

## **ANNEX FOR LOAN TRANSACTIONS: DECLARATION OF TRUST**

1.1 This document (this *Annex*) applies where the Agent has agreed that Collateral for a Loan Transaction may comprise or include Loans and requires such collateral to be provided by way of declaration of trust.

1.2 This Annex forms part of, and amends and supplements, any Applicable Terms and Conditions as varied by this Annex. In the event of any inconsistency between this Annex and the Applicable Terms and Conditions, the terms of this Annex shall prevail.

1.3 BEAPFF (through the Agent) and the Participant agree that BEAPFF's operations under the Term Funding Scheme is an Applicable Facility for the purposes of this Annex.

1.4 The Bank enters into this Annex on its own behalf, and as Agent.

### **2. INTERPRETATION**

In this Annex references to paragraphs, Clauses and Schedules are to paragraphs, Clauses and Schedules of this Annex.

### **3. ELIGIBILITY; INITIATION OF LOAN TRANSACTIONS**

#### **Eligibility**

3.1 A Participant may not provide collateral in the form of Loans unless it shall have provided to the Agent, duly executed by the parties thereto (other than by or on behalf of BEAPFF, which shall, where relevant, thereupon duly execute or where otherwise stated) in accordance with the Applicable Operating Procedures:

- (a) a Declaration of Trust;
- (b) details of one or more Provisional Portfolios, which have been agreed with the Agent, including a list of the Loans in each Provisional Portfolio, in the form and containing the details required by the Agent;
- (c) an original power of attorney substantially in the form set out in Schedule 2 (Form of Power of Attorney);
- (d) a form of Scottish Declaration of Trust (but unexecuted);
- (e) a legal opinion in form and substance satisfactory to the Agent in respect of each relevant jurisdiction;
- (f) an audit report and a legal due diligence report in respect of each relevant jurisdiction on the Provisional Portfolio, each in form and substance satisfactory to the Agent; and
- (g) such other documentation as the Agent may require.

3.2 The Participant shall arrange for the information provided under paragraph 3.1 to be updated on a monthly basis (in respect of paragraphs 3.1(a) and 3.1(b)) and at such other times as the Agent may require (in respect of paragraphs 3.1(c) to 3.1(g)).

## Initiation of Loan Transactions

3.3 A notice in respect of a Loan Transaction for which the Agent has agreed that the Collateral may comprise or include Eligible Loans provided by way of declaration of trust shall be accompanied by a Trust Asset Designation (with the date of delivery left blank) in respect of the Loan Portfolio or Loan Portfolios to be provided as collateral to BEAPFF on the Transfer Date (except where such a Trust Asset Designation has previously been delivered to the Agent and the applicable Trust Assets have not been re-acquired by the Participant). The Agent shall hold the Trust Asset Designation undelivered until the Transfer Date.

3.4 On the Transfer Date, to evidence delivery of the Trust Asset Designation, and provided that, where the Collateral includes Collateral Securities, the Participant shall have transferred to BEAPFF Collateral Securities with an Adjusted Value agreed with the Agent, the Agent shall complete the date of delivery and sign the endorsement of delivery on the Trust Asset Designation and provide a copy of the endorsed Trust Asset Designation to the Participant.

3.5 In relation to any Loan Transaction, the *Transfer Date* is the date on which the Agent completes the date of delivery and signs (on behalf of BEAPFF) the endorsement of delivery on the Trust Asset Designation.

3.6 It shall be a term of any Loan Transaction relating to a Scottish Loan, that the Participant shall, at the same time as it gives the notice referred to in paragraph 3.3 above:

- (a) enter into and deliver to the Agent (or its solicitors) a fully executed Scottish Declaration of Trust declaring a trust over the Scottish Loans, and their Related Security including any Loan Guarantees in relation thereto and undertaking to take such further action as may be required to perfect the trust created or intended to be created thereunder; and
- (b) if requested by the Agent, enter into and deliver to the Agent (or its solicitors) a fully executed Scottish Transfer with respect to any Scottish Mortgages assigning the relevant Participant's whole interest in the Scottish Mortgages in favour of BEAPFF. The Agent acknowledges that such Scottish Transfers will be held by it (or its solicitors) as undelivered, pending the occurrence of an Event of Default whereon such Scottish Transfers will be treated as fully and unconditionally delivered to BEAPFF. The Agent may immediately thereafter register such Scottish Transfers at the relevant Land Registry.

3.7 The Participant shall take such action as the Agent may require to ensure that the respective interests of BEAPFF are noted by the relevant insurers in relation to each Insurance Contract relating to the Loans in respect of which a declaration of trust has been made.

3.8 Where relevant and with effect from the Transfer Date and until the delivery by the Agent of a Trust Asset Re-acquisition Notice or such other time as the Agent may determine, the Participant shall hold the deeds and documents constituting the Title Deeds and the Loan Files and all other certificates, notices, policies endorsements and other matters necessary to establish title thereto which it may now or in the future have in its possession and which relate to Loans that are Trust Assets, or ensure that such deeds and documents are held, to BEAPFF's order (or the Agent's order on behalf of BEAPFF).

3.9 With effect from the Transfer Date and until the delivery by the Agent of a Trust Asset Re-acquisition Notice or such other time as the Agent may determine, all Income received by the Participant on or after the Transfer Date under or in respect of the Loans that

are the subject of a Trust Asset Designation (excluding any fees, charges and expenses which are payable to the Administrator for its own account) will form part of the Trust Assets upon receipt by the Participant.

3.10 Where:

- (a) the relevant Income has been received;
- (b) no Event of Default or Potential Event of Default shall have occurred and be continuing with respect to the Participant; and
- (c) no obligation owed by the Participant to the Agent or BEAPFF under the Applicable Terms and Conditions is outstanding,

then the Participant, as Trustee, is authorised and instructed to pay to itself in its capacity as Participant from the Trust Assets an amount equal to the Income received under paragraph 3.9 and such amount shall thereby cease to be Trust Assets.

#### **4. ADMINISTRATION**

4.1 The Agent appoints the Participant and the Participant agrees to act as BEAPFF's sole and exclusive Administrator in respect of Loans that are Trust Assets on the terms set out in Schedule 3.

4.2 The Administrator may delegate any of the administration services set out in Schedule 3 to a third party; provided that it shall have given to the Agent prior notification of that delegation (including the identity of the delegate and such other details as the Agent may require) and provided further that the Administrator shall remain responsible for the provision of the administration services.

4.3 The Agent may terminate the appointment at any time:

- (a) after the occurrence of an Event of Default; or
- (b) if the Participant fails to provide the administration services in accordance with Schedule 3 and the Agent considers it necessary to terminate the appointment to protect its interests.

Following such termination, the Participant undertakes to co-operate with and provide at its own expense all assistance that the Agent may require to ensure an orderly transfer of administration functions to any replacement Administrator. The Participant agrees to pay or reimburse to BEAPFF and the Agent all of their costs and expenses (including legal expenses) together with any value added tax thereon in connection with the termination of the Participant's appointment as administrator and the appointment of any replacement Administrator.

#### **5. TERMINATION OF LOAN TRANSACTIONS**

5.1 Where the Participant has served notice under the Applicable Terms and Conditions requiring BEAPFF (or the Agent on behalf of BEAPFF) to transfer to it Equivalent Collateral, the Agent may, in circumstances where a Trust Asset Designation has previously been delivered to the Agent and the applicable Trust Assets have not been re-acquired by the Participant and subject to paragraph 5.2, deliver to the Participant a Trust Asset Re-acquisition Notice and the Participant shall repurchase the beneficial interest in each of the

Trust Assets specified in such notice (unless such assets are Collateral in respect of any other Transaction which is then outstanding). The Agent shall not be required to deliver to the Participant a Trust Asset Re-acquisition Notice under this paragraph 5.1 at any time and, in any event, the Participant acknowledges that the Agent may not deliver any Trust Asset Re-acquisition Notice to the Participant at any time where BEAPFF has at that time, or would have as a result of the giving of the Trust Asset Re-acquisition Notice, an Applicable Relevant Exposure (or any other exposure to the Participant howsoever defined) under any other Applicable Facility.

5.2 BEAPFF may, instead of selling to the Participant the beneficial interest in the Trust Assets specified in the Trust Asset Re-acquisition Notice with the Agent delivering such notice to the Participant under paragraph 5.1, pay to the Participant an amount in cash equal to the Value of the beneficial interest in such Trust Assets determined by the Agent in a commercially reasonable manner. Such payment shall discharge in full BEAPFF's obligations under paragraph 5.1 in respect of the Trust Assets. If the Agent elects to make such payment it shall notify the Participant accordingly.

5.3 Any reference in this Annex to delivery of a Trust Asset Re-acquisition Notice shall, in the context of any Scottish Loans or their Related Security, be construed to mean termination of the Scottish Declarations of Trust in respect of such Scottish Loans or their Related Security in accordance with the terms of such Scottish Declaration of Trust.

## **6. FURTHER ASSURANCE**

6.1 The Participant undertakes to BEAPFF that, for so long as BEAPFF has not obtained legal title to the Loans, the Participant will promptly when required by the Agent, lend its name to, and take such other steps as may be required by the Agent in relation to, any legal proceedings in respect of the Loans and their Related Security.

6.2 The Participant will co-operate fully with the Agent and BEAPFF promptly to do all such further acts and things and execute any further documents that may be necessary or desirable to give full effect to the transactions contemplated by this Annex.

## **7. REPRESENTATIONS AND WARRANTIES AND LOAN WARRANTIES**

7.1 The Participant represents and warrants to each of the Agent and BEAPFF on a continuing basis that:

- (a) the execution, delivery and performance of this Annex and each Loan Transaction will not breach (including, without limitation, breach any negative pledge) or conflict with any instrument or agreement by which it is bound;
- (b) at the time of the declaration of trust in favour of BEAPFF of the beneficial interest in any Loan and its Related Security, it will have the full and unqualified right to make such declaration;
- (c) at the time of designating any Loans as Trust Assets, such Loans and their Related Security will become Trust Assets free and clear of any lien, claim, charge or encumbrance; and
- (d) at the time of any re-acquisition by the Participant of any Loan and its Related Security it will have the full and unqualified right to acquire such Loan and its Related Security.

7.2 The Participant represents and warrants to each of the Agent and BEAPFF in relation to each Loan and its Related Security the subject of a Loan Transaction, in the form of the representations and warranties set out in Schedule 4 (Loan Representations and Warranties) as at the Transfer Date for that Loan Transaction.

7.3 The Participant acknowledges that the representations and warranties set out in paragraph 7.1 and the Loan Warranties are made with a view to inducing each of the Agent and BEAPFF to enter into the Loan Transaction and that each of the Agent and BEAPFF will enter into the Loan Transaction, among other things, in reliance thereon and will rely upon such representations and warranties notwithstanding any information possessed or discoverable by the Agent or BEAPFF.

7.4 In respect of any actual or alleged breach of any Loan Warranty the Participant shall:

- (a) notify the Agent of any actual or alleged breach of a Loan Warranty as soon as it becomes aware of such breach which could have a material adverse effect on any Loan or its Related Security or which could have an effect on a significant proportion of the Loans or their Related Security;
- (b) notify the Agent as soon as reasonably practicable following any claim or intimation of claim by any person of or arising from such actual or alleged breach, or arising from any dispute in relation to the Loans or their Related Security which could have a material adverse effect on any Loan or its Related Security or which could have an effect on a significant proportion of the Loans or their Related Security, and thereafter keep the Agent informed in relation to such claim or intimation; and
- (c) indemnify each of the Agent and BEAPFF and hold them harmless in respect of all losses, costs and expenses suffered or incurred by each of the Agent and BEAPFF in connection with any such breach.

7.5 For the purposes of the Events of Default, a Loan Warranty shall be incorrect in a material respect only if, in the Agent's opinion, such incorrectness could have a material adverse effect on a significant proportion of Loans or their Related Security.

7.6 At any time the Agent shall be entitled to request from the Participant a certificate of compliance with regards to the Participant's obligations hereunder.

7.7 The Participant shall notify the Agent as soon as it becomes aware of the breach of any of its obligations hereunder and shall provide the Agent with such information relating to the breach as the Agent shall require. The Agent shall, in the absence of receipt of any such notice, be entitled to assume that the Participant is complying with such obligations.

7.8 BEAPFF represents and warrants to the Participant that at the time of the release of its beneficial interest in any Trust Assets it will have the full and unqualified right to effect such release.

## **8. DATA PROTECTION**

8.1 Each party shall comply with the notification requirements under the Data Protection Act 1998 and the data protection principles specified in that act, and any equivalent or similar legislation, rules, regulations or principles applicable in any other jurisdiction, to the extent that such party receives any personal data in respect of the Loans and their Related Security.

8.2 For such time as the Participant remains the data controller (as that term is defined in the Data Protection Act 1998) in respect of personal data relating to the Loans and Borrowers that are provided to it, the Agent shall, in respect of all such personal data that it receives in connection with any Loan Transaction:

- (a) process that personal data only for the purposes of fulfilling its obligations in respect of any Loan Transaction and in accordance with the reasonable instructions of the Participant and shall ensure that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data;
- (b) from time to time comply with any reasonable request made by the Participant to ensure compliance with the measures mentioned in (a); and
- (c) take the measures mentioned in (a) and (b), having regard to the state of technological development and the cost of implementing the measures, so as to ensure a level of security appropriate to: (i) the harm that may result from breach of those measures; and (ii) the nature of the personal data to be protected.

**9. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

**IN WITNESS** whereof the Participant has caused this Annex to be executed and delivered as a Deed on the date which appears below.

**EXECUTED and DELIVERED** )  
 as a **DEED** by [ ]<sup>1</sup> ) Director  
 acting by two directors/a )  
 director and the secretary: )  
 on )  
 Director/Secretary

For and on behalf of )  
 the **GOVERNOR AND COMPANY** )  
**of the BANK OF ENGLAND** as agent for )  
**BANK OF ENGLAND ASSET** )  
**PURCHASE FACILITY FUND LIMITED** ) Authorised Signatory

Dated:

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<sup>1</sup> Insert name of Participant

## SCHEDULE 1

### GLOSSARY

In this Annex:

- (a) capitalised terms not otherwise defined in the Annex shall have the same meanings given to them in the Applicable Terms and Conditions; and
- (b) the following words and expressions shall have the following meanings:

**Adjusted Value** shall bear the meaning given to such term in the Applicable Terms and Conditions;

**Administrator** means, with respect to any Loan Collateral, the Participant or any other person appointed by the Agent or BEAPFF to act as administrator of those Loans;

**Agent** means the Bank in its capacity as agent of BEAPFF;

**Applicable Facility** means any facility or scheme which BEAPFF has made available to the Participant pursuant to which the Agent has agreed that the Participant may provide Loan Collateral for the purposes of that facility or scheme;

**Applicable Operating Procedures** means, with respect to any Applicable Facility, the procedures published by the Bank relating to that Applicable Facility;

**Applicable Relevant Exposure** has the meaning given to the term “Relevant Exposure” in the Applicable Terms and Conditions or as otherwise provided for in the Applicable Operating Procedures;

**Applicable Terms and Conditions** means any terms and conditions of any Applicable Facility;

**Bank** means The Governor and Company of the Bank of England, acting on its own behalf;

**BEAPFF** means Bank of England Asset Purchase Facility Fund Limited;

**Borrower** means, with respect to any Loan Collateral, the persons named and defined as borrower under the relevant Loan or such other person or persons (other than a guarantor) who shall become legally obliged to comply with such Borrower’s obligations under the related Loan;

**CCA** means the Consumer Credit Act 1974;

**Collateral** means Collateral Securities or Loan Collateral;

**Collateral Securities** means Eligible Collateral Securities that have been transferred to BEAPFF in respect of which Equivalent Collateral Securities have not been transferred by BEAPFF;

**Covered Agreement** means any agreement, deposit made by the Participant with BEAPFF, payment arrangement or obligation (other than the then Applicable Terms and Conditions) between BEAPFF and the Participant;

***Criminal Damage Claims*** means a claim made under the Criminal Damage Order in relation to damage caused to Northern Irish Property;

***Criminal Damage Order*** means the Criminal Damage (Compensation) (Northern Ireland) Order 1977 (or any statutory successor scheme for the compensation of criminal damage to property for the time being in force);

***Declaration of Trust*** means the Declaration of Trust in respect of Loans (other than Scottish Loans) made by the Participant in favour of BEAPFF;

***Default Termination*** means, in respect of any Applicable Terms and Conditions or a Covered Agreement, the termination of all outstanding transactions or acceleration of all outstanding deposits (other than any transaction or deposit which the Agent has excluded from such termination or acceleration in accordance with the Applicable Terms and Conditions or any Designated Agreement) following the occurrence of an Event of Default of an event of default howsoever described under that Covered Agreement;

***Designated Agreement*** means those Covered Agreements as the Agent declares are subject to a Default Termination pursuant to the Applicable Terms and Conditions;

***Eligible Collateral*** means collateral of a type that is for the time being specified in the Applicable Operating Procedures or otherwise specified by the Agent as being eligible as collateral in respect of the Applicable Relevant Exposure and which is otherwise acceptable to the Agent;

***Eligible Collateral Securities*** means Eligible Collateral in the form of securities;

***Eligible Loans*** means Eligible Collateral in the form of loans;

***Equivalent Collateral*** means Equivalent Collateral Securities or Equivalent Loan Collateral and references to the transfer of Equivalent Collateral with respect to any Loans shall be construed as the repurchase by the Participant of the beneficial interest in Trust Assets that are the subject of a Trust Asset Re-acquisition Notice delivered by the Agent or the release of any trust in respect of those Loans, in each case, as the context may require;

***Equivalent Collateral Securities*** means securities equivalent to Collateral Securities;

***Equivalent Loan Collateral*** means loans equivalent to Loan Collateral;

***Event of Default*** has the meaning given to such term in the Applicable Terms and Conditions;

***Income*** means, with respect to any Collateral, at any time, any interest, dividend or other distribution on such securities (but excluding distributions which are a payment or repayment of capital in respect of such securities) and with respect to any Loan Collateral any interest and principal paid, repaid or prepaid and any other sums received by the Participant including without limitation any sums received from any Borrower or any insurer or guarantor under any Insurance Contract or Loan Guarantee;

***Insurance Contract*** means, with respect to any Loan, all insurance contracts or policies arranged by the Participant from time to time relating to that Loan;

***Land Registry*** means, as the context requires, the Land Registry in England and Wales, the Land Register in Scotland, the General Register of Sasines, the Land Registry of Northern



Ireland and/or the Registry of Deeds of Northern Ireland and relevant Land Registry shall be construed accordingly;

**Lending Criteria** means, with respect to Loan Collateral, the lending criteria of the Originator from time to time;

**Loan Account** means as the context requires (i) all Loans secured on the same Mortgaged Property and thereby forming a single mortgage account; or (ii) an account maintained by the Participant in respect of a particular Loan to record all amounts due in respect of that Loan (whether by way of principal, interest or otherwise) and all amounts received in respect thereof;

**Loan Agreement** means, in relation to any Loan, the agreement, any Loan Conditions, facility letter or accepted formal loan offer pursuant to which the moneys were advanced to the Borrower (as varied from time to time in accordance with its applicable terms and conditions);

**Loan Collateral** means Loans assigned by (or, if applicable, Loans over which a trust has been declared) the Participant to BEAPFF as Collateral under the Applicable Terms and Conditions and this Annex and in respect of which Equivalent Loan Collateral has not been transferred by BEAPFF;

**Loan Conditions** means, in relation to any Loan, the conditions applicable to that loan (including without limitation any set out in the relevant formal loan offer letter to the Borrower);

**Loan Files** means, in relation to each Loan, the file or files (including files kept in microfiche format or similar electronic data retrieval system) containing correspondence between the Borrower and the Participant and including any standard documentation applicable to that Loan, each letter of offer in respect of such Loan and other relevant documents;

**Loan Guarantee** means each guarantee in support of the obligations of a Borrower under a Loan;

**Loan Interest Rate** means the rate at which interest accrues on a Loan from time to time;

**Loan Portfolio** means the portfolio of Loans and Related Security selected from the Provisional Portfolio and over which a trust has been declared (or in the case of any Scottish Loans, a trust has been declared over such Scottish Loans) to BEAPFF;

**Loans** means, with respect to any Loan Collateral, the loans that form part of the Loan Portfolio and are or are to be beneficially assigned to BEAPFF or over which a trust has or will be declared over such loans (or in the case of any Scottish Loans, a trust has or will be declared over such Scottish Loans) or transferred to BEAPFF in such other manner as the Agent may agree, which have been selected from the Provisional Portfolio, a list of which will be provided by the Participant and, where the context permits, includes the Related Security (each a **Loan**);

**Loan Transaction** means a transaction between BEAPFF and the Participant under an Applicable Facility on the terms and subject to the conditions of the Applicable Terms and Conditions in respect of which the Agent has agreed that collateral may comprise or include Loans;

**Loan Warranties** means the Participant's representations and warranties relating to Loans as set out in this Annex;

**Mortgage** means for any Loan that is a mortgage loan, as the context requires, the first priority legal charge over freehold or leasehold Mortgaged Properties located in England and Wales, a Standard Security over Scottish Property, or a first priority mortgage by way of demise or sub-demise or a first priority legal charge over Northern Irish Property;

**Mortgaged Properties** means the residential or commercial properties which are security for any Loans which are mortgage loans as they are described in the list of Loans provided by the Participant and **Mortgaged Property** means any of the Mortgaged Properties;

**Northern Irish Mortgage** means a Mortgage secured over a Northern Irish Property;

**Northern Irish Mortgage Loan** means a Loan secured by a Northern Irish Mortgage;

**Northern Irish Property** means, in relation to a Northern Irish Mortgage Loan and its related Northern Irish Mortgage, the freehold, fee farm grant or leasehold property in Northern Ireland mortgaged or charged as security for repayment of such Northern Irish Mortgage Loan;

**Originator** means, with respect to any Loan, the Participant or, where appropriate, the third party lender of that Loan;

**Participant** means a person to whom the Agent has agreed that BEAPFF will make available any facility or scheme pursuant to which the Agent has agreed that the Participant may provide Loan Collateral for the purposes of that facility or scheme;

**Party** means the Agent, the Bank, BEAPFF or the Participant;

**Potential Event of Default** means any event or circumstance specified in the Applicable Terms and Conditions which would (with the expiry of a grace period, the giving of notice, the making of any determination or any combination of the foregoing) be an Event of Default;

**Property Deeds** means title deeds in respect of a Mortgaged Property (other than those the subject of any dematerialisation of deeds programme where the deeds have been electronically stored);

**Provisional Portfolio** means a portfolio of Loans and Related Security from which a Loan Portfolio will be selected;

**Regulated Agreement** means a Loan which is regulated in whole or in part pursuant to the CCA;

**Related Security** means the security for repayment of Loan Collateral including any relevant Mortgage and all other matters applicable to the Loan Collateral, acquired as part of the Loan Portfolio assigned to BEAPFF or in respect of which a Trust Asset Designation or a Scottish Declaration of Trust has been delivered to the Agent;

**Scottish Declaration of Trust** means a declaration of trust governed by Scots law, by the Participant in favour of BEAPFF in relation to the Scottish Loans in a Loan Portfolio, the Scottish Mortgages (where applicable) and their Related Security;

**Scottish Loan** means a Loan governed by or otherwise subject to Scots law;

**Scottish Mortgage** means a Standard Security over a Scottish Property;

**Scottish Property** means in relation to a Scottish Loan or its related Scottish Mortgage, the heritable or long lease residential or commercial property located in Scotland secured as security for repayments of such Scottish Loan;

**Scottish Transfer** means an assignation of Scottish Mortgages in the form requested by the Agent (or its solicitors);

**Standard Loan Documentation** means, with respect to a Loan Portfolio, the sample standard loan documentation of each type of Loan in that Loan Portfolio, which is listed by the Participant in the first schedule to the legal due diligence report delivered to the Agent by or on behalf of the Participant for the purposes of “pre-positioning” that Loan Portfolio;

**Standard Security** means a heritable security created by a Standard Security over any interest in land in Scotland in terms of the Conveyancing and Feudal Reform (Scotland) Act 1970;

**Title Deeds** means, in relation to each Loan which is a mortgage loan and its Related Security and the Mortgaged Property relating thereto, all conveyancing deeds and documents which make up the title to the Mortgaged Property and the security for the Loan and all searches and enquiries undertaken in connection with the grant by the Borrower of the related Mortgage, in each case, if subject to a dematerialisation programme, to the extent (if any) retained by the Participant;

**Transfer Date** has the meaning given to such term in paragraph 3.5;

**Trust Asset Designation, Trust Asset Re-acquisition Notice, Trust Assets** and **Trustee** shall have the meaning given to such terms in the Declaration of Trust; and

**Value** means, in relation to any Eligible Loans at any time, the value of that Eligible Loan as determined by the Agent having regard to such pricing sources and methods as the Agent considers appropriate.

## SCHEDULE 2

### Form of Power of Attorney

This **Power of Attorney** is made on

**BETWEEN:**

- (1) [ ] as Trustee (the *Participant*)

**IN FAVOUR OF:**

- (2) **BANK OF ENGLAND ASSET PURCHASE FACILITY FUND LIMITED**, 8 Lothbury, London, EC2R 7HH (*BEAPFF*);
- (3) [ ] (the *Administrator* which expression shall include such company or companies and all other persons for the time being acting as the administrator under the Terms and Conditions).

**WHEREAS:**

- (A) By the Applicable Terms and Conditions (including the Annex), the Participant agreed to declare a trust over the Loans.
- (B) At the request of the Agent, the Participant has agreed to enter into this Power of Attorney for the purposes hereinafter appearing.
- (C) The expressions defined in the Applicable Terms and Conditions (including the Annex) shall, unless otherwise defined herein or the context requires otherwise, bear the same meanings herein (including these recitals).

**NOW THIS DEED WITNESSES** as follows:

2. For good and valuable consideration and by way of security for the obligations of the Participant under the Applicable Terms and Conditions (including the Annex) the Participant hereby appoints BEAPFF to be its true and lawful attorney (with power to sub-delegate including any delegation to the Agent) and to be its agent and in its name to do the following acts and things or any of them:

- (a) to exercise its rights, powers and discretions under the Loans;
- (b) to demand sue for and receive all moneys due or payable under the Loans or any such collateral security or related rights;
- (c) upon payment of such moneys or any part thereof, to give good receipts and discharges for the same and to execute such receipts, discharges, releases, re-assignments, retrocessions, surrenders, instruments and deeds as may be requisite or advisable;
- (d) subject to paragraph (a) above to exercise any other rights, discretions and powers under the Loans and for that purpose to execute, sign and do any deeds, documents, acts or things; and

(e) from time to time substitute and appoint severally one or more attorney or attorneys for all or any of the purposes aforesaid.

3. The Participant hereby agrees at all times hereafter to ratify and confirm whatsoever any act matter or deed any attorney or substitute shall lawfully do or cause to be done under or concerning these presents.

4. The Participant hereby declares that these presents having been given for security purposes and to secure a continuing obligation, the powers hereby created shall be irrevocable.

5. The parties to this Power of Attorney do not intend that any of its terms shall be enforceable by any third party who would not be able to enforce such terms other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

6. This Power of Attorney and any non-contractual obligation arising out of or in relation to this Power of Attorney shall be governed by, and construed in accordance with, the laws of England.

IN WITNESS of which [ ] has caused this Power of Attorney to be executed and delivered as a Deed on the date which first appears above.

**EXECUTED** as a **DEED** )  
for and on behalf of )  
 )  
acting by two directors, or a director and its )  
secretary in the presence of a witness )

**Director**  
Name:

**Director/Secretary**  
Name:

## **SCHEDULE 3**

### **Administration Services**

#### **1. THE PARTICIPANT AS ADMINISTRATOR**

1.1 The Agent hereby appoints the Participant in relation to Loans that are Trust Assets to administer on its behalf and as its lawful agent on its behalf to provide certain other administration and management services and to exercise its respective rights, powers and discretions, and to perform its respective duties, under and in relation to each such Loan Portfolio (including, without limitation, the collection of payments due from Borrowers under Loans and calculation of amounts of interest and principal due under such Loans); provided that the Participant may at all times service the Loans in accordance with its normal business practice as a reasonable, prudent mortgage servicer.

1.2 In respect of each Loan that is a Trust Asset, and subject to paragraph 4.2, the appointment shall commence on the relevant Transfer Date and shall cease immediately following the delivery of a Trust Asset Re-acquisition Notice.

1.3 The Administrator shall not be entitled to charge a fee except where the Agent has exercised its rights under paragraph 4.2 in which case the Administrator may charge such commercially reasonable fee as the Administrator and the Agent may agree.

1.4 The Participant in each case hereby accepts such appointment on the terms and subject to the conditions of the Applicable Terms and Conditions and the Annex.

#### **2. THE SERVICES**

The Participant shall provide the services as set forth below:

- (a) keeping records (written or computerised)/books of account/documents for the Agent and BEAPFF in relation to the Loans and, where applicable, their Related Security and keeping all key loan details in computerised form;
- (b) keeping records for all taxation purposes including VAT;
- (c) notifying relevant Borrowers of any changes in payments under the Loans;
- (d) providing a redemption statement to a Borrower or any person acting on the Borrower's behalf, in each case upon written request or otherwise at the discretion of the Participant;
- (e) notifying relevant Borrowers of any other matter or thing which the applicable Loan Conditions or offer conditions require them to be notified of in the manner and at the time required by the relevant Loan Conditions;
- (f) subject to the provisions of the Applicable Terms and Conditions and the Annex, taking all reasonable steps to recover all sums due to BEAPFF including without limitation by the institution of proceedings or enforcement of any Loan or any Related Security;
- (g) taking all other action and doing all other things which it would be reasonable to expect a prudent lender acting reasonably to do in administering its Loans, including

monitoring performance of the Loans and the Borrowers and monitoring and take such action as is necessary in relation to Loans in arrears;

- (h) keeping a Loan Account for each Loan which shall record all proceeds received in respect of that Loan and all amounts debited to such Loan Account;
- (i) if required by the relevant Loan Conditions but otherwise at its discretion, preparing and sending on request an annual statement to Borrowers in relation to each calendar year in the agreed form;
- (j) arranging for the renewal and continuation at all times of the Insurance Contracts;
- (k) providing the reports and other information which it is required to provide under the Applicable Terms and Conditions and the Annex; and
- (l) maintaining adequate insurance against loss or damage to any documents or information held under the Applicable Terms and Conditions and the Annex.

### **3. AUTHORITY TO SET INTEREST RATES**

Subject to applicable law and regulation and any regulatory undertaking binding on the Administrator from time to time and subject to the provisions of this paragraph 3, the Agent grants the Administrator full right, liberty and authority from time to time to determine, in accordance with the applicable Loan Conditions, any discretionary rate of margin applicable to the Loans chargeable to Borrowers from time to time.

The Administrator shall take the steps necessary by the relevant Loan Conditions and/or applicable law (including, without limitation, applicable guidelines of the Office of Fair Trading and applicable statements of good practice of the Financial Conduct Authority) to bring each change in such rate or rates of interest or margins and any consequential change in payments that Borrowers are required to make to the attention of the relevant Borrowers and shall, if so requested, provide details of such change to the Agent.

## **SCHEDULE 4**

### **Loan Representations and Warranties**

1. Each Loan included in a Loan Portfolio is an Eligible Loan.
2. The particulars of each Loan and, where applicable, its Related Security in the Loan Portfolio provided to the Agent are complete, true and accurate in all material respects.
3. Immediately prior to the Transfer Date, and where applicable, subject to completion of any registration or recording of the Mortgage of the Participant's title in the Mortgage, which may be pending at the relevant Land Registry, the Participant was the absolute beneficial and legal owner (or in the case of assets situated in Scotland or governed by Scots law, the absolute owner) of the Loans, the Related Security and the other property to be assigned or transferred by the Participant to BEAPFF under the Applicable Terms and Conditions (including the Annex) at the Transfer Date and the Participant has not assigned (whether by way of absolute assignment or assignation or by way of security only), transferred, charged, disposed of or dealt with the benefit of (or in the case of assets situated in Scotland or governed by Scots law, any right, title or interest in relation to) any of the Loans or, where applicable, their Related Security, any of the other rights relating thereto or any of the property, rights, titles, interests or benefits to be transferred or assigned pursuant to the Applicable Terms and Conditions (including the Annex) other than pursuant to the Applicable Terms and Conditions (including the Annex).
4. The Loan Conditions and the Loan Agreement for each Loan and its related Mortgage and, where applicable, the Related Security constitute a valid and binding obligation of the Borrower enforceable in accordance with its terms (save any term which is not binding by virtue of the Unfair Terms in Consumer Contracts Regulations 1994, the Unfair Terms in Consumer Contracts Regulations 1999 or the Consumer Rights Act 2015 (as applicable)) and is non-cancellable and, where applicable, the Related Security secures the repayment of all advances, interest, costs and expenses payable by the relevant Borrower to the Participant under the relevant Loan in priority to any other charges registered against the relevant property.
5. At the time that it was made, each Loan complied in all respects with applicable laws, regulations and rules including, without limitation, consumer protection, data protection and contract law other than the Unfair Terms in Consumer Contracts Regulations 1994, the Unfair Terms in Consumer Contracts Regulations 1999 or the Consumer Rights Act 2015 (as applicable).
6. Prior to making a Loan to a Borrower, the Originator carried out or instructed or required to be instructed on its behalf solicitors or other advisers to carry out in relation to the relevant Loan, its Related Security and, where applicable any Mortgaged Property or other property used as security for the Loan, all investigations, searches, due diligence and other actions that would have been undertaken by the Originator acting in accordance with standards consistent with those of a reasonable and prudent lender, lending to Borrowers in the United Kingdom when advancing money in an amount equal to such advance to be secured on a property of the relevant kind (where relevant) or to such a person or entity and such investigations, searches due diligence and other actions did not, either initially or after further investigation, revealed any material matter which would cause the Originator, acting reasonably, to decline the Loan having regard to its Lending Criteria in force at that time.
7. Prior to making the initial advance under each Loan that is secured on commercial property, the Originator undertook such environmental due diligence as a reasonable and



prudent lender of money secured on commercial property would have taken, the results of which would, as at that date, have been acceptable to such lender and have been taken into account in the valuation report obtained by such lender.

8. No Loan is an extortionate credit bargain within the meaning of sections 137 to 139 of the CCA.

9. All property that constitutes or forms part of any Related Security is located in the United Kingdom.

10. All steps necessary to perfect the Participant's title to each Loan and, where applicable, its Related Security have been duly taken, or are in the process of being taken with all due diligence, in accordance with standards consistent with those of a reasonable and prudent lender.

11. Prior to making a Loan, the nature and amount of such Loan, the circumstances of the relevant Borrower and nature of any Related Security satisfied the Lending Criteria in force at that time in all material respects.

12. The exercise of any discretion by the Originator in the making of any Loan has been consistent with the practice of a reasonable and prudent lender.

13. Each Loan and, where applicable, its Related Security has been made on the terms of the Standard Loan Documentation (so far as applicable) which has not been varied in any material respect.

14. Interest on each Loan is charged on the capital balance of each Loan in accordance with the provisions of the applicable Loan Conditions and the Loan Agreement and its related Mortgage.

15. So far as the Participant is aware, no Borrower is in material breach of its Loan Conditions, other than, in the case of any mortgage loan, with respect to arrears.

16. So far as the Participant is aware, the underwriting, origination and completion of each Loan is not the subject of fraud by any person (including, without limitation, the Borrower or any professional or third party employed or engaged on behalf of the Originator).

17. Where any Borrower is or was entitled to repayment of any early repayment charge in respect of any loan previously made by the Originator to that Borrower, that repayment has been or will be made by the Originator.

18. To the extent that a Loan Guarantee was required under the Lending Criteria in force at that time in relation to a particular Loan, that Loan Guarantee constitutes the valid, binding and enforceable obligations of the guarantor thereunder (save to the extent that any term of the Loan Guarantee is not valid, binding or enforceable by virtue of the Unfair Terms in Consumer Contracts Regulations 1994, the Unfair Terms in Consumer Contracts Regulations 1999 or the Consumer Rights Act 2015 (as applicable)).

19. No Borrower who is an individual was under 18 years of age at the time of completion of the relevant Loan.

20. In the case of a Loan secured on commercial property, the Participant has not received written notice of the bankruptcy, liquidation, winding-up, receivership, administration or administrative receivership (or any analogous event) of any Borrower.

21. The Participant has procured that full and proper accounts, books and records have been kept showing clearly all material transactions, payments, receipts and proceedings relating to that Loan and, if applicable its Related Security and all such accounts, books and records are up to date and in the possession of the Participant or held to its order.
22. The origination practices employed by the Originator, and the Lending Criteria in force with respect to the Loans have been, in all respects, legal and consistent with the practice of a reasonable and prudent lender.
23. The collection practices employed by the Participant with respect to the Loans have been, in all respects, legal and consistent with the practice of a reasonable and prudent lender.
24. The Participant is not aware of any litigation or claim calling into question in any material way its title to any Loan and, if applicable its Related Security or the value of any security. Neither the Participant nor, so far as the Participant is aware, the third party lender of any Loan is engaged in any litigation, and no litigation is pending or threatened by the Participant or, so far as the Participant is aware, the third party lender of any Loan against any person in connection with any report, valuation, opinion, certificate, consent or other statement of fact or opinion given in connection with any Loan received by the Originator in connection with the origination of any Loan.
25. The Participant has performed in all material respects all of its obligations under each Loan and its Related Security and so far as the Participant is aware no Borrower has taken or threatened to take any action against the Originator for any material failure on the part of the Originator under any Loan or its Related Security to perform any such obligation.
26. The Loan Conditions and the Loan Agreement in relation to each Loan contain no obligation on the part of the Originator to make any further advance and all costs, fees and expenses incurred in making, closing or registering the Loans and the Related Security have been paid in full.
27. All formal approvals, consents and other steps necessary to permit a legal or equitable or beneficial transfer or a transfer of servicing away from the Participant of the Loans and, if applicable, their Related Security to be transferred under the Applicable Terms and Conditions (including the Annex) whenever required under the Loan documents have been obtained or taken and there is no requirement in order for the transfer to be effective to notify the Borrower before, on or after any equitable or beneficial transfer of the Loans and, if applicable, their Related Security.
28. So far as the Participant is aware, none of the terms in any Loan Conditions and the Loan Agreement in relation to each Loan and, where applicable, its Related Security are unfair terms within the meaning of the Unfair Terms in Consumer Contracts Regulations 1994, the Unfair Terms in Consumer Contracts Regulations 1999 or the Consumer Rights Act 2015 (as applicable) in any material respect save those which impose early repayment charges.
29. Each Loan was originated in a currency specified in the Applicable Operating Procedures as an eligible currency, is denominated in and is currently repayable in such a currency.
30. Each Loan is governed by the laws of England and Wales, Northern Ireland or Scotland.

31. The Participant is authorised to transfer to the Agent personal data relating to the Borrowers and in doing so is not in breach of any of its obligations under the Data Protection Act 1998.

32. The Participant is not in breach of any of its confidentiality obligations under the terms of the Loans.

33. With respect to each Loan secured by Related Security, the whole balance of the Loan is secured by the applicable Related Security.

Where the Provisional Portfolio contains one or more Regulated Agreements:

34. In relation to a Regulated Agreement, the Participant and any agent of the Participant have duly complied with those provisions of the CCA which govern the conduct of antecedent negotiations.

35. Each Regulated Agreement has been entered into in accordance with the relevant provisions of the CCA and the Participant has materially complied with the relevant provisions of the CCA in respect of each Regulated Agreement (it being acknowledged that “material” means for the purposes of this warranty compliance with the provisions of the CCA, failure to comply with which would cause the validity or enforceability of the Regulated Agreement in accordance with its terms to be impugned or require the prior consent of the relevant court).

36. In relation to each Regulated Agreement, no debtor has commenced any action against the Participant under section 75 or in relation to section 56 of the CCA for any failure on the part of the Participant to perform any such obligations, such action subsisting at the Transfer Date.

Where the Provisional Portfolio contains one or more mortgage loans:

37. Subject to completion of any registration or recording which may be pending at the relevant Land Registry, each Mortgage either constitutes, or will constitute, following registration or recording at the Land Registry a first ranking charge by way of legal mortgage (or, in relation to the Scottish Mortgages, by way of Standard Security) over the relevant Mortgaged Property.

38. All steps necessary to perfect the Participant’s title to each Loan and its related Mortgage have been duly taken, or are in the process of being taken with all due diligence, in accordance with standards consistent with those of a reasonable and prudent mortgage lender.

39. In relation to each such Loan the Borrower has a good, valid and marketable title to the relevant Mortgaged Property.

40. No agreement for any Loan (other than to the extent it relates to the funding of buildings insurance premia) is or has ever been, wholly or partly regulated by the CCA (other than by Sections 137 to 140 of the CCA) or constitutes an unfair relationship or, to the extent it is so regulated or partly regulated, all the requirements of the CCA have been met in full. No Loan is, or has ever been, a linked transaction within Section 19 of the CCA.

41. Each Mortgage Property is, under the Loan Conditions, required to be insured under an appropriate policy.

42. If a Mortgaged Property is leasehold or long leasehold, written notice has been given to the landlord of the creation of the Mortgage.

43. Other than in the case of a Loan that is a buy-to-let mortgage loan or a loan secured on commercial property, any person who at the date when the Loan was made has been identified by the Borrower to the Originator as residing or about to reside in the relevant Mortgaged Property and was at that time aged 18 or over is either named as joint Borrower or has signed a form of consent declaring that he or she agrees that any present or future rights or interests as he or she may have or acquire over or in respect of the relevant Mortgaged Property shall be postponed and made subject to the rights, interests and remedies of the Originator under the relevant Mortgage and that he or she shall not claim any such rights or interests against the Originator.

44. In respect of any Mortgaged Property which is subject to a second or subsequent mortgage or standard security, the Participant has first priority for the full amount of the Loan and all costs, fees and expenses relative thereto.

45. Subject to completion of any registration or recording which may be pending at the Land Registry, all Property Deeds and Loan Files are held by, or to the order of, the Participant.

46. The Participant has not received written notice of any default that has not been remedied under, or any forfeiture or irritancy of any occupational leases granted in respect of, a Mortgaged Property, which would render the relevant Mortgaged Property unacceptable as security for the Loan in the context of the applicable Lending Criteria.

Where the Provisional Portfolio contains one or more social housing loans:

47. Each Borrower is (and has been at all times since commencement of the applicable DWF Loan Agreement) either (i) a Registered Provider of Social Housing under the Housing and Regeneration Act 2008 (or applicable statutory antecedent) in England; or (ii) Registered Social Landlord under the Housing Act 1996 (or applicable statutory antecedent) in Wales.

48. No Borrower is a local authority.

49. Each Borrower and Guarantor has (to the maximum extent permitted by law) waived all of its rights of set-off and is not entitled to exercise any lien, or counterclaim against the Participant in respect of any amounts payable under the relevant Loan Agreement, nor to render such Loan Agreement unenforceable in whole or in part.

50. Each Borrower is established in England and Wales as: (i) an Industrial and Provident Society under the Industrial and Provident Societies Act 1965; or (ii) a company limited by shares or guarantee under the Companies Act 2006 (or any applicable statutory antecedent); or (iii) a trust, in each case, which is either a Registered Provider of Social Housing under the Housing and Regeneration Act 2008 (or applicable statutory antecedent) in England; or (iv) Registered Social Landlord under the Housing Act 1996 (or applicable statutory antecedent) in Wales.