

# Contingent Asset Appendix

## General

1. This is an Appendix to the Board's Determination under section 175(5) of the Act in respect of the 2023/24 Levy Year. Unless defined in this Appendix, expressions defined in the Rules shall have the same meanings as set out therein. For the avoidance of doubt, Rule A1.2(10) applies to this Appendix so that in a case of a Segregated Scheme, each segregated section shall be treated as if it were a separate Scheme for the purposes of the Rules, and where a Segregated Part of a Scheme has been created on or before 31 March 2023, each of the Segregated Part(s) and the remainder of the Scheme shall be treated as if they were each a separate Scheme for the purposes of the Rules. References to Schemes shall be construed accordingly.
2. For the purposes of calculating RBL under the Rules: (1) one or more current Contingent Asset(s) shall be taken into account where the provisions of Rule G2 are met; and (2) amended, cancelled and replaced Contingent Asset(s) may be taken into account only as provided for in Rule G3.
3. A contingent asset must either be a Type A Contingent Asset, a Type B Contingent Asset or a Type C Contingent Asset.

## Definitions and Interpretation

4. For the purposes of this Appendix:
  - (1) References to an agreement being in 'Acceptable Form' mean that the agreement is in the relevant Standard Form, subject only to:
    - (a) completion of blanks and other choices and variations explicitly contemplated by the relevant Standard Form; and
    - (b) other variations which are expressly notified to the Board as such by midnight on 31 March 2023 (the '**March Deadline**') and which do not, in the opinion of the Board, have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form.
  - (2) 'Acceptable Financial Institution' means a financial institution that:
    - (a) has been regulated and approved for business by the Financial Conduct Authority or its applicable successor;
    - (b) is domiciled in a Nominated Jurisdiction; and
    - (c) has a current credit rating as follows:

- (i) in respect of any Type B(i), B(iii), C(i) Contingent Asset and in respect of any Type C(ii) Contingent Asset that is issued by a bank, a current long-term issuer rating of:
    - A3 or better by Moody's;
    - A- or better by Standard and Poor's; or
    - A- or better by Fitch; or
  
  - (ii) in respect of any Type C Contingent Asset that is issued by an insurer, a current long-term insurer financial strength rating of:
    - A3 or better by Moody's;
    - A- or better by Standard and Poor's; or
    - A- or better by Fitch.
- (3) The 'April Date' shall be 1 April 2023.
- (4) 'Certified Guarantor' is a Guarantor certified on Exchange by the trustees in respect of a Type A Contingent Asset and to which Rule E5.1 would apply if it were an Employer
- (5) The 'Certifier' means the person who Submits any certificate under this Appendix.
- (6) A 'Chargor' is the entity who enters into a Type B Contingent Asset as described in this Appendix in favour of the trustees of a Scheme.
- (7) An "Employer's Associate" in this Appendix means:
- (a) an 'associate' within the meaning of section 435 of the Insolvency Act 1986 of one or more of the Scheme Employers; or
  - (b) a natural or legal person not falling within (a) above, but which gives a Type A or Type B Contingent Asset or pays for a Type C Contingent Asset by reason of a pre-existing legal or commercial relationship between itself and one or more of the Scheme Employers, where such relationship has not been created for the purpose of enabling that person to give or purchase a Contingent Asset. To fall within this paragraph (b), the Board must be satisfied both that the Contingent Asset was given or purchased because of such an existing relationship between the person and the Scheme Employer(s) concerned, and that having regard to any relevant guidance published pursuant to Rule A1.2(13), the person giving or paying for the Contingent Asset had a genuine and substantial reason for doing so regardless of any payment or other consideration received by it as a result of doing so.

- (8) 'Associated Party' means a party which is an 'associate' of the relevant Guarantor, Chargor, Purchaser or employer, as the case may be, within the meaning of section 435 of the Insolvency Act 1986, except that where the relevant Guarantor, Chargor, Purchaser or employer is an Employer's Associate by virtue of paragraph 4(7)(b), the definition of 'Associated Party' is to be applied as if the relevant Guarantor, Chargor, Purchaser or employer was the Scheme Employer with whom the necessary pre-existing relationship is said to exist (or each such Scheme Employer as the case may be).
- (9) A 'Consolidated Guarantor' is a Certified Guarantor which is the Ultimate Parent of all Guaranteed Employers and whose Latest Accounts as at the Measurement Time are Consolidated Accounts.
- (10) A 'Guaranteed Employer' is an Employer whose liabilities to the Scheme are guaranteed pursuant to a Type A Contingent Asset.
- (11) A 'Guarantor' is the entity who enters into a Type A Contingent Asset as described in this Appendix in favour of the trustees of a Scheme.
- (12) The 'March Date' shall be 31 March 2024.
- (13) (a) A 'Nominated Jurisdiction' means any state which is: (i) a member of the European Economic Area; (ii) a member of the Organisation for Economic Co-operation and Development (OECD); (iii) Hong Kong; or (iv) any other country, territory or jurisdiction that the PPF may at any time designate as a Nominated Jurisdiction,
- but excluding any country, territory or jurisdiction which the PPF may at any time specify is not, or is no longer to be considered, a Nominated Jurisdiction.
- (b) For the purposes of paragraph (13)(a)(ii), the following states shall (in addition to the full members of the OECD) be treated as members of the OECD:
- (a) each of the Channel Islands;
  - (b) the Isle of Man;
  - (c) Gibraltar; and
  - (d) Bermuda.
- (14) A 'Purchaser' is the entity who purchases a Type C Contingent Asset as described in this Appendix in favour of the trustees of a Scheme.

- (15) The 'Realisable Recovery' is the lower of:
- (a) an amount determined by the trustees and which is no greater than the amount which the trustees, having made reasonable enquiry into the financial position of each Certified Guarantor, are reasonably satisfied that each Certified Guarantor, as at the date of the certificate referred to in paragraph 25 of this Appendix, could meet, having taken account of the likely impact of the immediate insolvency of all of the Employers; and
  - (b) where the Maximum Guaranteed Amount referred to in the table at paragraph 5 of this Appendix is or includes a fixed monetary sum, that fixed monetary sum.
- (15A) When determining the amount under paragraph 4(15)(a), where the Certified Guarantor is also an Employer:
- (i) the trustees may disregard the likely impact of an insolvency of the Certified Guarantor unless paragraph 4(15A)(ii) applies.
  - (ii) This paragraph 4(15A)(ii) applies where the trustees consider that the immediate insolvency of all of the Employers (other than the Certified Guarantor) would be more likely than not to result in the insolvency of the Certified Guarantor during the period between 1 April 2023 and 31 March 2024,
  - (iii) Where paragraph 4(15A)(ii) applies, the determination by the trustees of the amount under paragraph 4(15)(a) should take account of any likely expected reduction in the Scheme's recovery from the Certified Guarantor under its obligations as an Employer under s75 of the 1995 Act (the "Employer Claim"), where any such reduction would arise as a result of the Employer Claim ranking *pari passu* with any claim by the trustees under the Type A Contingent Asset in question.
- (16) The 'Re-execution Requirement' applies in the case of any Type A and B Contingent Asset of Sub Type (a), (c) and (e) listed in paragraph 5 of this Appendix (those containing a fixed monetary sum) unless that Contingent Asset has been accepted by the Board as satisfying its requirements in relation to a Levy Year commencing on or after 1 April 2018.
- (17) The 'Relevant Levy Year' shall be the 2023/24 Levy Year.
- (18) The 'Standard Confirmations' are each of the following, except for certification (e) which is applicable only in a case where a Contingent Asset is given (or in the case of a Type C Contingent Asset, purchased) by an entity who is an Employer's Associate by virtue of paragraph 4(7)(b) of this Appendix:

- (a) The Certifier is authorised by or on behalf of the trustees of the Scheme to complete the certificate.
  - (b) The Certifier is aware of the 'Guidance in relation to contingent assets' published by the Board on its website.
  - (c) The information contained within the certificate is complete and accurate, and the trustees of the scheme/section undertake to notify the Board promptly if the terms of the Contingent Asset are amended in any respect, the Contingent Asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2024.
  - (d) The Certifier is aware that it is a criminal offence under section 80 of the Act for any person knowingly or recklessly to provide false or misleading information to TPR in circumstances in which the person providing the information intends or could reasonably be expected to know that it would be used by TPR for the purposes of exercising its functions. The Certifier is also aware that it is a criminal offence under section 195 of the Act for any person knowingly or recklessly to provide false or misleading information to the Board in circumstances in which the person providing the information intends or could reasonably be expected to know, that it would be used by the Board for the purposes of exercising its functions.
  - (e) The Contingent Asset is given/purchased by an entity which is an Employer's Associate, and where that is by virtue of paragraph 4(7)(b) of the Contingent Asset Appendix, evidence will be (or has been) provided to the Board by the March Deadline as to the details of the relationship between the Guarantor, Chargor or Purchaser and the Scheme Employer and the reason for giving or purchasing the Contingent Asset.
- (19) The 'Standard Form', in relation to any agreement creating a Contingent Asset means the Board's standard form of agreement for the relevant asset type as published on its website on or prior to, and still current as at, the date of execution of the agreement, **except** where the Re-execution Requirement applies, in which case any reference to the Standard Form means the Board's standard form of agreement for the relevant asset type as published on its website on or after 18 January 2018, and still current (by reference to the version number specified on the cover page of the standard form) as at the date of execution of the agreement.
- (20) Any reference to a legal opinion upon the basis of which declarations are to be made means a legal opinion whose authorship, form and content are considered by the Board to be satisfactory having regard to its published guidance on Contingent Assets (including an opinion as to foreign law where that is necessary in the circumstances).

5. The table below sub-divides Type A Contingent Assets and Type B Contingent Assets into five sub-types (referred to below as A(a), A(b) etc) based on the form of liability cap within the relevant agreement, and defines 'Cap Value' and 'Maximum Guaranteed Amount' for this Appendix.

<b>Sub Type</b>	<b>Maximum Guaranteed Amount</b>	<b>Cap Value</b>
(a)	A fixed monetary sum (and the maximum amount must be so fixed in the case of a Centralised Scheme as defined in Rule E6.2(4))	that fixed monetary sum
(b)	The lowest non-negative amount which, when added to the assets of the Scheme, would result in the Scheme being funded at a given percentage level (referred to in this Appendix as 'G%') on the date on which any liability under the Contingent Asset arose, calculated on the basis set out in section 179, were a valuation to be conducted as at that date	the amount by which G% of the Scheme's Liabilities or Unstressed Liabilities exceeds the amount of the Scheme's Assets or Unstressed Assets (in each case whichever of Assets or Unstressed Assets and Liabilities or Unstressed Liabilities is used to calculate U for the purposes of the levy calculation of the Scheme in question), determined in accordance with Rule D2.1; or, if such amount is negative, zero
(c)	The lower of: (i) the amount for (b), and (ii) a fixed monetary sum	the lower of: (i) the amount for (b), and (ii) the fixed monetary sum
(d)	The entire aggregate liability, on the date on which any liability under the Contingent Asset arose, of every employer (within the meaning set out in section 318 of the Act) in relation to the Scheme, were debts under section 75(2) of the 1995 Act to have become due from each such employer on that date	the amount by which the Scheme's Liabilities or Unstressed Liabilities exceeds the Scheme's Assets or Unstressed Assets (in each case whichever of Assets or Unstressed Assets and Liabilities or Unstressed Liabilities is used to calculate U for the purposes of the levy calculation of the Scheme in question), determined in accordance with Rule D2.1; or,

		if such amount is negative, zero
(e)	The lower of: (i) the amount for (d), and (ii) a fixed monetary sum	the lower of: (i) the amount for (d), and (ii) the fixed monetary sum

#### What is a Type A Contingent Asset

6. Subject to paragraphs 23 and 24 of this Appendix, a Type A Contingent Asset is a guarantee in Acceptable Form and governed by the laws of England and Wales which, without prejudice to any additional requirements stipulated in this Appendix, fulfils the following conditions:
- (1) the guarantor is an Employer's Associate; and
  - (2) the guarantor is domiciled in a Nominated Jurisdiction.
7. The value to be ascribed to a Type A Contingent Asset is the lower of:
- (1) Cap Value; and
  - (2) the Realisable Recovery.

#### What is a Type B Contingent Asset

8. A Type B Contingent Asset is an asset listed in paragraph 9 of this Appendix, in Acceptable Form and governed by the laws of England and Wales, and in relation to which the conditions in paragraph 10 of this Appendix are met. In the case of real estate situated in Scotland or Northern Ireland, the Contingent Asset must also be governed by the laws of Scotland or Northern Ireland as the case may be, and in relation to which the conditions in paragraph 10 of this Appendix are met. This paragraph 8 is subject to paragraphs 23 and 24 of this Appendix.
9. Assets permitted for this paragraph 9 are:
- (1) Cash in sterling deposited in a bank account held with an Acceptable Financial Institution and subject to a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme;
  - (2) Real estate situated in England, Wales, Scotland or Northern Ireland and subject to a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme; or

- (3) Securities held by a custodian which is an Acceptable Financial Institution and where the owner's interest under the relevant custodian agreement and the securities themselves are subject to a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme. The securities must be ones in which the Scheme is permitted to invest by its governing documentation (but disregarding any restrictions in relation to employer-related investments).

10. The conditions in this paragraph are as follows:

- (1) The mortgagor or chargor is an Employer's Associate; and
- (2) Without prejudice to any additional requirements stipulated in the appropriate Contingent Asset Certificate or the accompanying notes, the asset is irrevocably available to the trustees of the Scheme upon the insolvency of the Employer(s).

11. The value to be ascribed to a Type B Contingent Asset is the lower of:

- (1) the Cap Value; and
- (2) the amount of the cash deposited, the valuation of the real estate, or the valuation of the securities, in each case as shown in the Contingent Asset Certificate and transformed in line with section 6 of the Transformation Appendix and meeting the requirements in relation to valuation specified in the notes or help files in Exchange to the relevant certificate and this Appendix.

What is a Type C Contingent Asset

12. A Type C Contingent Asset is a letter of credit or demand guarantee in favour of the trustees of the Scheme in Acceptable Form and governed by the laws of England and Wales, in relation to which the Purchaser identified in the Contingent Asset Certificate is an Employer's Associate and which meets the test in paragraph 13 of this Appendix, subject to paragraphs 23 and 24 of this Appendix.

13. Without prejudice to any additional requirements stipulated in the appropriate Contingent Asset Certificate, or the accompanying notes or help files in Exchange, the Type C Contingent Asset must be issued by an Acceptable Financial Institution.

14. The maturity date of a Type C Contingent Asset shall be:

- (1) in the case of a Type C Contingent Asset in the Standard Form labelled 'Type C(i)', not earlier than the March Date; and



- (2) in the case of a Type C Contingent Asset in the Standard Form labelled 'Type C(ii)', not earlier than five days after the last 'Planned Contribution' (as defined in the Standard Form of Type C(ii) Contingent Asset) is due.
- 15. In the case of a Type C(i) Contingent Asset, the letter of credit or bank guarantee must be for a fixed monetary amount, and the value of such an asset for the purposes of this Appendix shall be that amount.
- 16. In the case of a Type C(ii) Contingent Asset, the letter of credit or demand guarantee must be for a fixed monetary amount which reduces upon the making of Planned Contributions (as defined in the Standard Form of Type C(ii) Contingent Asset). The value of such an asset for the purposes of this Appendix shall be the amount of the letter of credit or demand guarantee as at the April Date.

How is RBL calculated taking into account Contingent Assets

- 17. In paragraphs 17 to 22 of this Appendix:
  - (1) The underfunding ('U') of a Scheme shall be as calculated under the Rules in respect of the Scheme in question;
  - (2) L is the Liabilities or Unstressed Liabilities (whichever is used to calculate U for the Scheme) as calculated under the Rules;
  - (3) Insolvency risk ('IR') shall have the meaning given to it by, and be calculated in accordance with, the Rules;
  - (4) Subject to paragraph 17(6), the Levy Rate ('LR') of the Certified Guarantor of a Type A Contingent Asset shall be calculated in accordance with Part E of the Rules and the Insolvency Risk Appendix as if the Certified Guarantor were an Employer (for the avoidance of doubt, including provisions as to data collection, as modified by provisions specifically referring to Certified Guarantors), PROVIDED THAT, except where paragraph 17(4)(c) or (d) apply, the Certified Guarantor's LR as so calculated shall be adjusted as follows:
    - (a) An Increase In Gearing is calculated for the Certified Guarantor in accordance with paragraph 17(4)(b). An Increase In Gearing of the following amounts will cause the Certified Guarantor's LR to be the LR associated with a Levy Band which is a higher number by the number of bands set out in the following table, subject to the result being no higher than band 10:

<b>Increase In Gearing</b>	<b>Increase in Levy Band</b>
0.1 to <0.5	1

Increase In Gearing	Increase in Levy Band
0.5 to <1	2
1 or more	3

For the avoidance of doubt, an Increase In Gearing of less than 0.1 shall mean that the LR of the Certified Guarantor will not be adjusted.

(b) For these purposes Increase In Gearing is calculated as follows:

$$\sum_{i=1}^n \left[ \min (H_i, U_i) \times \left( 1 - \frac{GAM_i}{M_i} \right) \right]$$

TA

Where:

TA = Total Assets (calculated in accordance with the Rules and the Insolvency Risk Appendix and taken from the Latest Accounts of the Certified Guarantor).

H is calculated pursuant to paragraph 20 of this Appendix;

GAM = zero where the Certified Guarantor is not also an Employer; and the number of Allocated Members allocated to the Certified Guarantor, where that Certified Guarantor is also an Employer;

M = the total number of Scheme Members;

n = the total number of schemes for which the Certified Guarantor has provided a Type A Contingent Asset; and

$H_i$ ,  $U_i$ ,  $GAM_i$  and  $M_i$  represent H, U, GAM and M respectively in respect of the *ith* Scheme for which the Certified Guarantor has provided a Type A Contingent Asset, subject to the proviso that  $GAM_i$  shall be zero if such members are recognised in the levy formula for the corresponding Scheme under the provisions of paragraph 21A of this Appendix.

(c) This paragraph 17(4)(c) applies where the Certified Guarantor is a Consolidated Guarantor.

- (d) This paragraph 17(4)(d) applies where the Certified Guarantor is a Special Category Employer or is CRA Rated in accordance with the Rules.
- (5) In the case of a single-Employer Scheme with a Type A Contingent Asset,  $IR_g$  shall be the LR of the Certified Guarantor calculated (and, if applicable, adjusted) in accordance with paragraph 17(4).
- (6) In the case of a Multi-Employer Scheme with a Type A Contingent Asset,  $IR_g$  shall be calculated as follows:
- (a) The LR of each Guaranteed Employer shall be compared with the LR of the Certified Guarantor, calculated (and, if applicable, adjusted) in accordance with paragraph 17(4);
  - (b) Where the LR of any Guaranteed Employer is higher than the LR of the Certified Guarantor, as a result of the comparison described in paragraph 17(6)(a), the LR of that Guaranteed Employer shall be substituted with the LR of the Certified Guarantor;
  - (c)  $IR_g$  shall then be calculated in accordance with Rule E6 (subject to paragraph 17(6)(d) and (e)) taking into account any substitutions as specified in paragraph 17(6)(b);
  - (d) For the purposes of this paragraph 17, in the case of a Centralised Scheme, the LR of each Guaranteed Employer shall be multiplied by the concentration index 'Hf' described in Rule E6.3(1) before the comparison described in paragraph 17(6)(a), and in the case of a Last Man Standing Scheme the LR of each Guaranteed Employer shall be multiplied by the factor of  $0.9 + (0.1 \times Hf)$  described in Rule E6.3(3) before the comparison described in paragraph 17(6)(a) ; and
  - (e) For the purposes of this paragraph 17, in the case of a Centralised Scheme the LR of the Certified Guarantor shall not be multiplied by the concentration index Hf described in Rule E6.3(1), and in the case of a Last Man Standing Scheme the LR of the Certified Guarantor shall not be multiplied by the factor of  $0.9 + (0.1 \times Hf)$  described in Rule E6.3(3).
- (7) In any case where under the same Type A Contingent Asset agreement there are two or more Certified Guarantors who have entered into separate certifications of Realisable Recoveries, then  $IR_g$  in relation to that guarantee shall be calculated separately for each such certification, up to the level of the certified Realisable Recovery, by reference to the LR of the corresponding individual Certified Guarantor (calculated and, if applicable, adjusted, in accordance with paragraph 17(4)), PROVIDED THAT  $IR_g$  in relation to that guarantee shall be calculated as if the Certified Guarantor with the lowest LR (calculated

and, if applicable, adjusted, in accordance with paragraph 17(4)) was taken account of first and the second lowest LR, second, and so on;

- (8) In any case where, in relation to a Type A Contingent Asset,  $IR_g$  or, as the case may be,  $IR_g^E$  is higher than IR for the relevant Scheme, then that Type A Contingent Asset (or component certification thereunder calculated in accordance with paragraph 17(7)) shall be ignored for the purposes of calculating RBL; and
  - (9) The total amount of RBL calculated in each case shall be subject to Rules C2.3 (Small Scheme Adjustment) and C3.1 (RBL cap).
18. Where, in relation to a Scheme, one or more Contingent Asset(s) of Type B and/or Type C, but no Contingent Assets of Type A, fall to be taken into account in accordance with this Appendix, the RBL for that Scheme shall be:

$$U \times IR \times LSF$$

19. Paragraphs 20 and 21 of this Appendix shall apply where, in relation to a Scheme, there falls to be taken into account one or more Type A Contingent Assets.
20. For the purposes of paragraph 21 of this Appendix '£H' shall be calculated as follows PROVIDED THAT it shall not be higher than the Realisable Recovery and also PROVIDED THAT for cases falling within the remit of paragraph 17(7) of this Appendix, £H shall be calculated separately for each individual Certified Guarantor as the Realisable Recovery certified by that Certified Guarantor:

- (1) in relation to a Type A(a) contingent asset, £H shall be the fixed monetary sum which is the Cap Value;
- (2) in relation to a Type A(b) contingent asset, £H shall be calculated as:

$$U - \frac{\max(105-G,0)}{100} \times L$$

- (3) in relation to a Type A(c) contingent asset, £H shall be the lower of the amounts calculated under paragraph 20(1) and (2);
  - (4) in relation to a Type A(d) contingent asset, £H shall be equal to U; and
  - (5) in relation to a Type A(e) contingent asset, £H shall be the lower of the amounts calculated under paragraph 20(1) and (4).
21. Subject to the exceptions at paragraph 21A of this Appendix, following a calculation made under paragraph 20 of this Appendix the RBL for that Scheme shall be:

$$(\sum_1^r (H^n \times IR_g^n) + (U - \sum_1^r H^n) \times IR) \times LSF$$

In the above calculation, 'Σ' means that, where one or more Type A Contingent Assets fall to be taken into account, separate calculations for each such contingent asset shall be made and added together.

The formula ' $\sum_1^r (H^n \times IR_g^n)$ ' takes account of that part of U covered by one or more Type A Contingent Assets.

The formula ' $(U - \sum_1^r H^n) \times IR$ ' takes account of that part of U which is not covered by any Type A Contingent Asset. If such part of U is zero, i.e.,

$$\sum_1^r H^n > U$$

then the formula  $\sum_1^r (H^n \times IR_g^n)$  shall be applied by:

- (1) ordering the Certified Guarantors in decreasing order of strength, i.e. in ascending order by  $IR_g^n$ ; and
- (2) disregarding all Certified Guarantors beyond the rth, being the first Certified Guarantor in the sequence for which  $\sum_1^r H^n$  equals or exceeds U.

In these circumstances, the RBL formula above will be replaced in its entirety by:

$$(\sum_1^{(r-1)} (H^n \times IR_g^n) + (U - \sum_1^{(r-1)} H^n) \times IR_g^r) \times LSF$$

- 21A. Subject to paragraph 21A(c) and (d), this Rule amends the above formulae for cases where at least one Certified Guarantor is also an Employer of the Scheme. In these circumstances the RBL formulae at paragraph 21 of this Appendix will be replaced in their entirety by the formulae set out at paragraph 21A(a) and (b).

In the following formulae, in relation to any Certified Guarantor which is also an Employer of the Scheme:

'GAM' and 'M' have the representations assigned to them under paragraph 17(4)(b) of this Appendix, and

$IR_g^E$  represents the insolvency risk of the Certified Guarantor in its capacity as an Employer of the Scheme, i.e., its LR multiplied, in the case of a Centralised Scheme, by the concentration index 'Hf' described in Rule E6.3(1), and in the case of a Last Man Standing Scheme, by the factor of  $0.9 + (0.1 \times Hf)$  described in Rule E6.3(3). For the avoidance of doubt,  $IR_g^E$  shall not incorporate any adjustment under paragraph 17(4) of this Appendix.

- (a) Where a part of U remains uncovered after considering all Type A guarantors, the RBL for the Scheme shall be:

$$\sum_1^t [(U \times (\text{GAMn}/M) \times \text{IR}_g^{\text{nE}}) + (\text{H}^n \times \text{IR}_g^n)] \times \text{LSF}$$

$$+ \{U - \sum_1^t [U \times (\text{GAMn}/M) + \text{H}^n]\} \times \text{IR} \times \text{LSF}$$

For the avoidance of doubt:

- the terms GAMn and  $\text{IR}_g^{\text{nE}}$  in the above formula shall be zero if the nth Certified Guarantor in the summation is not also an Employer of the Scheme; and
- the term  $U \times (\text{GAMn}/M)$  in the above formula shall be recognised only once (as an addition in the first summation and as a deduction in the second summation) in respect of each Certified Guarantor which is also an Employer of the Scheme, irrespective of whether that Certified Guarantor has provided more than one Type A Contingent Asset to the Scheme.

This sub-paragraph 21A(a) applies where:

$$\sum_1^t [U \times (\text{GAMn}/M) + \text{H}^n] \text{ is less than } U,$$

so that an element of U, namely:

$$\{U - \sum_1^t [U \times (\text{GAMn}/M) + \text{H}^n]\} \text{ in the formula above is not covered by any Type A Contingent Asset.}$$

If there is no element of U not covered by any Type A Contingent Asset, i.e. if:

$$\sum_1^t [U \times (\text{GAMn}/M) + \text{H}^n] \text{ is greater than } U,$$

then the formula in this sub-paragraph 21A(a) shall be modified in accordance with sub-paragraph 21(A)(b).

- (b) Where U is used up before all of the guarantors have been considered, then the RBL formula in paragraph 21A(a) shall be replaced in its entirety by:

$$\sum_1^t [(U \times (\text{GAMn}/M) \times \text{IR}_g^{\text{nE}}) + (\text{H}^n \times \text{IR}_g^n)] \times \text{LSF}$$

This formula shall be applied by:

- (1) ordering the Certified Guarantors in ascending order by  $\text{IR}_g^n$ ;
- (2) disregarding all Certified Guarantors beyond the rth, being the first Certified Guarantor in the sequence for which  $\sum_1^r [U \times (\text{GAMn}/M) + \text{H}^n]$  equals or exceeds U; and

- (3) if the  $r$ th Certified Guarantor is also an Employer of the Scheme, in respect of which the term  $U \times (GAMr/M)$  falls to be recognised (i.e., having not previously been recognised in the summation), applying this element first before determining if a residual element of  $U$  remains, requiring the application of all or part of  $H^r$ .
- (c) Where the Board is of the opinion that the application of the term  $U \times (GAMn/M)$  in paragraph 21A(a) or 21A(b) for any Certified Guarantor which is also an Employer of the Scheme would mean that Rule G2.3(2)(b) of the Rules would not be satisfied, the term  $U \times (GAMn/M)$  shall be disapplied in respect of that Certified Guarantor. In particular, and for the avoidance of doubt, if the term  $H_n$  in paragraph 21A(a) or (b) is zero for any Certified Guarantor which is also an Employer of the Scheme (or, where the Certified Guarantor has provided more than one Type A Contingent Asset to the Scheme, each such term  $H_n$  is zero), the term  $U \times (GAMn/M)$  shall be disapplied in respect of that Certified Guarantor.
- (d) Where the application of paragraph 17(8) of this Appendix in respect of any Type A Contingent Asset (or component certification thereunder calculated in accordance with paragraph 17(7) of this Appendix) for a Scheme subject to this paragraph 21(A) would result in a higher RBL than would be the case if paragraph 17(8) did not apply, paragraph 17(8) shall be disapplied and the relevant Type A Contingent Asset (or component certification thereunder) shall be recognised in the calculation of the Scheme's RBL.
- (e) Where a Scheme subject to paragraph 21(A)(b) has more than one Type A Contingent Asset with the same value of  $IR_g^n$ , the Board shall order the Certified Guarantors under paragraph 21(A)(b)(1) in a manner which minimises the RBL.

21B. Where there are multiple guarantors under a Type A guarantee who have entered into separate certifications of Realisable Recoveries in accordance with paragraph 17(7) of this Appendix, component 'H' in the formulae under paragraphs 21, 21A(a) and 21A(b) of this Appendix will be restricted so that the amount credited for each such Certified Guarantor in the sequence is subject to a maximum, calculated for the  $i$ th such Certified Guarantor as:

$$\max(0, (LC - \sum_1^{(i-1)} H^n))$$

For the avoidance of doubt, the above formula is taken to be LC for the first such Certified Guarantor in the sequence.

In the above formula 'LC' means the liability cap specified within the relevant Type A Contingent Asset agreement.

22. The Board, in relation to a Scheme, shall calculate the RBL in a manner which in the view of the Board:

- (1) best gives effect to the approach set out in paragraphs 17 to 21B (inclusive) of this Appendix; and
- (2) results in the Contingent Assets being consistently treated for these purposes.

When shall a Contingent Asset be disregarded?

23. Without prejudice to Rule G3, paragraph 24 of this Appendix applies where paragraph 23(1) and (2) is satisfied:

- (1) in connection with the certification requirements specified below, and prior to the notification of the amount of the Levies to the relevant Scheme, the Board becomes aware of any matter relating to any Contingent Asset, including without limitation:
  - (a) that any attempt has been made to enforce or call upon the Contingent Asset;
  - (b) that the Contingent Asset itself or any other documentation that was supplied in connection with any application for recognition of that Contingent Asset has been amended or terminated since it was supplied to the Board;
  - (c) other variations which are expressly notified to the Board as such by the March Deadline and which, in the opinion of the Board, have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form; or
  - (d) that the position in respect of the Contingent Asset no longer remains as certified.
- (2) it appears to the Board that:
  - (a) the assets of the relevant Scheme and/or the value of the Contingent Asset itself would be overstated; or
  - (b) it would not be consistent with the approach set out in the Determination and this Appendix for the Contingent Asset to continue to be recognised.

24. Where this paragraph 24 applies, the Board may disregard the Contingent Asset in whole or in part for the purposes of the Levies.

What are the certification and documentary requirements for a Type A Contingent Asset (guarantee from a parent company or other associated undertaking)?

25. The certificate must contain the following information:



- (1) In respect of each guarantor which is a party to the guarantee and which the Certifier is choosing to certify for levy purposes:
  - (a) Full name;
  - (b) Type of organisation (legal form);
  - (c) Company registration number (if applicable);
  - (d) Charities number (if applicable);
  - (e) Country of domicile, which must be a Nominated Jurisdiction; and
  - (f) Full address.
- (2) In respect of the guarantee:
  - (a) Date on which the guarantee came or will come into effect, which must be no later than the April Date;
  - (b) A statement as to whether the form of liability cap which the Certifier is certifying includes a limitation based on a percentage funding level on the Section 179 Valuation basis and, if so, the percentage level of that limitation. Where the Contingent Asset adopts a cap of the form 'the higher of [Cap1] and [Cap2]', where Cap1 is one of the five caps set out in the table in paragraph 5 of this Appendix and Cap2 is an alternative measure, the statement in the certificate must be assessed by reference to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount;
  - (c) A statement as to the amount of the Realisable Recovery; and
  - (d) Where the same guarantee has been recognised by the Board for the purposes of the previous Levy Year, a statement as to whether any amendments have been made to the guarantee since it was previously Submitted to the Board and if so what those amendments are.

26. The Certifier must confirm the Standard Confirmations and the following matters:

- (1) The Guarantor(s) has/have entered into a guarantee in favour of the Scheme as detailed above.
- (2) The Certifier confirms that the trustees, having made reasonable enquiry into the financial position of each Certified Guarantor, are reasonably satisfied that:

- (a) in the case of a single Certified Guarantor, as at the date of the certificate, that Guarantor could meet in full the Realisable Recovery certified, having taken account of the likely impact of the immediate insolvency of all the Employers (other than the Certified Guarantor where that Certified Guarantor is also an Employer); or
  - (b) in the case of multiple Certified Guarantors who are jointly and severally liable under the relevant Type A Contingent Asset agreement that the Certified Guarantor as at the date of the certificate, could meet in full the Realisable Recovery certified, having taken account of the likely impact of the immediate insolvency of all of the relevant Employers (other than the Certified Guarantor where that Certified Guarantor is also an Employer).
- (3) The guarantee:
- (a) is a legally binding, valid and enforceable obligation of the Guarantor(s) and where there is more than one Guarantor, each Guarantor is jointly and severally liable for the obligations under the guarantee;
  - (b) is in the Standard Form, subject only to variations which have been or will be notified to the Board by the March Deadline and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
  - (c) can be drawn against the Scheme liabilities of any of the employers listed in Schedule 1 to the guarantee, which schedule lists every undertaking which is both an Associated Party of any Guarantor and an 'employer' in relation to the relevant Scheme within the meaning set out in section 318 of the Act and regulations made thereunder; and
  - (d) on its terms, will be unconditionally available to the Scheme for so long as any actual or contingent liability of any such employers to the Scheme subsists.
- (4) The declarations made in paragraph 26(3) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.
- (5) The Certifier has notified the Board of any claim that has been made under the guarantee.
- (6) The Certifier confirms whether or not the trustees have obtained a report for the purposes of the application of Rule G2.3(4), and, if such report has been prepared, it in a manner consistent with guidance issued by the Board.

27. The following documents must be Submitted to the Board in accordance with Rule G2.1:

- (1) Subject to paragraph 27(2), if the guarantee has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e., generally where the

guarantee is new, and including where the Re-execution Requirement applies (whether it is new or an amendment and restatement)):

- (a) A certified copy of the guarantee;
  - (b) A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Guaranteed Obligations (or, as the case may be, one of the options set out in respect of the limit on the amount recoverable) and the insertion of relevant details of the parties;
  - (c) A copy of the legal opinion referred to in paragraph 26(4) of this Appendix;
  - (d) Unless covered in the legal opinion referred to in paragraph 26(4) of this Appendix, a document providing satisfactory evidence that the benefit to the Guarantor of entering into the guarantee has been considered and established;
  - (e) Unless covered in the legal opinion referred to in paragraph 26(4) of this Appendix, in a case where the Guarantor is an Employer's Associate by virtue of paragraph 4(7)(b) of this Appendix, a document providing satisfactory details as to the relationship between the Guarantor and the Scheme Employer and the reason for giving / purchasing the Contingent Asset;
  - (f) A copy of the Contingent Asset Certificate; and
  - (g) A copy of any guarantor strength report prepared for the purposes of the certification in paragraph 26(6) of this Appendix.
- (2) With the exception of any case where the Re-execution Requirement applies (in which case paragraph 27(1) will apply), if the guarantee has been accepted by the Board as satisfying its requirements in relation to the immediately preceding Levy Year or, where the conditions in Rule G2.6 are satisfied, a previous Levy Year (i.e. the scheme is re-certifying for the Relevant Levy Year):
- (a) If the guarantee has been amended since the version last sent to the Board, a certified copy of the amended guarantee or amending document;
  - (b) If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraph 26(3) and (4) of this Appendix, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the Contingent Asset guidance for more details;

- (c) If any documents are supplied to the Board in respect of the re-certification for the Relevant Levy Year (for example an amending document or updated legal opinion), a copy of the Contingent Asset Certificate; and
- (d) A copy of any guarantor strength report prepared for the purposes of the certification in paragraph 26(6) of this Appendix.

What are the certification and documentary requirements for a Type B(i) Contingent Asset (security over cash in a bank account)?

28. The certificate must contain the following information:

- (1) In respect of the Chargor which has executed the security agreement and whose interest in the bank account has been charged:
  - (a) Full name;
  - (b) Type of organisation (legal form);
  - (c) Company registration number (if applicable);
  - (d) Charities number (if applicable); and
  - (e) Full address.
- (2) In respect of the bank at which the charged account is held:
  - (a) Full name of account bank;
  - (b) The long-term issuer rating for the account bank published by Moody's, Standard and Poor's and/or Fitch;
  - (c) Country of domicile, which must be a Nominated Jurisdiction;
  - (d) Regulatory body (e.g. the UK Financial Conduct Authority or its applicable successor); and
  - (e) Full address.
- (3) In respect of the security agreement:
  - (a) Date on which the charge came or will come into effect, which must be no later than the April Date;

- (b) Balance on the charged account as at a date not more than 7 days prior to the date of submission of the Contingent Asset Certificate as evidenced by a bank statement. The account must be denominated in pounds sterling;
- (c) A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on the Section 179 Valuation basis which is guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of 'Secured Liabilities' (or, as the case may be, in respect of the limit on the amount recoverable) set out in the relevant Standard Form. Where the Contingent Asset adopts a cap of the form 'the higher of [Cap1] and [Cap2]', where Cap1 is one of the five caps set out above and Cap2 is an alternative measure, the statement in the certificate must refer to Cap1 only. In the case of a Centralised Scheme the liability cap must be a fixed sterling amount; and
- (d) Where the same charge has been recognised by the Board for the purposes of the previous Levy Year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are.

29. The Certifier must confirm the Standard Confirmations and the following matters:

- (1) The Chargor has entered into a security agreement in respect of a bank account in favour of the scheme/section as detailed above.
- (2) The security agreement:
  - (a) is a legally binding, valid and enforceable obligation of the Chargor;
  - (b) has been properly registered as required by the Companies Acts 1985 and/or 2006 or any other applicable legislation<sup>1</sup>;
  - (c) is in the Standard Form subject only to variations which have been or will be notified to the Board by the March Deadline and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
  - (d) creates a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme over all amounts standing to the credit of the bank account referred to above, and such amounts are not subject to any prior or pari passu security interest; and

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<sup>1</sup> Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the PPF.

- (e) secures the liability to the Scheme of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both an Associated Party of the Chargor and an 'employer' in relation to that scheme/section within the meaning set out in section 318 of the 1995 Act and regulations made thereunder.
- (3) The declarations made in paragraph 29(2) are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.
- (4) The credit balance on the charged account as at the date specified under 'Cash balance' was as stated there, no withdrawals have been made since that date and a copy of the bank statement verifying such balance has been or will be sent to the Board by the March Deadline.
- (5) The Certifier has notified the Board of any attempt that has been made to enforce the security created by the security agreement.

30. The following documents must be supplied to the Board in accordance with Rule G2.1:

- (1) Subject to paragraph 30(2), if the security agreement has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e. generally where the security agreement is new), including where the Re-execution Requirements apply (whether it is new or an amendment and restatement):
  - (a) A certified copy of the security agreement;
  - (b) A blacklined document showing the changes from the Standard Form, or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Secured Liabilities (or, as the case may be, one of the options set out in respect of the limit on the amount recoverable) and the insertion of relevant details of the parties;
  - (c) A copy of the legal opinion referred to in paragraph 29(3) of this Appendix;
  - (d) A copy of the bank statement referred to in paragraph 29(4) of this Appendix;
  - (e) Unless covered in the legal opinion referred to in paragraph 29(3) of this Appendix, a document providing satisfactory evidence that the benefit to the Chargor of entering into the security agreement has been considered and established;
  - (f) Unless covered in the legal opinion referred to in paragraph 29(3) of this Appendix, in a case where the Chargor is an Employer's Associate by virtue of paragraph 4(7)(b)

of this Appendix, a document providing satisfactory details as to the relationship between the Chargor and the Scheme Employer and the reason for giving / purchasing the Contingent Asset; and

- (g) A copy of the Contingent Asset Certificate.
- (2) With the exception of any case where the Re-execution Requirement applies (in which case paragraph 30(1) will apply), if the security agreement has been accepted by the Board as satisfying its requirements in relation to the previous Levy Year or, where the conditions in Rule G2.6 are satisfied, a previous Levy Year (i.e., the scheme is re-certifying for the Relevant Levy Year):
- (a) A copy of the bank statement referred to in paragraph 29(4) of this Appendix;
  - (b) If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document;
  - (c) If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraph 29(2) and (3) of this Appendix, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the Contingent Asset guidance for more details; and
  - (d) If any documents are supplied to the Board in respect of the re-certification for the Relevant Levy Year (for example an amending document or updated legal opinion), a copy of the Contingent Asset Certificate.

What are the certification and documentary requirements for a Type B(ii) Contingent Asset?

31. In paragraphs 31 to 34 of this Appendix:

- (1) A 'Local Charge' means:
  - (a) for real estate located in England and Wales or Northern Ireland, a first priority legal mortgage or fixed charge; and
  - (b) for real estate located in Scotland, a first ranking standard security.
- (2) The 'Local Registration Requirement' means:
  - (a) for real estate located in England and Wales, has been properly registered as required by the Land Registration Acts 1925-1986, the Land Registration Act 2002,

the Companies Acts 1985 and/or 2006 (each as amended from time to time) and/or any other applicable legislation;

- (b) for real estate located in Northern Ireland, has been properly registered as required by the Land Registration Act (Northern Ireland) 1970, the Companies (Northern Ireland) Order 1986 (each as amended from time to time) and/or any other applicable legislation; and
- (c) for real estate located in Scotland, has been properly registered as required by the Land Register of Scotland or recorded in the General Register of Sasines (as appropriate) and the charge created thereby has been registered under the Companies Acts 1985 and/or 2006 (as amended from time to time) and/or any other applicable legislation.

- (3) The 'Relevant Agreement' means a security agreement in respect of real estate located in England, Wales or Northern Ireland and a standard security in respect of real estate located in Scotland.

32. The certificate must contain the following information:

- (1) In respect of the Chargor which has executed the Relevant Agreement and whose interest in the property has been charged:
  - (a) Full name;
  - (b) Type of organisation (legal form);
  - (c) Company registration number (if applicable);
  - (d) Charities number (if applicable); and
  - (e) Full address.
- (2) In respect of the security:
  - (a) The date on which the Relevant Agreement came or will come into effect, which must be no later than the April Date;
  - (b) A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a Section 179 Valuation basis which is guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of 'Secured Liabilities' set out in the relevant Standard Form (or, as the case may be, one of the options set out in respect of the limit on the amount recoverable). Where the Contingent Asset adopts a cap of the form 'the higher of [Cap1] and [Cap2]', where Cap1 is one of the five caps set out above and Cap2 is an



alternative measure, the statement in the certificate must refer to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount; and

- (c) Where the same charge has been recognised by the Board for the purposes of the previous Levy Year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are.
- (3) In respect of the real estate which is the subject of the security:
- (a) A statement as to whether any of the property is occupied by the chargor, any of the employers listed in Schedule 1 to the Relevant Agreement or by any Associated Party of any of them;
  - (b) The market value of the property as stated in a professional valuation, and the valuation date (i.e., the date on which the opinion of value applies), and in this regard 'market value' means the estimated amount for which the property should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion;
  - (c) Only the property which is the subject of the charge is to be included in the valuation;
  - (d) Where the security has not previously been recognised by the Board for the purposes of the Levies, the valuation date must not be more than three months prior to the date of the certificate. Otherwise the valuation date must not be more than fifteen months prior to the date of the certificate;
  - (e) If the property, or any part of it, is occupied by the Chargor or any of the employers covered by the Relevant Agreement or an Associated Party of any of them, then the market value of the property or the relevant part must be assessed on the following basis:
    - (i) for any type of property designed for a specific type of business where the property value reflects the trading potential of that business, such as a hotel or conference centre, the valuation shall be an assessment of the market value of the property (as defined above), having regard to the property's trading potential, but subject to the special assumptions that the property is vacant, trade has ceased, no trading records are available to prospective purchasers or tenants and the trade inventory has been removed as at the valuation date; and
    - (ii) For any other type of property, the valuation shall be an assessment of the market value of the property (as defined above), but subject to the special assumption that the buyer is granted vacant possession on completion.

- (f) What constitutes a valuation for these purposes, and other matters relating to valuation bases, shall be determined in accordance with the Contingent Asset guidance published by the Board; and
- (g) The date of a certificate of title obtained by the Scheme trustees, which shall not be earlier than seven days prior to the effective date of the Relevant Agreement.

33. The Certifier must confirm the Standard Confirmations and the following matters:

- (1) The Chargor has entered into a Relevant Agreement in respect of real estate in favour of the scheme/section as detailed above;
- (2) The real estate in question is in England and Wales, Northern Ireland or Scotland, specifying which of those countries it is in;
- (3) The Relevant Agreement:
  - (a) is a legally binding, valid and enforceable obligation of the Chargor;
  - (b) meets the relevant Local Registration Requirement<sup>2</sup>;
  - (c) is in the Standard Form subject only to variations which have been or will be notified to the Board by the March Deadline and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
  - (d) creates a Local Charge in favour of the trustees of the Scheme over the real estate referred to above, and such property is not subject to any prior or *pari passu* security interest;
  - (e) secures the liability to the Scheme of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the Relevant Agreement) in respect of any of the employers listed in Schedule 1 to the Relevant Agreement; and
  - (f) Schedule 1 to the Relevant Agreement lists every undertaking which is both an Associated Party of the Chargor and an 'employer' in relation to that Scheme within the meaning set out in section 318 of the Act and regulations made thereunder.
- (4) The declarations made in paragraph 33(3) are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion;

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<sup>2</sup> Note that this means the security must actually have been recorded in the relevant registers at the point the certificate is given to the Board.

- (5) The trustees have obtained a valuation of the property that is the subject of the Relevant Agreement, as at the date specified above. Where this security has not previously been recognised by the Board for the purposes of the Levies, the valuation date is not more than three months prior to the date of the certificate. Otherwise the valuation date is not more than fifteen months prior to the date of the certificate. The valuation has been prepared by a chartered surveyor who is a member of RICS and has appropriate indemnity cover in place. The valuation has been prepared on a market value basis, except to the extent any of the property is occupied by the Chargor or any of the employers listed in Schedule 1 to the Relevant Agreement (or by any Associated Party of any of them), in which event the property or part of the property so occupied has been valued on the basis set out in paragraph 32(3)(e) of this Appendix. The valuation includes allowance for any encumbrances recorded in the certificate of title referred to in paragraph 33(6);
- (6) The Scheme trustees have obtained a certificate of title from an appropriately qualified person and dated not more than seven days prior to the effective date of the Relevant Agreement which confirms that the Chargor has good and marketable title to the property that is the subject of the Relevant Agreement and records any material encumbrances to that property. Having made appropriate enquiries the Certifier is satisfied that, as at the date of the certificate, there are no matters affecting the title to the property which were not disclosed in the certificate of title referred to above, or that to the extent there are any such matters, they have been allowed for in the valuation of the property referred to above;
- (7) Insurance in relation to the property which meets the requirements of the Relevant Agreement is in place and all premiums have been paid; and
- (8) The Certifier has notified the Board of any attempt that has been made to enforce the security created by the Relevant Agreement.

34. The following documents must be supplied to the Board in accordance with Rule G2.1:

- (1) Subject to paragraph 34(2), if the Relevant Agreement has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e., generally where the Relevant Agreement is new, including where the Re-execution Requirement applies (whether it is new or an amendment and restatement)):
  - (a) A certified copy of the Relevant Agreement;
  - (b) A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Secured Liabilities (or, as the case may be, one of the options set out in respect of the limit on the amount recoverable) and the insertion of relevant details of the parties;
  - (c) A copy of the legal opinion referred to in paragraph 33(4) of this Appendix;

- (d) A copy of the valuation referred to in paragraph 33(5) of this Appendix;
  - (e) A copy of the certificate of title referred to in paragraph 33(6) of this Appendix;
  - (f) Unless covered in the legal opinion referred to in paragraph 33(4) of this Appendix, a document providing satisfactory evidence that the benefit to the Chargor of entering into the Relevant Agreement has been considered and established;
  - (g) Unless covered in the legal opinion referred to in paragraph 33(4) of this Appendix, in a case where the Chargor is an Employer's Associate by virtue of paragraph 4(7)(b) of this Appendix, a document providing satisfactory details as to the relationship between the Chargor and the Scheme Employer and the reason for giving / purchasing the Contingent Asset; and
  - (h) A copy of the Contingent Asset Certificate.
- (2) With the exception of any case where the Re-execution Requirement applies (in which case paragraph 34(1) will apply), if the Relevant Agreement has been accepted by the Board as satisfying its requirements in relation to the previous Levy Year or, where the conditions in Rule G2.6 are satisfied, a previous Levy Year (i.e., the Scheme is re-certifying for the Relevant Year):
- (a) If the Relevant Agreement has been amended since the version last sent to the Board, a certified copy of the amended Relevant Agreement or amending document;
  - (b) If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 33(3) and (4) of this Appendix, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the Contingent Asset guidance for more details;
  - (c) If a new valuation has been obtained, a copy of that valuation;
  - (d) If a new certificate of title has been obtained, a copy of that certificate of title;
  - (e) Where a property has been substituted in accordance with the Relevant Agreement, the document effecting the substitution and the legal opinion, valuation and certificate of title relating to the replacement property. These documents must comply with the relevant requirements set out in this Appendix and in the Board's guidance. The valuation date must be no more than three months prior to the date of the certificate. The certificate of title must be no more than seven days prior to the effective date of the agreement effecting the substitution; and

- (f) If any documents are supplied to the Board in respect of the re-certification for the Relevant Levy Year (for example an amending document, updated legal opinion or new valuation), a copy of the Contingent Asset Certificate.

What are the certification and documentary requirements for a Type B(iii) (security over securities) Contingent Asset?

35. The certificate must contain the following information:

- (1) In respect of the Chargor which has executed the security agreement and whose interest in the securities has been charged:
  - (a) Full name;
  - (b) Type of organisation (legal form);
  - (c) Company registration number (if applicable);
  - (d) Charities number (if applicable); and
  - (e) Full address.
- (2) In respect of the custodian holding the charged securities (the 'Custodian'):
  - (a) Full name of Custodian;
  - (b) The long-term issuer rating for the Custodian published by Moody's, Standard and Poor's and/or Fitch;
  - (c) Country of domicile, which must be a Nominated Jurisdiction;
  - (d) Regulatory body (e.g. the UK Financial Conduct Authority or its applicable successor); and
  - (e) Full address.
- (3) In respect of the security agreement:
  - (a) The date on which the charge came or will come into effect, which must be no later than the April Date;
  - (b) The date and value of the latest valuation of the charged securities. The valuation must be provided by the Custodian save that, to the extent the securities are unquoted, the Custodian may rely on a valuation provided by an appropriately qualified third-party valuer. The valuation must be as at a date not more than one

month prior to the date of the certificate, except that for unquoted securities this limit is extended to three months. If the securities are a mixture of quoted and unquoted, the date of the oldest element of the valuation must be stated. Securities issued by, or by reference to, undertakings which are the Chargor or any employer covered by the security agreement or 'associates' of any of them must be excluded for the purposes of valuing the securities;

- (c) A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a section 179 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of 'Secured Liabilities' set out in the relevant Standard Form (or, as the case may be, one of the options set out in respect of the limit on the amount recoverable). Where the Contingent Asset adopts a cap of the form 'the higher of [Cap1] and [Cap2]', where Cap1 is one of the five caps set out above and Cap2 is an alternative measure, the statement in the certificate must refer to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount; and
- (d) Where the same charge has been recognised by the Board for the purposes of a previous Levy Year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are.

36. The Certifier must confirm the Standard Confirmations and the following matters:

- (1) The Chargor has entered into a security agreement in respect of certain securities owned by the Chargor and held by the Custodian in favour of the scheme/section as detailed above;
- (2) The security agreement:
  - (a) is a legally binding, valid and enforceable obligation of the Chargor;
  - (b) has been properly registered as required by the Companies Acts 1985 and/or 2006 (as amended from time to time) or any other applicable legislation<sup>3</sup>;
  - (c) is in the Standard Form subject only to variations which have been or will be notified to the Board by the March Deadline and which do not have a materially detrimental effect on the rights of the trustees as compared with the Standard Form;
  - (d) creates a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme over the relevant securities and the Chargor's rights under its custody

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<sup>3</sup> Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the Board.

agreement with the Custodian named above, and such amounts are not subject to any prior or pari passu security interest; and

- (e) secures the liability to the Scheme of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both an Associated Party of the Chargor and an 'employer' in relation to the Scheme within the meaning set out in section 318 of the Act and regulations made thereunder.
- (3) The declarations made in paragraph 36(2) are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion;
- (4) The securities which are the subject of the security agreement are securities in which the Scheme trustees would be permitted to invest pension fund assets recognising any restrictions on investment contained within the Scheme governing documentation (but ignoring any restriction on employer-related investments);
- (5) The Custodian has provided a valuation of the securities subject to the security agreement as at the date specified above. The valuation has been prepared in accordance with the Statement of Recommended Practice on Financial Reporting for Pension Schemes. Securities issued by, or by reference to, any undertaking which is the Chargor or any of the employers listed in Schedule 1 to the security agreement or an Associated Party of any of them have been valued at zero for the purposes of the valuation; and
- (6) The Certifier has notified the Board of any attempt that has been made to enforce the security created by the security agreement.

37. The following documents must be supplied to the Board in accordance with Rule G2.1:

- (1) Subject to paragraph 37(2), if the security agreement has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e., generally where the security agreement is new, including where the Re-execution Requirement applies (whether it is new or an amendment and restatement)):
  - (a) A certified copy of the security agreement;
  - (b) A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Secured Liabilities (or, as the case may be, one of the options set out in respect of the limit on the amount recoverable) and the insertion of relevant details of the parties;
  - (c) A copy of the legal opinion referred to in paragraph 36(3) of this Appendix;

- (d) A copy of the valuation referred to in paragraph 36(5) of this Appendix;
  - (e) Unless covered in the legal opinion referred to in paragraph 36(3) of this Appendix, a document providing satisfactory evidence that the benefit to the Chargor of entering into the security agreement has been considered and established;
  - (f) Unless covered in the legal opinion referred to in paragraph 36(3) of this Appendix, in a case where the Chargor is an Employer's Associate by virtue of paragraph 4(7)(b) of this Appendix, a document providing satisfactory details as to the relationship between the Chargor and the Scheme Employer and the reason for giving / purchasing the Contingent Asset; and
  - (g) A copy of the Contingent Asset Certificate.
- (2) With the exception of any case where the Re-execution Requirement applies (in which case paragraph 37(1) will apply), if the security agreement has been accepted by the Board as satisfying its requirements in relation to the previous Levy Year or, where the conditions in Rule G2.6 are satisfied, a previous Levy Year (i.e., the scheme is re-certifying for the Relevant Levy Year):
- (a) A copy of the valuation referred to in paragraph 36(5) of this Appendix;
  - (b) If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document;
  - (c) If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraph 36(2) and (3) of this Appendix, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the Contingent Asset guidance for more details; and
  - (d) If any documents are supplied to the Board in respect of the re-certification for the Relevant Levy Year (for example an amending document, updated legal opinion or new valuation), a copy of the Contingent Asset Certificate.

What are the certification and documentary requirements for a Type C(i) (letter of credit or bank guarantee, evergreen version) Contingent Asset?

38. The certificate must contain the following information:

- (1) In respect of the Purchaser:
  - (a) Full name;



- (b) Type of organisation (legal form);
  - (c) Company registration number (if applicable);
  - (d) Charities number (if applicable); and
  - (e) Full address.
- (2) In respect of the counterparty;
- (a) Full name of counterparty;
  - (b) The long-term issuer rating for the counterparty published by Moodys, Standard and Poor's and/or Fitch. The counterparty must be rated at least A3 by Moody's and/or A- by Standard and Poor's and/or A- by Fitch;
  - (c) Country of domicile, which must be a Nominated Jurisdiction;
  - (d) Regulatory body (e.g. the UK Financial Conduct Authority or its applicable successor); and
  - (e) Full address.
- (3) In respect of the letter of credit/bank guarantee:
- (a) The date on which the letter of credit/bank guarantee came or will come into effect, which must be no later than the April Date;
  - (b) The date on which the letter of credit/bank guarantee will expire, which must be no earlier than the March Date; and
  - (c) Face value of letter of credit/bank guarantee. The instrument must be denominated in sterling.

39. The Certifier must confirm the Standard Confirmations and the following matters:

- (1) The counterparty has provided a letter of credit/bank guarantee (type C(i) 'evergreen' version) in favour of the Scheme as detailed in paragraph 38(3) of this Appendix;
- (2) The letter of credit/bank guarantee:
  - (a) is a legally binding, valid and enforceable obligation of the counterparty;

- (b) is in the Standard Form subject only to variations which have been or will be notified to the Board by the March Deadline and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
  - (c) on its terms, will be unconditionally available to the Scheme until the expiry date stated above; and
  - (d) can be drawn, inter alia, upon the occurrence of an Insolvency Event (as defined in the letter of credit/bank guarantee) in respect of, any of the employers listed in Schedule 1 to the letter of credit/bank guarantee, which schedule lists every undertaking which is both an Associated Party of the Purchaser and an 'employer' in relation to that scheme/section within the meaning set out in section 318 of the Act and regulations made thereunder.
- (3) The declarations made in paragraph 39(2) are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion;
  - (4) If any contractual documents other than the letter of credit/bank guarantee were previously supplied to the Board in support of an application for recognition of the letter of credit/bank guarantee, those contractual documents remain in force without amendment or, if this is not the case, he/she has notified the Board of any changes; and
  - (5) The Certifier has notified the Board of any attempt that has been made to call upon the letter of credit/bank guarantee.

40. The following documents must be supplied to the Board in accordance with Rule G2.1:

- (1) Subject to paragraph 40(2), if the letter of credit/bank guarantee has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e., generally where the letter of credit/bank guarantee is new):
  - (a) A certified copy of the letter of credit/bank guarantee;
  - (b) A blacklined document showing the changes from the Pension Protection Fund's Standard Form or confirmation that there are no changes to the Standard Form except for the insertion of the Total L/C Amount or Total Guaranteed Amount and the relevant details of the parties;
  - (c) A copy of the legal opinion referred to in paragraph 39(3) of this Appendix;
  - (d) Unless covered in the legal opinion referred to in paragraph 39(3) of this Appendix, a document providing satisfactory evidence that the benefit to the Purchaser of entering into the letter of credit/bank guarantee has been considered and established;

- (e) Unless covered in the legal opinion referred to in paragraph 39(3) of this Appendix, in a case where the Purchaser is an Employer's Associate by virtue of paragraph 4(7)(b) of this Appendix, a document providing satisfactory details as to the relationship between the Purchaser and the Scheme Employer and the reason for giving / purchasing the Contingent Asset; and
  - (f) A copy of the Contingent Asset Certificate.
- (2) If the letter of credit/bank guarantee has been accepted by the Board as satisfying its requirements in relation to the previous Levy Year or, where the conditions in Rule G2.6 are satisfied, a previous Levy Year (i.e., the scheme is re-certifying for the Relevant Levy Year):
- (a) If the letter of credit/bank guarantee has been amended since the version last sent to the Board, a certified copy of the amended letter of credit/bank guarantee or amending document;
  - (b) If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraph 39(2) and (3) of this Appendix, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the Contingent Asset guidance for more details; and
  - (c) If any documents are supplied to the Board in respect of the re-certification for the Relevant Levy Year (for example an amending document or updated legal opinion), a copy of the Contingent Asset Certificate.

What are the certification and documentary requirements for a Type C(ii) Contingent Asset (letter of credit or demand guarantee to support a defined schedule of deficit reduction contributions)?

41. The certificate must contain the following information:

- (1) In respect of the Purchaser:
  - (a) Full name;
  - (b) Type of organisation (legal form);
  - (c) Company registration number (if applicable);
  - (d) Charities number (if applicable); and

(e) Full address.

(2) In respect of the counterparty:

(a) Full name of counterparty;

(b) The long-term issuer rating or long-term insurer financial strength rating (as appropriate) for the counterparty published by Moody's, Standard and Poor's and/or Fitch. The counterparty must be rated at least A3 by Moody's and/or A- by Standard and Poor's and/or A- by Fitch;

(c) Country of domicile, which must be a Nominated Jurisdiction;

(d) Regulatory body (e.g. the UK Financial Conduct Authority or its applicable successor);  
and

(e) Full address.

(3) In respect of the letter of credit/demand guarantee:

(a) The date on which the letter of credit/demand guarantee came or will come into effect, which must be no later than the April Date;

(b) The date on which the letter of credit/demand guarantee will expire, which must be no earlier than 5 days after the last 'Planned Contribution' is due (see below); and

(c) The face value of the letter of credit/demand guarantee. The instrument must be denominated in sterling. The face value of the instrument must be stated as at the April Date, i.e. after any reduction as a result of Planned Contributions having been made prior to that date.

42. The Certifier must confirm the Standard Confirmations and the following matters:

(1) The counterparty has provided a letter of credit/demand guarantee (Type C(ii) – to support a defined schedule of deficit reduction contributions) in favour of the Scheme as detailed in paragraph 41(3);

(2) The Scheme benefits from an undertaking to make a defined schedule of deficit-reduction contributions to the Scheme (the 'Planned Contributions'). The aggregate amount of the outstanding Planned Contributions is at least equal to the face value of the letter of credit/demand guarantee stated above, and all of the Planned Contributions will become payable no later than five days prior to the expiry date of the letter of credit/demand guarantee stated in paragraph 41(3). The trustees of the Scheme have received confirmation in writing from the Scheme Actuary dated not more than 30 days prior to the date this Contingent Asset was first certified to the Board stating that, based on then

current circumstances including the level of committed regular contributions, all of the Planned Contributions were expected to constitute deficit-reduction contributions;

- (3) The letter of credit/demand guarantee:
  - (a) is a legally binding, valid and enforceable obligation of the counterparty;
  - (b) is in the Standard Form subject only to variations which have been or will be notified to the Board by the March Deadline and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
  - (c) on its terms, will be unconditionally available to the Scheme until the expiry date stated above; and
  - (d) can be drawn, *inter alia*, upon a failure to pay any of the Planned Contributions or upon the occurrence of an Insolvency Event (as defined in the letter of credit/demand guarantee) in respect of, any of the employers listed in Schedule 1 to the letter of credit/demand guarantee, which schedule lists every undertaking which is both an Associated Party of the Purchaser and an "employer" in relation to that scheme/section within the meaning set out in section 318 of the Act and regulations made thereunder.
- (4) The declarations made in paragraph 42(3) are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion;
- (5) If any contractual documents other than the letter of credit/demand guarantee were previously supplied to the Board in support of an application for recognition of the letter of credit/demand guarantee, those contractual documents remain in force without amendment or, if this is not the case, he/she has notified the Board of any changes; and
- (6) The Certifier has notified the Board of any attempt that has been made to call upon the letter of credit/demand guarantee.

43. The following documents must be supplied to the Board in accordance with Rule G2.1:

- (1) Subject to paragraph 43(2), if the guarantee has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e. generally where the guarantee is new):
  - (a) A certified copy of the letter of credit/demand guarantee;
  - (b) A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the insertion

of the Total L/C Amount or Total Guaranteed Amount and the relevant details of the parties;

- (c) A copy of the actuary's confirmation referred to in paragraph 42(2) of this Appendix;
  - (d) A copy of the legal opinion referred to in paragraph 42(4) of this Appendix;
  - (e) Unless covered in the legal opinion referred to in paragraph 42(4) of this Appendix, a document providing satisfactory evidence that the benefit to the purchaser of entering into the letter of credit/demand guarantee has been considered and established;
  - (f) Unless covered in the legal opinion referred to in paragraph 42(4) of this Appendix, in a case where the Purchaser is an Employer's Associate by virtue of paragraph 4(7)(b) of this Appendix, a document providing satisfactory details as to the relationship between the Purchaser and the Scheme Employer and the reason for giving / purchasing the Contingent Asset; and
  - (g) A copy of the Contingent Asset Certificate.
- (2) If the guarantee has been accepted by the Board as satisfying its requirements in relation to the previous Levy Year or, where the conditions in Rule G2.6 are satisfied, a previous Levy Year (i.e., the scheme is re-certifying for the Relevant Levy Year):
- (a) If the letter of credit/demand guarantee has been amended since the version last sent to the Board, a certified copy of the amended letter of credit/demand guarantee or amending document;
  - (b) If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraph 42(3) and (4) of this Appendix, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the Contingent Asset guidance for more details; and
  - (c) If any documents are supplied to the Board in respect of the re-certification for the Relevant Levy Year (for example an amending document or updated legal opinion), a copy of the Contingent Asset Certificate.