably practicable after determining that there are Surplus Proceeds, pay to the Guarantor an amount equal to the lesser of:

(i) the aggregate of all sums paid by the Guarantor in respect of all Scheme Guarantees in respect of the Borrower, less the aggregate of all amounts (if any) received by the Guarantor under paragraph 6(B) above); and

(ii) the Surplus Proceeds.

(2) Notwithstanding any other provision of this paragraph 6(J), the Lender is entitled to withhold payment of any amount that is due and payable to the Guarantor under such paragraphs, provided that any such withheld amount is paid to the Guarantor by the Lender within twelve (12) months of its due date.

(K) *Personal Guarantee Settlements*

<i>This section is subject to the provisions set out in Clause 15.8 of this Agreement.</i>
--

(1) Subject to the Lender complying with Clause 15.8 (*Personal guarantees*) of this Agreement but notwithstanding any other provision of this Scheme Facility Type Schedule, if:

- (a) the Lender has the benefit of one or more personal guarantees from a single Personal Guarantor which support two or more separate Borrowing Facilities; and
- (b) such personal guarantee or (if there is more than one such personal guarantee) at least one of such personal guarantees is specified in a Scheme Facility Letter as supporting a Scheme Facility (each such personal guarantee, a “**Linked Settlement Guarantee**”),

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

- (2) If the proceeds of any Linked Settlement Guarantee are applied under paragraph 6(B)(2), the pro rata split referred to in sub-paragraphs 6(B)(2)(b)(i) and 6(B)(2)(b)(ii) will be determined by the Lender based on:

- (a) if applied prior to the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(b)(i)(x), the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(B)(2)(b)(i)(y), the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities; or
- (b) if applied on or after the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(b)(ii)(x), the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of such Scheme Facility, multiplied by the Applicable Guaranteed Percentage in respect of such Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(B)(2)(b)(ii)(y), the aggregate of (1) the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility, multiplied by 100% minus the Applicable Guaranteed Percentage in respect of such Scheme Facility; and (2) the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities,

to the extent this is permitted under the terms of such Linked Settlement Guarantee(s), *provided that*, if the Borrower has one or more term loans,

revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities and that are Subsequent Facilities, the pro-rata splits referred to in sub paragraphs 6(K)(2) above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

- (3) If the Linked Settlement Guarantees do not specify how the liability of the Personal Guarantor is to be apportioned between the relevant Scheme Facility and Linked Facilities that are Subsequent Facilities then, for the purposes of this paragraph 6(K), such liabilities will be determined on the basis of the principal amount due and payable under such Scheme Facility and such Linked Facilities.

(L) *Excluded Residential Net Proceeds*

(1) Exclusion of Excluded Residential Net Proceeds

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

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

(2) Timing

The Lender should use reasonable endeavours to ensure that the Borrower is not disadvantaged as a result of any effect that the restriction in paragraph 6(L)(1) above has on the timing of the Lender's application of Excluded Residential Net Proceeds or Net Proceeds (as applicable) in discharging Borrowing Facilities.

(3) Permitted Residential Net Proceeds

If a Borrower:

- (a) proposes, on its own initiative, to use proceeds derived from, or otherwise attributable to, the sale of, or release of equity in, a Principal Private Residence to repay a Scheme Facility; and
- (b) signs and returns to the Lender a declaration in the form set out in Schedule 9 to this Agreement (as may be amended by the Guarantor from time to time),

then the proceeds specified in that declaration will constitute "**Permitted Residential Net Proceeds**" and will not be subject to the restriction in paragraph 6(L)(1) above.

7. **What other amendments to this Agreement apply for Term Loan Scheme Facilities?**

The following amendment and addition to this Agreement will apply to Term Loan Scheme Facilities:

- (A) If any tranche of a Term Loan Scheme Facility is redrawn by a Borrower after it has been repaid, such tranche 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.

SCHEDULE 6 : SCHEME FACILITY TYPE SCHEDULE: RCF SCHEME FACILITIES

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

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

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

2. What amounts in respect of RCF Scheme Facilities will be guaranteed under the Scheme?

The terms of the guarantee are set out in Clause 2 of this Agreement and state that the Guarantor guarantees the Applicable Guaranteed Percentage of the Outstanding Guaranteed Balance of the relevant Scheme Facility.

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

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

- (A) if such date falls prior to the earlier of (1) the Borrowing Facilities Demand Date and (2) the Expiry Date, in each case of such RCF Scheme Facility, the amount outstanding from the relevant Borrower to the Lender in respect of such RCF Scheme Facility (including any amounts of interest or other costs, fees, expenses or charges which accrue in respect of such RCF Scheme Facility before the earlier of the dates in sub-paragraph (A)(1) and (2) above but excluding any Forbearance Amount), as recorded in the books and records of the Lender; or
- (B) if such date falls on or after the earlier of the Borrowing Facilities Demand Date or the Expiry Date, in each case of such RCF Scheme Facility, the lesser of (1) the amount outstanding from the relevant Borrower to the Lender in respect of such RCF Scheme Facility (including any amounts of interest or other costs, fees, expenses or charges which accrue in respect of such RCF Scheme Facility to and including the earlier of the Expiry Date or the Borrowing Facilities Demand Date, in each case of such RCF Scheme Facility but excluding any Forbearance Amount) as recorded in the books and records of the Lender (the “**Relevant Amount**”) and (2) the Relevant Amount as reduced by any recoveries applied to the balance of such RCF Scheme Facility in accordance with paragraph 6 and/or paragraph 7(B) below,

in each case subject to:

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

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

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

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

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

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

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

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

- (A) the General Eligibility Criteria; and

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

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

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

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

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

“1. RLS guarantee

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

2. You are responsible for the repayment of your facility

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

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

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

This section describes the recovery process to be followed by a Lender following a demand made on a Borrower under an RCF Scheme Facility. References in this paragraph to “the Borrower” are to that Borrower.

If the Lender has made available to a Borrower Scheme Facilities of different Scheme Facility Types, the recovery process to be followed by a Lender will be as set out in the Scheme Facility Type Schedule that applies to the most recent Scheme Facility made available by the Lender to that Borrower, except that:

- (1) when the Scheme Facilities include an Asset Finance Scheme Facility, the principles set out in section 6 of the Scheme Facility Type Schedule – Asset Finance Scheme Facilities shall take precedence in determining (A) the application of any RLS Specific Collateral Proceeds relating to an Asset Finance Scheme Facility; and (B) the application of any Other Net Proceeds (and, for such purpose, the “Guaranteed Portion” of any Scheme Facility that is not an Asset Finance Scheme Facility shall be deemed to be the entire Scheme Facility);*
- (2) if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant RCF Scheme Facility and that are Subsequent Facilities or other Borrowing Facilities (in each case, for which Other Net Proceeds are available to be applied), the Lender should, when determining how Other Net Proceeds are applied under paragraphs 6(B)(2)) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below; and*
- (3) if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant RCF Scheme Facility and that are Subsequent Facilities and paragraph (6)(K)(2) applies, the Lender should, when determining how Other Collateral Proceeds are applied under paragraph 6(B)(2) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below.*
- (4) Lenders should also ensure that Clause 15.8 (Personal guarantees) of this Agreement is complied with in relation to the use of personal guarantees and application of their proceeds.*

(A) Categorise exposures, collateral and proceeds

- (1)** The Lender will determine, in respect of each Commercial Facility that it has entered into with the Borrower, whether the Commercial Facility was entered into:

- (a) before, or at the same time as, the Cut-Off Scheme Facility (a “**Prior Facility**”); or
- (b) after the Cut-Off Scheme Facility (a “**Subsequent Facility**”).

*If the overall balance of the revolving credit facility was in excess of the RCF Scheme Facility Limit at default, the excess sum (the “**Facility Excess Amount**”) must be treated as a Subsequent Facility.*

- (2) The Lender will categorise all Collateral in respect of Borrowing Facilities with the Borrower by:
 - (a) identifying any Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower solely for the purposes of supporting that Scheme Facility (“**RLS Specific Collateral**”); and
 - (b) identifying any Collateral that is not RLS Specific Collateral (“**Other Collateral**”).
- (3) The Lender will categorise all Net Proceeds received in respect of Borrowing Facilities with the Borrower by determining whether those Net Proceeds:
 - (a) have been realised from RLS Specific Collateral (“**RLS Specific Collateral Proceeds**”); or
 - (b) have not been realised from RLS Specific Collateral (“**Other Net Proceeds**”).

Lenders must determine, in a manner consistent with the Lender’s standard internal policies, the Collateral, if any, that must be provided by the Borrower to support the Scheme Facility.

This paragraph 6 sets out how, following a demand for repayment on the Borrower, the proceeds of any Collateral that is available to support the Scheme Facility should be allocated as between the Scheme Facility, Other Scheme Facilities and Commercial Facilities. It does not require any Scheme Facility to have access to the proceeds of particular Collateral other than where this would typically be required by the Lender’s standard internal policies.

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

(B) *Application of Net Proceeds*

This paragraph 6(B) is subject to paragraphs 6(C), 6(D), 6(E), 6(F), 6(G) and 6(H) below.

If the Borrower and the Lender have an existing facility under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that remains outstanding, then this paragraph 6(B) applies subject to the amendments set out in paragraph 6(F) below.

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

provided that the maximum amount payable to the Guarantor pursuant to this paragraph 6(B) in respect of a Scheme Facility will be equal to the aggregate of all sums paid by the Guarantor to the Lender under the relevant Scheme Guarantee.

(C) *Application of proceeds of Shared Collateral*

If the Other Net Proceeds to be applied under paragraph 6(B)(2) arise from Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower for the purposes of supporting both that Scheme Facility and any Commercial Facility or Other Scheme Facility (any such Commercial Facility or Other Scheme Facility, being a “**Linked Facility**” in respect of that Scheme Facility) (“**Shared Collateral**”), then references to Prior Facilities, Subsequent Facilities and Borrowing Facilities shall be deemed to refer only to such facilities to the extent that they are Linked Facilities. Net Proceeds arising from Shared Collateral may only be applied to Borrowing Facilities that are not Scheme Facilities or Linked Facilities after all such Scheme Facilities and Linked Facilities have been repaid.

(D) *Application to Other Scheme Facilities*

To the extent that any sums would be applied under paragraph 6(B)(2) to any Other Scheme Facility, references to “discharge of any principal, interest or other sums outstanding” when applied to such Other Scheme Facility shall include any discharge of an obligation of the Lender to repay a guaranteed amount due to the Guarantor under the terms of the guarantee agreement in respect of such Other Scheme Facility.

(E) *Coronavirus Business Interruption Loan Scheme and Bounce Back Loan Scheme*

If the Lender and the Borrower have entered into any BBLS Scheme Facility or CBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraph 6(B)(2):

- (1) all BBLS Scheme Facilities and CBILS Scheme Facilities, shall be Subsequent Facilities; and
- (2) if the Borrower has more than one CBILS Scheme Facility, then each such CBILS Scheme Facility shall be treated as a single CBILS Scheme Facility entered into at the time of the most recent such CBILS Scheme Facility.

(F) *Coronavirus Large Business Interruption Loan Scheme*

If the Lender and the Borrower have entered into a CLBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraph 6(B)(2):

- (1) references to Prior Facilities shall be disregarded; and
- (2) references to Subsequent Facilities shall be deemed to be references to all Borrowing Facilities that are not Scheme Facilities.

(G) *Secured Commercial Facilities and Other Scheme Facilities*

For the avoidance of doubt, where the Lender has taken security of Collateral in respect of any Commercial Facility or Other Scheme Facility in accordance with the standard of care set out in Clause 3.1 of this Agreement, paragraph 6(B)(2) shall

only apply to any Other Net Proceeds available to the Lender after the secured obligations of the relevant Borrower under that Commercial Facility or Other Scheme Facility (as applicable) have been repaid in full, and to the extent that such Other Net Proceeds are available to be applied in repayment of any Borrowing Facility other than that Commercial Facility or Other Scheme Facility (as applicable).

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

- (i) take all action (or decide to take no action) in connection with any Scheme Facility, potential Scheme Facility and any Applicant, Borrower or related Scheme Guarantee in a reasonable manner and act with reasonable skill and care:
 - (1) taking into account the aims and purpose of the Scheme and the context in which it was established and is carried on; and*
 - (2) in a manner consistent with how a prudent lender would be reasonably expected to act with respect to facilities with similar characteristics or commercial terms to the Scheme Facility (notwithstanding the fact that the Scheme Facility benefits from a government guarantee), except as set out in this Agreement (including, without limitation, paragraph 2(O) of Schedule 2 (General Eligibility Criteria)),**
- including, in each case, all action (or decisions to take no action) in respect of origination, servicing and enforcement; and*
- (ii) always act in good faith, including by not behaving in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute, and not contravening any applicable law or regulation (including complying with all requirements applicable to it relating to treating customers fairly).*

(H) *Calculation of pro rata splits*

If Net Proceeds are applied under paragraph 6(B)(2):

- (1) prior to the Claim Date for the Scheme Facility, then the pro rata split between sub-paragraphs 6(B)(2)(b)(i)(x) and 6(B)(2)(b)(i)(y) will be determined by the Lender based on all amounts due and payable under (x) the relevant Scheme Facility and (y) all Subsequent Facilities; or
- (2) on or following the Claim Date for the Scheme Facility, then the pro rata split between sub-paragraphs 6(B)(2)(b)(ii)(x) and 6(B)(2)(b)(ii)(y) will be determined by the Lender based on (x) the Guaranteed Amount paid by the Guarantor to the Lender in respect of the relevant Scheme Facility and (y) all amounts due and payable under the relevant Scheme Facility and all other Borrowing Facilities for which the Other Net Proceeds are available to be applied,

in each case on the date of application of those Net Proceeds, *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are other Borrowing Facilities (for which Other Net Proceeds are available to be applied), the pro-rata split referred to in sub-paragraphs (1) and (2) immediately above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital

balance outstanding of the asset finance facility, or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

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

(1) Condition to use

Notwithstanding paragraph 6(B) above, the Lender may credit any Net Proceeds to any suspense or impersonal account provided that the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future.

(2) Application on release

Upon release of any Net Proceeds from the suspense or impersonal account referred to above, the Lender will apply those Net Proceeds in accordance with paragraph 6(B), provided that any Net Proceeds comprised of payments made by the Guarantor under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower will, upon release, be applied promptly in or toward the discharge of the Guaranteed Amount due in respect of that Scheme Guarantee.

(J) *Payments to the Guarantor*

(1) Subject to the Guarantor having paid to the Lender all sums due to the Lender and demanded on the Claim Date from the Guarantor, in accordance with the terms of the relevant Scheme Guarantee, in respect of the relevant Scheme Facility, the Lender will:

- (a) pay to the Guarantor all amounts due by it to the Guarantor under paragraph 6(B) above; and
- (b) as soon as reasonably practicable after determining that there are Surplus Proceeds, pay to the Guarantor an amount equal to the lesser of:
 - (i) the aggregate of all sums paid by the Guarantor in respect of all Scheme Guarantees in respect of the Borrower, less the aggregate of all amounts (if any) received by the Guarantor under paragraph 6(B) above; and
 - (ii) the Surplus Proceeds.

(2) Notwithstanding any other provision of this paragraph 6(J), the Lender is entitled to withhold payment of any amount that is due and payable to the Guarantor under such paragraphs, provided that any such withheld amount is paid to the Guarantor by the Lender within twelve (12) months of its due date.

(K) *Personal Guarantee Settlements*

<p><i>This section is subject to the provisions set out in Clause 15.8 of this Agreement.</i></p>

(1) Subject to the Lender complying with Clause 15.8 (*Personal guarantees*) of this Agreement but notwithstanding any other provision of this Scheme Facility Type Schedule, if:

- (a) the Lender has the benefit of one or more personal guarantees from a single Personal Guarantor which support two or more separate Borrowing Facilities; and
- (b) such personal guarantee or (if there is more than one such personal guarantee) at least one of such personal guarantees is specified in a Scheme Facility Letter as supporting a Scheme Facility (each such personal guarantee, a “**Linked Settlement Guarantee**”),

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

(2) If the proceeds of any Linked Settlement Guarantee are applied under paragraph 6(B)(2), the pro rata split referred to in sub-paragraphs 6(B)(2)(b)(i) and 6(B)(2)(b)(ii) will be determined by the Lender based on:

- (a) if applied prior to the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(b)(i)(x), the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(B)(2)(b)(i)(y), the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities; or
- (b) if applied on or after the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(b)(ii)(x), the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of such Scheme Facility, multiplied by the Applicable Guaranteed Percentage in respect of such Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(B)(2)(b)(ii)(y), the aggregate of (1) the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility, multiplied by 100% minus the Applicable Guaranteed Percentage in respect of such Scheme Facility; and (2) the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities,

to the extent this is permitted under the terms of such Linked Settlement Guarantee(s) and *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities and that are Subsequent Facilities, the pro-rata splits referred to in sub paragraphs 6(J)(2) above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

- (3) If the Linked Settlement Guarantees do not specify how the liability of the Personal Guarantor is to be apportioned between the relevant Scheme Facility and Linked Facilities that are Subsequent Facilities then, for the purposes of this paragraph 6(K), such liabilities will be determined on the basis of all amounts due and payable under such Scheme Facility and such Linked Facilities.

(L) *Excluded Residential Net Proceeds*

- (1) Exclusion of Excluded Residential Net Proceeds

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

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

- (2) Timing

The Lender should use reasonable endeavours to ensure that the Borrower is not disadvantaged as a result of any effect that the restriction in paragraph 6(L)(1) above has on the timing of the Lender's application of Excluded Residential Net Proceeds or Net Proceeds (as applicable) in discharging Borrowing Facilities.

- (3) Permitted Residential Net Proceeds

If a Borrower:

- (a) proposes, on its own initiative, to use proceeds derived from, or otherwise attributable to, the sale of, or release of equity in, a Principal Private Residence to repay a Scheme Facility; and
- (b) signs and returns to the Lender a declaration in the form set out in Schedule 9 to this Agreement (as may be amended by the Guarantor from time to time),

then the proceeds specified in that declaration will constitute "**Permitted Residential Net Proceeds**" and will not be subject to the restriction in paragraph 6(L)(1) above.

7. **What other amendments to this Agreement apply for RCF Scheme Facilities?**

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

- (A) If the Guarantor serves notice pursuant to Clause 17.2(C) (*Termination without cause*) of the closure of the Scheme to new Scheme Facilities, the Lender will be entitled to reassess each RCF Scheme Facility made available by the Lender, and where necessary, the Lender may make replacement Scheme Facilities (which, in the Lender's opinion, are the most appropriate taking into account the requirements of the relevant Borrower) available to the Borrowers before the closure of the Scheme.
- (B) Where a Lender is taking action as part of a Lender's debt management processes to manage down debts ahead of or as an alternative to a Repayment Demand being issued, the Lender will apply any credits which are made to the account relating to that revolving credit facility (but excluding any amounts which are to be applied in accordance with paragraph 6 above):
 - (1) first, to reduce the Facility Excess Amount (if any); and
 - (2) second, to reduce the amount outstanding in respect of the RCF Scheme Facility,regardless of the order in which utilisations under that revolving credit facility may have occurred.

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

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

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

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

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

For each Invoice Finance Scheme Facility, the Lender must select the maximum amount of the Invoice Finance Scheme Facility that is to be covered under this Agreement. This amount must be entered into the Scheme Portal by the Lender during the Scheme Application Process. The amount entered will be the “**Maximum Guaranteed Amount**” and the “**Original Guaranteed Balance**” of the Invoice Finance Scheme Facility. This amount must not exceed the facility limit applicable to the Invoice Finance Scheme Facility agreed at the date of offer.

2. What amounts in respect of Invoice Finance Scheme Facilities will be guaranteed under the Scheme?

The terms of the guarantee are set out in Clause 2 of this Agreement and state that the Guarantor guarantees the Applicable Guaranteed Percentage of the Outstanding Guaranteed Balance of the relevant Scheme Facility.

The “**Outstanding Guaranteed Balance**” of an Invoice Finance Scheme Facility will, on any date, be equal to the aggregate amount outstanding of the financing advanced by the Lender under such Invoice Finance Scheme Facility (for the avoidance of doubt, excluding any Forbearance Amount) and (without double counting) any Accrued Amounts, as recorded in the books and records of the Lender on that date, subject to:

- (1) a minimum of zero; and
- (2) a maximum of the Maximum Guaranteed Amount.

“**Accrued Amounts**” means, in respect of an Invoice Finance Facility at any time, amounts of interest or other costs, fees, expenses or charges which have accrued in respect of such

Invoice Finance Scheme Facility up to such time and before the earlier of (1) the date on which the Lender makes a demand for repurchase of all the Funded Debts and/or repayment of the whole of the sums then outstanding under such Invoice Finance Scheme Facility, and (2) the Expiry Date of such Invoice Finance Scheme Facility).

The Lender can choose whether the Scheme Guarantee covers all or part of the facility limit of an Invoice Finance Scheme Facility and will specify this amount as part of the Scheme Portal Application Process. The amount specified must not exceed the facility limit applicable to the Invoice Finance Scheme Facility. The part of an Invoice Finance Scheme Facility which is covered by a Scheme Guarantee is referred to as the "Guaranteed Portion" and the part which is not covered by a Scheme Guarantee is the "Non-Guaranteed Portion".

References to the "facility limit" of an Invoice Finance Scheme Facility are to the maximum amount of financing that the Lender is prepared to provide to the Borrower under such Invoice Finance Scheme Facility and not to the value of the debts financed under such Invoice Finance Scheme Facility.

Lenders may purchase or take an assignment of Excluded Debts in connection with an Invoice Finance Scheme Facility provided that the Lender does not advance funding against these Excluded Debts or take them into account in assessing the level of financing made available to the Borrower under the Scheme Facility.

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

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

The "**Maximum Guarantee Term**" of any Invoice Finance Scheme Facility will be three (3) years, subject to Clause 8.2(B)(3).

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

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

(A) the General Eligibility Criteria; and

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

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

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

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

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

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

“1. RLS guarantee

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

2. You are responsible for the repayment of your facility

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

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

6. How will recoveries and Collateral be applied in respect of Invoice Finance Scheme Facilities?

This section describes the recovery process to be followed by a Lender following a demand made on a Borrower under an Invoice Finance Scheme Facility. References in this paragraph to “the Borrower” are to that Borrower.

If the Lender has made available to a Borrower Scheme Facilities of different Scheme Facility Types, the recovery process to be followed by a Lender will be as set out in the Scheme Facility Type Schedule that applies to the most recent Scheme Facility made available by the Lender to that Borrower, except that:

- (1) when the Scheme Facilities include an Asset Finance Scheme Facility, the principles set out in section 6 of the Scheme Facility Type Schedule – Asset Finance Scheme Facilities shall take precedence in determining (A) the application of any RLS Specific Collateral Proceeds relating to an Asset Finance Scheme Facility; and (B) the application of any Other Net Proceeds (and, for such purpose, the “Guaranteed Portion” of any Scheme Facility that is not an Asset Finance Scheme Facility shall be deemed to be the entire Scheme Facility);*
- (2) if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant Scheme Facility and that are Subsequent Facilities or other Borrowing Facilities (in each case, for which Other Net Proceeds are available to be applied), the Lender should, when determining how Other Net Proceeds are applied under paragraphs 6(B) or 6(C) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below; and*

- (3) *if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant Scheme Facility and that are Subsequent Facilities and paragraph 6(L)(2) applies, the Lender should, when determining how Other Collateral Proceeds are applied under paragraph 6(B) or 6(C) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below.*
- (4) *Lenders should also ensure that Clause 15.8 (Personal guarantees) of this Agreement is complied with in relation to the use of personal guarantees and application of their proceeds.*

(A) *Categorise exposures, collateral and proceeds*

- (1) The Lender will determine, in respect of each Commercial Facility that it has entered into with the Borrower, whether the Commercial Facility was entered into:
 - (a) before, or at the same time as, the Cut-Off Scheme Facility (a “**Prior Facility**”); or
 - (b) after the Cut-Off Scheme Facility (a “**Subsequent Facility**”).
- (2) The Lender will categorise all Collateral in respect of Borrowing Facilities with the Borrower by:
 - (a) identifying any Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower solely for the purposes of supporting that Scheme Facility (“**RLS Specific Collateral**”); and
 - (b) identifying any Collateral that is not RLS Specific Collateral (“**Other Collateral**”).
- (3) The Lender will categorise all Net Proceeds received in respect of Borrowing Facilities with the Borrower by determining whether those Net Proceeds:
 - (a) have been realised from RLS Specific Collateral (“**RLS Specific Collateral Proceeds**”); or
 - (b) have not been realised from RLS Specific Collateral (“**Other Net Proceeds**”).

Lenders must determine, in a manner consistent with the Lender’s standard internal policies, the Collateral, if any, that must be provided by the Borrower to support the Scheme Facility.

This paragraph 6 sets out how, following a demand for repayment on the Borrower, the proceeds of any Collateral that is available to support the Scheme Facility should be allocated as between the Scheme Facility, Other Scheme Facilities and Commercial Facilities. It does not require any Scheme Facility to have access to the proceeds of particular Collateral other than where this would

typically be required by the Lender's standard internal policies.

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

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

This paragraph 6(B) is subject to paragraphs 6(D), 6(E), 6(F), 6(G), 6(H) and 6(I) below.

If the Borrower and the Lender have an existing facility under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that remains outstanding, then this paragraph 6(B) applies subject to the amendments set out in paragraph 6(G) below.

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

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

- (a) in discharge of any amounts outstanding from the Borrower to the Lender under the Scheme Facility; and
- (b) thereafter, to the extent that it is permitted to do so, in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender in respect of other Borrowing Facilities.

The Lender should apply recoveries to the whole of the Non-Guaranteed Portion prior to applying recoveries to the balance of the Guaranteed Portion.

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

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

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

This paragraph 6(C) is subject to paragraphs 6(D), 6(E), 6(F), 6(G) and 6(H) below.

If the Borrower and the Lender have an existing facility under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that remains outstanding, then this paragraph 6(C) applies subject to the amendments set out in paragraph 6(G) below.

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

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

provided that the maximum amount payable to the Guarantor pursuant to this paragraph 6(C) in respect of a Scheme Facility will be equal to the aggregate of all sums paid by the Guarantor to the Lender under the relevant Scheme Guarantee.

(D) *Application of proceeds of Shared Collateral*

If the Other Net Proceeds to be applied under paragraph 6(B)(2) or 6(C)(2) arise from Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower for the purposes of supporting both that Scheme Facility and any Commercial Facility of Other Scheme Facility (any such Commercial Facility or Other Scheme Facility, being a “**Linked Facility**” in respect of that Scheme Facility) (“**Shared Collateral**”), then references to Prior Facilities, Subsequent Facilities and Borrowing Facilities shall be deemed to refer only to such facilities to the extent that they are Linked Facilities. Net Proceeds arising from Shared Collateral may only be applied to Borrowing Facilities that are not Scheme Facilities or Linked Facilities after all such Scheme Facilities and Linked Facilities have been repaid.

(E) *Application to Other Scheme Facilities*

To the extent that any sums would be applied under paragraph 6(B)(2) or 6(C)(2) to any Other Scheme Facility, references to “discharge of any principal, interest or other sums outstanding” when applied to such Other Scheme Facility shall include any discharge of an obligation of the Lender to repay a guaranteed amount due to the Guarantor under the terms of the guarantee agreement in respect of such Other Scheme Facility.

(F) *Coronavirus Business Interruption Loan Scheme and Bounce Back Loan Scheme*

If the Lender and the Borrower have entered into any BBLS Scheme Facility or CBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraphs 6(B)(2) and 6(C)(2):

- (1) all BBLS Scheme Facilities and CBILS Scheme Facilities, shall be Subsequent Facilities; and
- (2) if the Borrower has more than one CBILS Scheme Facility, then each such CBILS Scheme Facility shall be treated as a single CBILS Scheme Facility entered into at the time of the most recent such CBILS Scheme Facility.

(G) *Coronavirus Large Business Interruption Loan Scheme*

If the Lender and the Borrower have entered into a CLBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraphs 6(B)(2) and 6(C)(2):

- (1) paragraphs 6(B)(2)(a) and 6(C)(2)(a) shall be disregarded and no amounts shall be applied pursuant to these paragraphs;
- (2) the reference in paragraph 6(B)(2)(b)(i) to the “remainder of the relevant Scheme Facility” shall be deemed to be a reference to “the relevant Scheme Facility”;
- (3) references to Subsequent Facilities shall be deemed to be references to all Borrowing Facilities that are not Scheme Facilities;
- (4) paragraph 6(C)(2)(b) shall be deemed to be replaced with the following:

- “(b) secondly, pro rata in discharge of any principal, interest or other sums outstanding from the Borrower (i) under the Scheme Facility (including, for such purposes any Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of the Scheme Facility); and (ii) to the Lender under any other Borrowing Facilities,”; and
- (5) any amounts applied to the Scheme Facility pursuant to paragraph 6(C)(2)(b)(i) (as amended by the preceding paragraph) shall be applied firstly in discharge of any principal, interest or other sums outstanding from the Borrower to the Lender under the Scheme Facility and thereafter to repay to the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of that Scheme Facility as determined at the Borrowing Facilities Demand Date.

(H) *Secured Commercial Facilities and Other Scheme Facilities*

For the avoidance of doubt, where the Lender has taken security of Collateral in respect of any Commercial Facility or Other Scheme Facility in accordance with the standard of care set out in Clause 3.1 of this Agreement, paragraph 6(B)(2) and 6(C)(2) shall only apply to any Other Net Proceeds available to the Lender after the secured obligations of the relevant Borrower under that Commercial Facility or Other Scheme Facility (as applicable) have been repaid in full, and to the extent that such Other Net Proceeds are available to be applied in repayment of any Borrowing Facility other than that Commercial Facility or Other Scheme Facility (as applicable).

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

- (i) *take all action (or decide to take no action) in connection with any Scheme Facility, potential Scheme Facility and any Applicant, Borrower or related Scheme Guarantee in a reasonable manner and act with reasonable skill and care:*
 - (1) *taking into account the aims and purpose of the Scheme and the context in which it was established and is carried on; and*
 - (2) *in a manner consistent with how a prudent lender would be reasonably expected to act with respect to facilities with similar characteristics or commercial terms to the Scheme Facility (notwithstanding the fact that the Scheme Facility benefits from a government guarantee), except as set out in this Agreement (including, without limitation, paragraph 2(O) of Schedule 2 (General Eligibility Criteria)),*

including, in each case, all action (or decisions to take no action) in respect of origination, servicing and enforcement; and
- (ii) *always act in good faith, including by not behaving in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute, and not contravening any applicable law or regulation (including complying with all requirements applicable to it relating to treating customers fairly).*

(I) *Calculation of pro rata splits*

If Net Proceeds are applied:

- (1) prior to the Claim Date for the Scheme Facility under paragraph 6(B)(2), then the pro rata split between sub-paragraphs 6(B)(2)(b)(i) and 6(B)(2)(b)(ii) will be determined by the Lender based on all amounts due and payable under (x) the relevant Scheme Facility and (y) all Subsequent Facilities; or
- (2) on or following the Claim Date for the Scheme Facility under paragraph 6(C)(2), then the pro rata split between sub-paragraphs 6(C)(2)(b)(i) and 6(C)(2)(b)(ii) will be determined by the Lender based on (x) the Guaranteed Amount paid by the Guarantor to the Lender in respect of the relevant Scheme Facility and (y) all amounts due and payable under the relevant Scheme Facility and all other Borrowing Facilities for which the Other Net Proceeds are available to be applied,

in each case on the date of application of those Net Proceeds, *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are other Borrowing Facilities (for which Other Net Proceeds are available to be applied), the pro-rata split referred to in sub-paragraphs (1) and (2) immediately above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility, or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

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

- (1) Condition to use

Notwithstanding paragraphs 6(B) and 6(C) above, the Lender may credit any Net Proceeds to any suspense or impersonal account provided that the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future.

- (2) Application on release

Upon release of any Net Proceeds from the suspense or impersonal account referred to above, the Lender will apply those Net Proceeds in accordance with paragraph 6(B) or 6(C) (as applicable), provided that any Net Proceeds comprised of payments made by the Guarantor under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower will, upon release, be applied promptly in or toward the discharge of the Guaranteed Amount due in respect of that Scheme Guarantee.

(K) *Payments to the Guarantor*

- (1) Subject to the Guarantor having paid to the Lender all sums due to the Lender and demanded on the Claim Date from the Guarantor, in accordance with the terms of the relevant Scheme Guarantee, in respect of the relevant Scheme Facility, the Lender will:

- (a) pay to the Guarantor all amounts due by it to the Guarantor under paragraph 6(C) above; and
- (b) as soon as reasonably practicable after determining that there are Surplus Proceeds, pay to the Guarantor an amount equal to the lesser of:
 - (i) the aggregate of all sums paid by the Guarantor in respect of all Scheme Guarantees in respect of the Borrower, less the aggregate of all amounts (if any) received by the Guarantor under paragraph 6(C) above; and
 - (ii) the Surplus Proceeds.
- (2) Notwithstanding any other provision of this paragraph 6(K), the Lender is entitled to withhold payment of any amount that is due and payable to the Guarantor under such paragraphs, provided that any such withheld amount is paid to the Guarantor by the Lender within twelve (12) months of its due date.

(L) *Personal Guarantee Settlements*

This section is subject to the provisions set out in Clause 15.8 of this Agreement.

- (1) Subject to the Lender complying with Clause 15.8 (*Personal guarantees*) of this Agreement but notwithstanding any other provision of this Scheme Facility Type Schedule, if:
 - (a) the Lender has the benefit of one or more personal guarantees from a single Personal Guarantor which support two or more separate Borrowing Facilities; and
 - (b) such personal guarantee or (if there is more than one such personal guarantee) at least one of such personal guarantees is specified in a Scheme Facility Letter as supporting a Scheme Facility (each such personal guarantee, a **"Linked Settlement Guarantee"**),

then (i) all Net Proceeds received, recovered or realised by the Lender under such Linked Settlement Guarantees will be treated as proceeds of Shared Collateral in respect of such Scheme Facility and (ii) any Borrowing Facilities (other than such Scheme Facility) guaranteed under a Linked Settlement Guarantee shall comprise a Linked Facility in respect of such Scheme Facility.
- (2) If the proceeds of any Linked Settlement Guarantee are applied under paragraphs 6(B)(2) or 6(C)(2), the pro rata split referred to in sub-paragraphs 6(B)(2)(b) and 6(C)(2)(b) will be determined by the Lender based on:
 - (a) if applied prior to the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(b)(i), the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility; and

- (ii) in relation to sub-paragraph 6(B)(2)(b)(ii), the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities; or
- (b) if applied on or after the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(C)(2)(b)(i), the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of such Scheme Facility, multiplied by the Applicable Guaranteed Percentage in respect of such Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(C)(2)(b)(ii), the aggregate of (1) the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility, multiplied by 100% minus the Applicable Guaranteed Percentage in respect of such Scheme Facility; and (2) the aggregate amount for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities,

to the extent this is permitted under the terms of such Linked Settlement Guarantee(s) *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities and that are Subsequent Facilities, the pro-rata splits referred to in sub paragraphs 6(L)(2) above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

- (3) If the Linked Settlement Guarantees do not specify how the liability of the Personal Guarantor is to be apportioned between the relevant Scheme Facility and Linked Facilities that are Subsequent Facilities then, for the purposes of this paragraph 6(L), such liabilities will be determined on the basis of the principal amount due and payable under such Scheme Facility and such Linked Facilities.

(M) *Excluded Residential Net Proceeds*

- (1) Exclusion of Excluded Residential Net Proceeds

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

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

(2) Timing

The Lender should use reasonable endeavours to ensure that the Borrower is not disadvantaged as a result of any effect that the restriction in paragraph 6(M)(1) above has on the timing of the Lender's application of Excluded Residential Net Proceeds or Net Proceeds (as applicable) in discharging Borrowing Facilities.

(3) Permitted Residential Net Proceeds

If a Borrower:

- (a) proposes, on its own initiative, to use proceeds derived from, or otherwise attributable to, the sale of, or release of equity in, a Principal Private Residence to repay a Scheme Facility; and
- (b) signs and returns to the Lender a declaration in the form set out in Schedule 9 to this Agreement (as may be amended by the Guarantor from time to time),

then the proceeds specified in that declaration will constitute "**Permitted Residential Net Proceeds**" and will not be subject to the restriction in paragraph 6(M)(1) above.

7. **What other amendments to this Agreement apply for Invoice Finance Scheme Facilities?**

The following amendments and additions to this Agreement will apply to Invoice Finance Scheme Facilities:

- (A) A Repayment Demand shall be made in respect of an Invoice Finance Scheme Facility by the Lender on the relevant Borrower where the Lender has demanded in writing from such Borrower the repurchase of all the Funded Debts and/or the repayment of all of the sums then outstanding under such Invoice Finance Scheme Facility.

Paragraph 7(A) supplements and amends Clause 10.3 of this Agreement, which sets out certain conditions precedent to making a claim under a Scheme Guarantee. The Lender will not be entitled to make a claim under a Scheme Guarantee unless and until the conditions precedent to making a Payment Claim set out in Clause 10.3 of this Agreement (as amended in respect of Invoice Finance Scheme Facilities by paragraph 7(A)) have been satisfied.

- (B) Paragraph 2(G) of Schedule 2 to this Agreement shall be amended by adding the words "proposed Guaranteed Portion of the" immediately before the words "Proposed Scheme Facility Amount" in the first line.

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

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

This Scheme Facility Type Schedule applies to:

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) if such date falls prior to the Borrowing Facilities Demand Date, the Outstanding Balance Financed of such Asset Finance Scheme Facility on such date (for the avoidance of doubt, excluding any Forbearance Amount) multiplied by the Guarantee Cover Percentage; and
- (B) if such date falls on or after the Borrowing Facilities Demand Date, the lesser of:
 - (1) the Outstanding Balance Financed of such Asset Finance Scheme Facility on the Borrowing Facilities Demand Date (for the avoidance of doubt, excluding any Forbearance Amount) multiplied by the Guarantee Cover Percentage; and
 - (2) the Outstanding Balance Financed of such Asset Finance Scheme Facility on such date (for the avoidance of doubt, excluding any Forbearance Amount), as reduced by any recoveries applied to the principal or capital balance of the Asset Finance Scheme Facility in accordance with paragraph 6 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (A) the General Eligibility Criteria; and

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

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

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

The term of an Asset Finance Scheme Facility may be extended if such extension complies with the requirements of Clause 8.2 (Permitted Variations) – see paragraph 7(C) below.

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

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

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

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

“1. RLS guarantee

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

2. You are responsible for the repayment of your facility

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

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

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

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

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

- (1) any RLS Specific Collateral Proceeds relating to an Asset Finance Scheme Facility shall be applied, prior to the occurrence of the Claim Date in respect of such Asset Finance Scheme Facility, in accordance with paragraph 6(B)(1) below and, following the occurrence of the Claim Date in respect of such Asset Finance Scheme Facility, in accordance with paragraph 6(C)(1) below and may not be applied towards the repayment of any other Scheme Facility until the Asset Finance Scheme Facility has been repaid in full (and then only if the Lender is permitted to do so);*
- (2) any Other Net Proceeds shall be applied, prior to the occurrence of a Claim Date in respect of any Asset Finance Scheme Facility, in accordance with paragraph 6(B)(2) below and, following the occurrence of a Claim Date in respect of any Asset Finance Scheme Facility, in accordance with paragraph 6(C)(2) below (and, for such purpose, the ‘Guaranteed Portion’ of any Scheme Facility that is not an Asset Finance Scheme Facility shall be deemed to be the entire Scheme Facility); and*
- (3) if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant Scheme Facility and that are Subsequent Facilities or other Borrowing Facilities (in each case, for which Other Net Proceeds are available to be applied), the Lender should, when determining how Other Net Proceeds are applied under paragraphs 6(B)(1) or 6(B)(2) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all*

invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below; and

- (4) *if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities in respect of the relevant Scheme Facility and that are Subsequent Facilities and paragraph 6(K)(2) applies, the Lender should, when determining how Other Collateral Proceeds are applied under paragraph 6(K)(2) below, determine the pro-rata split based on the principal amount outstanding of the term loan and/or capital balance outstanding of the asset finance facility (as applicable). For all invoice finance and revolving credit facilities the pro rata split should be based on all amounts due and payable under the relevant facility as set out below.*

Lenders should also ensure that Clause 15.8 (Personal guarantees) of this Agreement is complied with in relation to the use of personal guarantees and application of their proceeds.

(A) *Categorise exposures, collateral and proceeds*

- (1) The Lender will determine, in respect of each Commercial Facility that it has entered into with the Borrower, whether the Commercial Facility was entered into:
- (a) before, or at the same time as, the Cut-Off Scheme Facility (a “**Prior Facility**”); or
 - (b) after the Cut-Off Scheme Facility (a “**Subsequent Facility**”).
- (2) The Lender will categorise all Collateral in respect of Borrowing Facilities with the Borrower by:
- (a) identifying any Collateral that is specified in the Scheme Facility Letter for a Scheme Facility and that has been provided by or on behalf of the Borrower solely for the purposes of supporting that Scheme Facility (“**RLS Specific Collateral**”); and
- The Purchased Asset will be RLS Specific Collateral for the purposes of this paragraph.*
- (b) identifying any Collateral that is not RLS Specific Collateral (“**Other Collateral**”).
- (3) The Lender will categorise all Net Proceeds received in respect of Borrowing Facilities with the Borrower by determining whether those Net Proceeds:
- (a) have been realised from RLS Specific Collateral (“**RLS Specific Collateral Proceeds**”); or
 - (b) have not been realised from RLS Specific Collateral (“**Other Net Proceeds**”).

Lenders must determine, in a manner consistent with the Lender’s standard internal policies, the Collateral, if any, that must be provided by the Borrower to support the Scheme Facility.

This paragraph 6 sets out how, following a demand for repayment on the Borrower, the proceeds of any Collateral that is available to support the Scheme Facility should be allocated as between the Scheme Facility, Other Scheme Facilities and Commercial Facilities. It does not require any Scheme Facility to have access to the proceeds of particular Collateral other than where this would typically be required by the Lender's standard internal policies.

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

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

This paragraph 6(B) is subject to paragraphs 6(D), 6(E), 6(F), 6(G) and 6(H) below.

If the Borrower and the Lender have an existing facility under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that remains outstanding, then this paragraph 6(B) applies subject to the amendments set out in paragraph 6(F) below.

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

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

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

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

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

- (a) firstly, pro rata, in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender in respect of:
 - (i) any Prior Facility; and

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

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

This paragraph 6(C) is subject to paragraphs 6(D), 6(E), 6(F), 6(G) and 6(H) below.

If the Borrower and the Lender have an existing facility under the Coronavirus Large Business Interruption Loan Scheme (CLBILS) that remains outstanding, then this paragraph 6(C) applies subject to the amendments set out in paragraph 6(F) below.

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

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

(b) secondly, pro rata:

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

provided that the maximum amount payable to the Guarantor pursuant to this paragraph 6(C) in respect of a Scheme Facility will be equal to the aggregate of all sums paid by the Guarantor to the Lender under the relevant Scheme Guarantee.

(D) *Application to Other Scheme Facilities*

To the extent that any sums would be applied under paragraph 6(B)(2) or 6(C)(2) to any Other Scheme Facility, references to “discharge of any principal, interest or other sums outstanding” when applied to such Other Scheme Facility shall include any discharge of an obligation of the Lender to repay a guaranteed amount due to the Guarantor under the terms of the guarantee agreement in respect of such Other Scheme Facility.

(E) *Coronavirus Business Interruption Loan Scheme and Bounce Back Loan Scheme*

If the Lender and the Borrower have entered into any BBLS Scheme Facility or CBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraphs 6(B)(2) and 6(C)(2):

- (1) all BBLS Scheme Facilities and CBILS Scheme Facilities, shall be Subsequent Facilities; and
- (2) if the Borrower has more than one CBILS Scheme Facility, then each such CBILS Scheme Facility shall be treated as a single CBILS Scheme Facility entered into at the time of the most recent such CBILS Scheme Facility.

(F) *Coronavirus Large Business Interruption Loan Scheme*

If the Lender and the Borrower have entered into a CLBILS Scheme Facility which remains outstanding in whole or in part, then for the purposes of paragraphs 6(B)(2) and 6(C)(2):

- (1) Paragraphs 6(B)(2)(a) and 6(C)(2)(a) shall be disregarded and no amounts shall be applied pursuant to these paragraphs;
- (2) references to Subsequent Facilities shall be deemed to be references to all Borrowing Facilities that are not Scheme Facilities;
- (3) paragraph 6(C)(2)(b) shall be deemed to be replaced with the following:
 - “(b) secondly, pro rata in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower (i) under the

Scheme Facility (including, for such purposes any Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of the Scheme Facility); and (ii) to the Lender under any other Borrowing Facilities,”; and

- (4) any amounts applied to the Scheme Facility pursuant to paragraph 6(C)(2)(b)(i) (as amended by the preceding paragraph) shall be applied firstly in discharge of any principal or capital balance, interest or other sums outstanding from the Borrower to the Lender under the Scheme Facility and thereafter to repay to the Guarantor the Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of that Scheme Facility as determined at the Borrowing Facilities Demand Date.

(G) *Secured Commercial Facilities and Other Scheme Facilities*

For the avoidance of doubt, where the Lender has taken security of Collateral in respect of any Commercial Facility or Other Scheme Facility in accordance with the standard of care set out in Clause 3.1 of this Agreement, paragraph 6(B)(2) and 6(C)(2) shall only apply to any Other Net Proceeds available to the Lender after the secured obligations of the relevant Borrower under that Commercial Facility or Other Scheme Facility (as applicable) have been repaid in full, and to the extent that such Other Net Proceeds are available to be applied in repayment of any Borrowing Facility other than that Commercial Facility or Other Scheme Facility (as applicable).

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

- (i) *take all action (or decide to take no action) in connection with any Scheme Facility, potential Scheme Facility and any Applicant, Borrower or related Scheme Guarantee in a reasonable manner and act with reasonable skill and care:*
- (1) *taking into account the aims and purpose of the Scheme and the context in which it was established and is carried on; and*
- (2) *in a manner consistent with how a prudent lender would be reasonably expected to act with respect to facilities with similar characteristics or commercial terms to the Scheme Facility (notwithstanding the fact that the Scheme Facility benefits from a government guarantee), except as set out in this Agreement (including, without limitation, paragraph 2(O) of Schedule 2 (General Eligibility Criteria)),*
- including, in each case, all action (or decisions to take no action) in respect of origination, servicing and enforcement; and*
- (ii) *always act in good faith, including by not behaving in a manner which could reasonably be expected to bring the Scheme or the Guarantor into disrepute, and not contravening any applicable law or regulation (including complying with all requirements applicable to it relating to treating customers fairly).*

(H) *Calculation of pro rata splits*

If Net Proceeds are applied:

- (1) prior to the Claim Date for the Scheme Facility under paragraph 6(B)(2), then the pro rata split between sub-paragraphs 6(B)(2)(b)(i) and 6(B)(2)(b)(ii) will be determined by the Lender based on the principal amount due and payable under or (as applicable) the capital balance of (x) the relevant Scheme Facility and (y) all Subsequent Facilities; or
- (2) on or following the Claim Date for the Scheme Facility under paragraph 6(C)(2), then the pro rata split between sub-paragraphs 6(C)(2)(b)(i) and 6(C)(2)(b)(ii) will be determined by the Lender based on (x) the Guaranteed Amount paid by the Guarantor to the Lender in respect of the Guaranteed Portion of the relevant Scheme Facility and (y) the principal amount due and payable under, or the capital balance of (as applicable) the Guaranteed Portion of the relevant Scheme Facility and all other Borrowing Facilities for which the Other Net Proceeds are available to be applied,

in each case on the date of application of those Net Proceeds, *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are other Borrowing Facilities (for which Other Net Proceeds are available to be applied), the pro-rata split referred to in sub-paragraphs (1) and (2) immediately above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility, or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

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

(1) Condition to use

Notwithstanding paragraph 6(B) and 6(C) above, the Lender may credit any Net Proceeds to any suspense or impersonal account provided that the sole intention of the Lender in doing so is to seek to maximise the Lender's recovery in any bankruptcy, liquidation or other insolvency proceedings relating to the Borrower which such proceedings are, at the time such credit is to be made, either in existence or could reasonably be expected to occur in the future.

(2) Application on release

Upon release of any Net Proceeds from the suspense or impersonal account referred to above, the Lender will apply those Net Proceeds in accordance with paragraph 6(B) or 6(C) (as applicable), provided that any Net Proceeds comprised of payments made by the Guarantor under any Scheme Guarantee in favour of the Lender in respect of the relevant Borrower will, upon release, be applied promptly in or toward the discharge of the Guaranteed Amount due in respect of that Scheme Guarantee.

(J) *Payments to the Guarantor*

- (1) Subject to the Guarantor having paid to the Lender all sums due to the Lender and demanded on the Claim Date from the Guarantor, in accordance with the terms of the relevant Scheme Guarantee, in respect of the relevant Scheme Facility, the Lender will:
 - (a) pay to the Guarantor all amounts due by it to the Guarantor under paragraph 6(C) above; and

- (b) as soon as reasonably practicable after determining that there are Surplus Proceeds, pay to the Guarantor an amount equal to the lesser of:
 - (i) the aggregate of all sums paid by the Guarantor in respect of all Scheme Guarantees in respect of the Borrower, less the aggregate of all amounts (if any) received by the Guarantor under paragraphs 6(B) and 6(C) above; and
 - (ii) the Surplus Proceeds.
- (2) Notwithstanding any other provision of this paragraph 6(J), the Lender is entitled to withhold payment of any amount that is due and payable to the Guarantor under such paragraphs, provided that any such withheld amount is paid to the Guarantor by the Lender within twelve (12) months of its due date.

(K) *Personal Guarantee Settlements*

This section is subject to the provisions set out in Clause 15.8 of this Agreement.

- (1) Subject to the Lender complying with Clause 15.8 (*Personal guarantees*) of this Agreement but notwithstanding any other provision of this Scheme Facility Type Schedule, if:
 - (a) the Lender has the benefit of one or more personal guarantees from a single Personal Guarantor which support two or more separate Borrowing Facilities; and
 - (b) such personal guarantee or (if there is more than one such personal guarantee) at least one of such personal guarantees is specified in a Scheme Facility Letter as supporting a Scheme Facility (each such personal guarantee, a “**Linked Settlement Guarantee**”),

then (i) all Net Proceeds received, recovered or realised by the Lender under such Linked Settlement Guarantees will be treated as proceeds of Shared Collateral in respect of such Scheme Facility and (ii) any Borrowing Facilities (other than such Scheme Facility) guaranteed under a Linked Settlement Guarantee shall comprise a Linked Facility in respect of such Scheme Facility.
- (2) If the proceeds of any Linked Settlement Guarantee are applied under paragraph 6(B)(2), the pro rata split referred to in sub-paragraphs 6(B)(2)(b)(i) and 6(B)(2)(b)(ii) will be determined by the Lender based on:
 - (a) if applied prior to the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(x), the aggregate amount of capital balance for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(B)(2)(y), the aggregate amount of principal for which the Personal Guarantor is liable under

such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities; or

- (b) if applied on or after the Claim Date for the relevant Scheme Facility:
 - (i) in relation to sub-paragraph 6(B)(2)(b)(x), the aggregate amount of capital balance for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of such Scheme Facility, multiplied by the Applicable Guaranteed Percentage in respect of such Scheme Facility; and
 - (ii) in relation to sub-paragraph 6(B)(2)(b)(y), the aggregate of (1) the aggregate amount of capital balance for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of the relevant Scheme Facility, multiplied by 100% minus the Applicable Guaranteed Percentage in respect of such Scheme Facility; and (2) the aggregate amount of principal for which the Personal Guarantor is liable under such Linked Settlement Guarantee(s) in respect of all Linked Facilities in respect of such Scheme Facility that are Subsequent Facilities,

to the extent this is permitted under the terms of such Linked Settlement Guarantee(s) *provided that*, if the Borrower has one or more term loans, revolving credit facilities, invoice finance facilities and/or asset finance facilities with the Lender which are Linked Facilities and that are Subsequent Facilities, the pro-rata splits referred to in sub paragraphs 6(K)(2) above will be determined by the Lender based on the principal amount outstanding of the term loan, the capital balance outstanding of the asset finance facility or all amounts due and payable under the invoice finance or revolving credit facility (as applicable).

If the Linked Settlement Guarantees do not specify how the liability of the Personal Guarantor is to be apportioned between the relevant Scheme Facility and Linked Facilities that are Subsequent Facilities then, for the purposes of this paragraph 6(K), such liabilities will be determined on the basis of the principal amount due and payable under such Scheme Facility and such Linked Facilities.

(L) *Excluded Residential Net Proceeds*

(1) Exclusion of Excluded Residential Net Proceeds

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

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

(2) Timing

The Lender should use reasonable endeavours to ensure that the Borrower is not disadvantaged as a result of any effect that the restriction in paragraph 6(L)(1) above has on the timing of the Lender's application of Excluded Residential Net Proceeds or Net Proceeds (as applicable) in discharging Borrowing Facilities.

(3) Permitted Residential Net Proceeds

If a Borrower:

- (a) proposes, on its own initiative, to use proceeds derived from, or otherwise attributable to, the sale of, or release of equity in, a Principal Private Residence to repay a Scheme Facility; and
- (b) signs and returns to the Lender a declaration in the form set out in Schedule 9 to this Agreement (as may be amended by the Guarantor from time to time),

then the proceeds specified in that declaration will constitute "**Permitted Residential Net Proceeds**" and will not be subject to the restriction in paragraph 6(L)(1) above.

7. **What other amendments to this Agreement apply for Asset Finance Scheme Facilities?**

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

- (A) For the purposes of Clause 6.2 of this Agreement, the "**Original Guaranteed Balance**" of an Asset Finance Scheme Facility shall be equal to the Original Balance Financed of such Asset Finance Scheme Facility multiplied by the Guarantee Cover Percentage of such Asset Finance Scheme Facility.
- (B) Notwithstanding Clause 8.2 (*Permitted Variations*) of this Agreement, the Lender may not amend the rate of interest payable in respect of an Asset Finance Scheme Facility to a variable rate.
- (C) If the Lender extends the term of an Asset Finance Scheme Facility for reasons other than those permitted by Clause 8.2 (*Permitted Variations*), then the Scheme Guarantee in respect of such Asset Finance Scheme Facility will be cancelled and the Guarantor will be unconditionally and irrevocably released and discharged from all its obligations under such Scheme Guarantee. The Lender may elect to treat an Asset Finance Scheme Facility that has been extended as a new Proposed Scheme Facility, in which case the terms of Clause 8.3 (*Variations comprising a new Proposed Scheme Facility*) of this Agreement shall apply.

Clause 8.3 (Variations comprising a new Proposed Scheme Facility) of this Agreement requires the Lender to comply with all the provisions of this Agreement relating to eligibility and application processing where the Lender amends a Scheme Facility in such a way that it is deemed to be a new Proposed Scheme Facility.

- (D) Paragraph 2(G) of Schedule 2 to this Agreement shall be amended by adding the words “proposed Guaranteed Portion of the” immediately before the words “Proposed Scheme Facility Amount” in the first line.
- (E) If the Lender is a Sale and Leaseback and Hire Purchase Back Authorised Lender, it shall comply at all times with any conditions to such authorisation imposed by the Guarantor.
- (F) Reference to the Scheme Facility Letter in Clause 4.3(A) of this Agreement, shall be construed as a reference to the written proposal communicated by the Lender to the Applicant confirming the availability of the facility (subject only to the availability of the Approved Asset).
- (G) Notwithstanding anything to the contrary in such Clauses, the obligations in Clauses 4.3(A)(1) and (2) of this Agreement, must be fulfilled by the Lender at the time that the Scheme Facility Letter is entered into by the Applicant, rather than the date of offer.
- (H) The obligation for the Lender to provide the Scheme Facility Letter to an Applicant as soon as reasonably practicable after the offer of the Scheme Facility to an Applicant, as set out in Clause 4.3(C)(1) of this Agreement, shall be construed as an obligation to provide the Scheme Facility Letter as soon as reasonably practicable after the Approved Asset becomes available.
- (I) The meaning of “Offer Date” shall be construed to mean the date on which the Lender makes and provides written confirmation of a credit acceptance to the Borrower (including via any Third Party Intermediary), subject only to the availability of the Approved Asset to be financed.

SCHEDULE 9 : PRINCIPAL PRIVATE RESIDENCE DECLARATION

"I, [name of party giving declaration]:

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

Signature

Signed	Signed
Print Name	Print name
Position	Position
Date	Date

SCHEDULE 10 : QUESTION SETS

Part A – Location Question Set

1. **Does your business, its subsidiaries, parent company or operations participate in the wholesale electricity markets in Northern Ireland insofar as it applies to the generation, transmission, distribution and supply of electricity, or does it trade in wholesale electricity or involve cross-border exchanges in electricity?**¹⁹

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

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

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

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

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

3. **Does your business have any active subsidiaries, an active parent company and/or operations in Northern Ireland? Or does your business have plans to operate any subsidiaries, or establish other operations in Northern Ireland within the next three years?**²⁰

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

If the answer to this question is no, the Applicant is outside of the scope of the Northern Ireland Protocol.

¹⁹ Note to applicants: if your business engages in generation, transmission, distribution or supply of electricity, trades in wholesale electricity or is involved in cross-border exchanges in electricity, but does not participate in the wholesale electricity markets in Northern Ireland, you should answer no to this question.

²⁰ Note to applicants: secondary economic effects, such as a general increase in the sale of goods to Northern Ireland does not constitute State aid and are therefore outside the scope of Article 10 of the Northern Ireland Protocol. Therefore, where a subsidy (which would include a facility under the Recovery Loan Scheme) is provided to a business in Great Britain, and a business then simply places goods on the NI market alongside other markets then this will not be in scope of Article 10 of the Northern Ireland Protocol. If this is the case, then you should answer no to question 3. However, subsidies that have the effect of channelling advantages to one or a select group of enterprises in Northern Ireland may be in scope of Article 10 of the Northern Ireland Protocol. If this is the case, then you should answer yes to question 3.

Part B – Additional Questionnaire

Northern Ireland-based businesses

Note to Lenders: If an Applicant has been identified as potentially being in scope of the Northern Ireland Protocol and has subsequently failed to satisfy paragraph 1(G)(2) of Schedule 2 (General Eligibility Criteria) of the Guarantee Agreement (the “EU Undertaking in Difficulty Test” for businesses other than small and micro businesses), you may provide the Applicant with the following additional questions (which can be self-certified by the Applicant) to determine whether the Applicant is outside the scope of the Northern Ireland Protocol.

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

If your business (this is the legal entity proposing to borrow the RLS facility) is established or registered in Northern Ireland:

1. Is your business active in the agriculture or fisheries/aquaculture sectors?

If the business is engaged in the production, processing or marketing in agricultural products or fishery and aquaculture products, the answer is “yes” to this question.

If yes – go to question 4.

If no – go to question 2.

2. Does your business (in whole or in part) engage in the manufacture or sale of goods that are traded between Northern Ireland and the European Union (whether by you or, to your knowledge, by third parties based in Northern Ireland or in the European Union)? Please answer yes if you have plans to start manufacturing or selling such goods in the next three years.

If yes – go to question 4.

If no – go to question 3.

3. Does your business involve the provision of services that are specifically tailored to the needs of a customer(s), which enable them to manufacture or sell goods that are traded between Northern Ireland and the European Union?

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

If yes – your business is within scope of the NI protocol as it supplies services tailored to a NI-based customer (or customers) active in the manufacture or sale of goods.

If no – your business is not within scope of the NI protocol as it is a NI-based company that is not active in the manufacture or sale of goods traded with the EU or the supply of services tailored to a NI-based customer (or customers).

4. Does your business also provide services?

Activities that involve the exchange in ownership of a product will not constitute services.

If yes – go to question 5.

If no – your business is within scope of the NI protocol.

5. Will you use the RLS facility only to support the provision of services (provided such services are not specifically tailored to customers active on the NI market) and not the (actual or planned) manufacture or sale of goods (including agricultural produce and/or the production or processing of fish or aquiculture products) and/or, if your business is active in the wholesale electricity markets, the generation, transmission of electricity, electricity trading or cross-border exchanges in electricity?

If yes – go to question 6.

If no – your business is within scope of the NI protocol.

6. Can you demonstrate that the RLS facility will not cross-subsidise any activities mentioned in question 5 above, e.g. by freeing up capital for use in any of those (actual or planned) activities.

To answer yes to this question, your business must have processes to allow you to identify the specific funding arrangements, working capital/other requirements that relate to both goods and/or services. Recording individual financial results for business units supplying goods or services will support this determination.

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

If yes – your business is not within scope of the NI protocol as it is an NI-based company that is active in the manufacture or sale of goods traded with the EU and in the supply of services, where the purpose of the facility is for services and sufficient segregation from the goods part of business exists.

If no – your business is within scope of the NI protocol as it is a NI-based company that is active in either the agriculture or fisheries sectors, the generation, transmission, distribution or supply of electricity, or the manufacture or sale of goods traded with the EU and in the supply of services, where the purpose of the facility is for services but insufficient segregation from the goods part of the business exists.

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

Signed by

Great Britain-based businesses

Note to Lenders: If an Applicant has been identified as potentially being in scope of the NI Protocol and has subsequently failed to satisfy paragraph 1(G)(2) of Schedule 2 (General Eligibility Criteria) of the Guarantee Agreement (the “EU Undertaking in Difficulty Test” for businesses other than small and micro businesses), you may provide the Applicant with the following additional questions (which can be self-certified by the Applicant) to determine whether the Applicant is outside the scope of the Northern Ireland Protocol.

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

If your business has any active subsidiaries, an active parent company and/or operations in Northern Ireland or has plans to operate any subsidiaries, or establish other operations in Northern Ireland, within the next three years.²¹

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

If yes – go to question 2.

If no – go to question 3.

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

To answer yes to this question:

- *your business units in each location must record individual financial results.*
- *you must have processes within your business which are able to identify the specific funding arrangements for working capital/other requirements that relate to the business, separately between Great Britain and Northern Ireland points of supply.*

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

If yes – your business is not in scope of the NI protocol as your business is a GB-based company with a NI branch or subsidiary with clear segregation between GB and NI businesses where the facility is only for the GB business.

If no – go to question 3.

²¹ Secondary economic effects, such as a general increase in the sale of goods to Northern Ireland does not constitute State aid and are therefore outside the scope of Article 10 of the Northern Ireland Protocol. Therefore, where a subsidy is provided to a GB business, and a business then simply places goods on the NI market alongside other markets then this subsidy will not be in scope of Article 10 of the Northern Ireland Protocol. However, subsidies that have the effect of channelling advantages to one or a select group of enterprises in Northern Ireland may be in scope of Article 10 of the Northern Ireland Protocol.

3. Are your subsidiaries, parent company and/or operations in Northern Ireland active in the agriculture or fisheries sectors?

If the business is engaged in the production, processing or marketing in agricultural products or fishery and aquaculture products, the answer is “yes” to this question.

If yes – go to question 6.

If no – go to question 4.

4. Do your subsidiaries, parent company and/or operations in Northern Ireland manufacture or sell goods that are traded between Northern Ireland and the European Union (whether by you or, to your knowledge, by third parties based in Northern Ireland or in the European Union)? Please answer yes if you have plans to start manufacturing or selling such goods in the next three years.

If yes – go to question 6.

If no – go to question 5.

5. Does your business (including any Great Britain and Northern Ireland entities) provide services that are specifically tailored to the needs of a customer or customers, which enable them to manufacture or sell goods that are traded between Northern Ireland and the European Union?

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

If yes – your business is in scope of the NI protocol as you are a GB-based company that supplies services tailored to a NI-based customer (or customers) active in the manufacture or sale of goods.

If no – your business is not in scope of the NI protocol as it is a GB-based company that is not active in the manufacture or sale of goods traded with the EU or the supply of services tailored to a NI-based customer (or customers).

6. Does your NI business also supply services?

Activities that involve the exchange in ownership of a product will not constitute services.

If yes – go to question 7.

If no – your business is in scope of the NI protocol as it is a GB-based company with NI branch/subsidiary without clear segregation between GB and NI businesses that is either active in the agriculture and fisheries sectors, active in the generation, transmission, distribution or supply of electricity, or active in the manufacture or sale of goods traded with the EU and not active in services.

7. Will you use the RLS facility only to support the provision of services (provided such services are not specifically tailored to customers active on the NI market) and not the (any actual or planned) manufacture or sale of goods (including agricultural produce and/or the production or processing of fish or aquaculture products) and/or, if your business is active in the wholesale electricity markets, the generation,

transmission of electricity, electricity trading or cross-border exchanges in electricity?

If yes – go to question 8.

If no – your business is in scope of the NI protocol as it is a GB-based company with NI branch/subsidiary without clear segregation between GB and NI businesses that either active in the agriculture and fisheries sectors, active in the generation, transmission, distribution or supply of electricity, or is active in the provision of both services and the manufacture or sale of goods traded with the EU, where the facility will be used in part to support the non-services activities.

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

To answer yes to this question, your business must have processes to allow you to identify the specific funding arrangements, working capital/other requirements that relate to both goods and/or services. Recording individual financial results for business units supplying goods or services will support this determination.

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

If yes – your business is not in scope of the NI protocol as it is a GB-based company with NI branch/subsidiary without clear segregation between GB and NI businesses that is active in the provision of both services and either the agriculture and fisheries sector, the generation, transmission, distribution or supply of electricity, or the manufacture or sale of goods traded with the EU, where the facility will be used only for out of scope services.

If no – your business is in scope of the NI protocol as it is a GB-based company with NI branch/subsidiary without clear segregation between GB and NI businesses that is active in the provision of both services and either the agriculture and fisheries sector, the generation, transmission, distribution or supply of electricity, or the manufacture or sale of goods traded with the EU, without sufficient evidence that the facility will be used only for out of scope services.

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

Signed by