|  |  |  |
| --- | --- | --- |
|  | **Financial Recovery Agreement** |  |
|  |
| 1. SALIX FINANCE LIMITED
2. [enter name of Digarbon Loan Recipient]
3. [enter name of Landlord]
 |
| Dated [DATE] |
| *The above date must be the date the agreement is signed by the last of the three parties.* |

Contents

Clauses

[**1** **Interpretation** 2](#_Toc180660703)

[**2** **Purpose of the Financial Recovery** 5](#_Toc180660704)

[**3** **Financial Recovery** 5](#_Toc180660705)

[**4** **Financial Recovery Calculation** 6](#_Toc180660706)

[**5** **Compliance with Law** 6](#_Toc180660707)

[**6** **Duration** 6](#_Toc180660708)

[**7** **Duration and Termination** 6](#_Toc180660709)

[**8** **Consequences of termination or expiry** 7](#_Toc180660710)

[**9** **Measure Practical Completion Documents** 7](#_Toc180660711)

[**10** **Freedom of Information** 7](#_Toc180660712)

[**11** **Change of Control** 7](#_Toc180660713)

[**12** **Anti-corruption** 7](#_Toc180660714)

[**13** **Assignment** 8](#_Toc180660715)

[**14** **Waiver** 8](#_Toc180660716)

[**15** **Notices** 8](#_Toc180660717)

[**16** **Dispute Resolution** 8](#_Toc180660718)

[**17** **No Partnership or Agency** 9](#_Toc180660719)

[**18** **Contracts (Rights of Third Parties) Act 1999** 9](#_Toc180660720)

[**19** **Governing Law** 9](#_Toc180660721)

Schedules

Schedule 1 – Recovery Formula

This Financial Recovery deed is made the

ENTER DAY

Day of

ENTER MONTH

ENTER YEAR

*The above date must be the date the agreement is signed by the third of the three parties.*

(**Financial Recovery Agreement**)

Between:

1. SALIX FINANACE LIMITED company number 0568355 whose principal address is at 10 South Colonnade, Canary Wharf, London E14 4PU (Funder).

ENTER NAME OF DIGARBON LOAN FUNDING RECIPIENT

whose principal address is at

ENTER DIGARBON LOAN FUNDING RECIPIENT ADDRESS

(**Digarbon Loan Funding Recipient**).

1. ENTER NAME OF LANDLORD

whose principal address is at

ENTER LANDLORD ADDRESS

(Landlord)

(Each a **Party**; collectively **the Parties**)

Background:

1. The Funder intends to pay the Applicable Loan Funding to the Digarbon Loan Funding Recipient in accordance with a Loan Agreement.
2. The Digarbon Loan Funding Recipient has entered into a lease dated

*Enter lease start date* ENTER DAY of ENTER MONTH ENTER YEAR

(**the Lease**) with the Landlord in respect to the Premises which are to benefit from the Loan Funding.

1. This Financial Recovery Agreement entered into as a deed, is to ensure that the Applicable Loan Funding is used for the purpose for which it is awarded over the Lifetime Loan Funding Period.
2. In the event that the Lease is terminated, or otherwise comes to an end for any reason (including non-renewal after its expiration) before the end of the Lifetime Loan Funding Period, the Funder shall be entitled to recover the sum owed to it directly from the Landlord in accordance with this Financial Recovery Agreement.
3. This Financial Recovery Agreement shall not come into force until the date the Loan Agreement is executed by the Funder and the Digarbon Loan Funding Recipient.
4. Without prejudice to paragraph E, in the event that the Loan Agreement is not executed by the Funder and Digarbon Loan Funding Recipient, this Financial Recovery Agreement shall not be effective or legally binding upon the Parties and shall be deemed terminated.
5. Subject to paragraph E, the Parties confirm that it is their intention to be legally and contractually bound by this Financial Recovery Agreement. The Parties further acknowledge and agree that the Applicable Loan Funding is not being allocated by the Funder as consideration for the provision of goods, services or works to the Funder.

It is agreed as follows:

1. **Interpretation**

The following definitions and rules of interpretation apply in this Financial Recovery Agreement.

* 1. Definitions:

|  |  |
| --- | --- |
| Applicable Loan Funding  | the total funding given by the Funder to the Digarbon Loan Funding Recipient in GBP for the installation of all of the decarbonisation measures at the Premises. |
| Applicable Laws | all applicable laws, statutes, regulations, regulatory guidance and codes from time to time in force. |
| Building Contract | the contract to design or complete the design of and build the Project.  |
| Business Day | a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business. |
| Calendar Day | the twenty-four hour period from one midnight to the next midnight. |
| Change of Control | the sale of all or substantially all the assets of a Party to the Agreement; any merger, consolidation or acquisition of a Party to the Agreement with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party to the Agreement in one or more related transactions.  |
| Early Termination  | where the Lease is terminated or otherwise expires for any reason whatsoever (including non-renewal after its expiration), prior to the expiry of the Lifetime Loan Funding Period.  |
| Financial Recovery | the amount calculated in accordance with the Recovery Formula. |
| Loan Agreement | the agreement executed between the Funder and the Digarbon Loan Recipient for the provision of Applicable Loan Funding in relation to Digarbon which pays for measures intended to reduce the carbon emissions from the property that the Digarbon Loan Recipient occupies, including the Premises. |
| Loan Start Date | the date on which this Financial Recovery Agreement takes effect, being the date the Loan Agreement is executed by the Funder and the Digarbon Loan Funding Recipient. |
| Lifetime Loan Funding Period  | the period commencing on the earliest Measure Practical Completion Date and concluding upon the expiry of the final Measure Loan Funding Period. |
| Measure | an individual item of design, construction or other building work as contained within the Project Programme in the Loan Agreement.  |
| Measure Loan Funding  | the total funding given by the Funder to the Digarbon Loan Funding Recipient in GBP for the installation of a single decarbonisation measure. |
| Measure Loan Funding Period | commencing on the Measure Practical Completion Date, the total number of days the Measure Loan Funding is provided for by the Funder for each decarbonisation measure that is intended to be utilised for the purpose of decarbonising the public sector. The Measure Loan Funding Period for each Measure is as follows:  |

[Please populate this table]

|  |  |  |  |
| --- | --- | --- | --- |
|  | Work type |  Building number (in application form) | Loan Funding period (days) |
| (a) |  |  |  |
| (b) |  |  |  |
| (c) |  |  |  |

|  |  |
| --- | --- |
| Measure Practical Completion Date  | the date on which the certificate of practical completion (or the equivalent evidence of practical completion of works) for a single Measure is properly issued in accordance with the terms of the Building Contract. |
| Premises  | the Premises which are the subject of the Lease in relation to which the Applicable Loan Funding has been spent to install decarbonisation measures.  |

[Please populate this table]

|  |  |  |  |
| --- | --- | --- | --- |
| Building No (in application form) | Building Name | Building UPRN | Building Address |
| (1) |  |  |  |
| (2) |  |  |  |
| (3) |  |  |  |

|  |  |
| --- | --- |
| Project | the project operated by the Digarbon Loan Funding Recipient to assist in the reduction of energy use or the switch to, or enabling works in preparation for, a cleaner heat source, as described in the Loan Agreement. |
| Project Programme | the detailed timetable for delivery and completion of the Project including a breakdown of the Measures and the cost of such Measures, as set out in the Loan Agreement. |
| Recovery Formula  | the formula as set out in Schedule 1 of this Agreement. |
| Remaining Measure Loan Funding Period  | the number of days from the date of Early Termination until the end of the relevant Measure Loan Funding Period.  |
| Replacement Public Authority Tenant | a public authority (as defined at section 2 of the Procurement Act 2023) that immediately follows the Recipient, or another Replacement Public Authority Tenant, as the tenant of the Premises. |
| Representative(s) | a Party's duly authorised directors, employees, officers, agents, professional advisers and consultants. |

* 1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), and any Crown body.
	2. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that legislation or legislative provision.
	3. A reference to **writing** or **written** includes email but not fax.
	4. Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression will be interpreted as illustrative and will not limit the sense of the words preceding those terms.

1.6 The Background set forth at the beginning of this Financial Recovery Agreement and Schedule 1 (Recovery Formula) of this Financial Recovery Agreement form integral parts of this Financial Recovery Agreement and have the same legal effect and interpretative weight as any other provision within the body of this Financial Recovery Agreement.

1. **Purpose of the Financial Recovery**

To ensure that the Applicable Loan Funding is used for the purpose for which it is awarded over the Lifetime Loan Funding Period.

1. **Financial Recovery**
	1. Without prejudice to the Funder's other rights and remedies, the Funder may exercise its rights in clause 3.2 in the event the Lease is subject to Early Termination.
	2. Where Early Termination of the Lease occurs, the Funder will be entitled to the Financial Recovery paid by the Landlord in accordance with the Recovery Formula (Schedule 1).
	3. Where an Early Termination has or may occur:
		1. the Digarbon Loan Funding Recipient will notify the Funder and the Landlord in writing not less than 20 Business Days prior to the expiry of the Lease;
		2. the Landlord shall upon expiry of the Lease (or by date otherwise agreed by the Parties in writing) repay directly to the Funder all or any part of the Applicable Loan Funding previously paid to the Digarbon Loan Funding Recipient in accordance with the Recovery Formula (Schedule 1); and
		3. the Digarbon Loan Funding Recipient shall provide the Funder with all documentation relating to the Measure Practical Completion in accordance with clause 9.1.
	4. Where the Funder exercises its rights in clause 3.2, the Landlord shall make the Financial Recovery payment by bank transfer to an account, the details of which will be provided to the Landlord by the Funder when required.
	5. Should the Landlord be subject to financial or other difficulties which are capable of having a material impact on its compliance with this Financial Recovery Agreement, it will notify the Funder as soon as possible so that, if possible and without creating any legal obligation, the Funder will have an opportunity to provide assistance in resolving the matter or to take action to protect the Funder and the Loan Funding.
	6. In the event of:
		1. Early Termination, if one or more Replacement Public Authority Tenants occupy the whole Premises for the remainder of the Lifetime Loan Funding Period then the provisions of this Financial Recovery Agreement shall not apply; and
		2. any Replacement Public Authority Tenant’s or subsequent Replacement Public Authority Tenant’s tenancy ending prior to the end of the Lifetime Loan Funding Period (and the Replacement Public Authority Tenant are not immediately replaced by a subsequent Replacement Public Authority Tenant), then the Landlord will owe the Funder Financial Recovery (calculated in accordance with the Recovery Formula) in accordance with this Financial Recovery Agreement for the remainder of the Lifetime Loan Funding Period commencing on the date the final Replacement Public Authority Tenant’s tenancy ends.
	7. Any Calendar Day(s) which elapse within the Lifetime Loan Funding Period between:
		1. the Lease of the Digarbon Loan Funding Recipient and any Replacement Public Authority Tenant; or
		2. the lease of the Replacement Public Authority Tenant and any subsequent Replacement Public Authority Tenant;

in which the Replacement Public Authority Tenant does not have an in-force lease, will be added to the Measure Loan Funding Period for the purposes of the Recovery Formula.

1. **Financial Recovery Calculation**
	1. The applicable calculation shall be in accordance with the formula provided in Schedule 1 (Recovery Formula) of this Financial Recovery Agreement.
	2. Financial Recovery shall apply to each and every decarbonising measure installed in the Premises covered by this Agreement for which the Funder has agreed to pay the Applicable Loan Funding to the Digarbon Loan Funding Recipient in accordance with the Loan Agreement as per the example set out in Schedule 1.
2. **Compliance with Law**

The Parties must carry out their obligations under this Financial Recovery Agreement in accordance with all Applicable Laws.

1. **Duration**
	1. Except where otherwise specified, the terms of this Financial Recovery Agreement shall apply from the Loan Start Date until the earlier of:
		1. the date of Early Termination; or
		2. the termination of this Financial Recovery Agreement pursuant to clause 7 below.
2. **Duration and Termination**
	1. This Financial Recovery Agreement shall remain in place until the Financial Recovery is paid to the Funder in accordance with the provisions of clause 3 or if there is no Early Termination until the conclusion of the Lifetime Loan Funding Period.
	2. The Funder may terminate this Financial Recovery Agreement by giving at least three months' written notice to the other Parties.

7.3 For greater certainty, and without prejudice to clause 13, the sale of the Premises or any share of the Premises by the Landlord prior to the end of the Lifetime Loan Funding Period shall not alter the rights or obligations of any Party under this Financial Recovery Agreement.

1. **Consequences of termination or expiry**
	1. Any provision of this Financial Recovery Agreement that expressly or by implication is intended to come into or continue in force on or after the expiry or termination of this Financial Recovery Agreement will survive expiry or termination and continue in full force and effect.
	2. Termination or expiry of this Financial Recovery Agreement will be without prejudice to any rights or remedies accrued under it before termination or expiry. Nothing in this Financial Recovery Agreement will prejudice the rights of the Funder to recover any amount of the Applicable Loan Funding previously paid to the Digarbon Loan Funding Recipient following termination or expiry.
	3. Any liabilities arising on termination or expiry of this Financial Recovery Agreement must be managed and paid for by the Digarbon Loan Funding Recipient or the Landlord (as applicable) using their own resources. There will be no additional funding available from the Funder for this purpose. The Funder will not be liable to pay any of the Recipient’s or Landlord’s costs related to this Financial Recovery Agreement.
2. **Measure Practical Completion Documents**
	1. The Digarbon Loan Funding Recipient shall retain copies of the certificate of practical completion (or equivalent evidence of practical completion) of each Measure and any other documentation in its possession in relation to the Measure and provide all to the Funder in the event of Early Termination.
3. **Freedom of Information**

 The Parties acknowledge that both the Funder and Digarbon Loan Funding Recipient are subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 (**EIRs**) and shall provide such assistance to each other as necessary in discharging those obligations pursuant to the FOIA and EIR.

1. **Change of Control**

The Digarbon Loan Funding Recipient and Landlord will notify the Funder as soon as either is aware (or reasonably should be aware) that it is undergoing or has undergone a Change of Control, provided that notification is permitted by Applicable Laws. The relevant Party will ensure that its notice sets out full details of the Change of Control, including the circumstances explaining it.

1. **Anti-corruption**
	1. The Landlord and the Digarbon Loan Funding Recipient shall not:
		1. offer to give or agree to give to any person employed by, appointed by or representing the Funder any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this Financial Recovery Agreement or any other agreement with the Funder, or for showing or forbearing to show favour or disfavour to any person in relation to this Financial Recovery Agreement or any other agreement; and
		2. enter into this Financial Recovery Agreement or any other agreement with the Funder in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge, unless, before the agreement is made, particulars of any such commission and the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Funder.
2. **Assignment**

Neither the Digarbon Loan Funding Recipient nor the Landlord may, without the prior written consent of the Funder, assign, transfer, novate or in any other way dispose of the whole or any part of this Financial Recovery Agreement to any third party.

1. **Waiver**

No failure or delay by any of the Parties to exercise any right or remedy under this Financial Recovery Agreement shall be construed as a waiver of any other right or remedy.

1. **Notices**
	1. Any notice given to a party under or in connection with this Financial Recovery Agreement must be in writing and in English and must be:
		1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
		2. sent by email to the following address (or an address substituted in writing by the party to be served):
			1. Funder:

Salix Finance Limited, 10 South Colonnade, Canary Wharf, London E14 4PU

* + - 1. DIGARBON Loan Funding Recipient:

ENTER DIGARBON LOAN FUNDING RECIPIENT ADDRESS

* + - 1. Landlord

ENTER LANDLORD ADDRESS

* 1. Any notice will be deemed to have been received:
		1. if delivered by hand, at the time the notice is left at the proper address;
		2. if sent by pre-paid first-class post or other next Business Day delivery service, at 9.00 am on the second Business Day after posting; or
		3. if sent by email, at the time of transmission except that if this time is on a non-Business Day or after 5.00 pm on any Business Day it will be deemed received on the next Business Day.
1. **Dispute Resolution**
	1. In the event of any dispute between the Parties in relation to this Financial Recovery Agreement the matter will first be referred for resolution to a senior Representative of the Funder, the Digaron Loan Funding Recipient and the Landlord (as appropriate).
	2. Should the dispute remain unresolved within 10 Business Days of the matter being referred to senior Representatives, any of the Parties may refer the matter to a formal meeting between the Chief Executive of the Funder and the Chief Executive of the Digarbon Loan Funding Recipient and the Chief Executive of the Landlord.
2. **No Partnership or Agency**

 This Financial Recovery Agreement shall not create any partnership or joint venture between the Parties, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Parties.

1. **Contracts (Rights of Third Parties) Act 1999**

This Financial Recovery Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999, with the exception of the Department for Energy Security and Net Zero.

1. **Governing Law**

This Financial Recovery Agreement is governed by and will be construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**DN: PARTIES TO AMEND BELOW AS NECESSARY, PROVIDED THIS DEED IS SIGNED BY EITHER; TWO DIRECTORS, OR A DIRECTOR AND COMPANY SECRETARY, OR A DIRECTOR AND A WITNESS (WHO MUST BE PHYSICALLY PRESENT), OR BY AFFIXING THE COMPANY’S COMMON SEAL, AS WELL AS THE SIGNATORIES MENTIONED ABOVE.**

Executed as a deed by affixing the common seal of SALIX FINANCE LIMITED acting by

[A DIRECTOR AND ITS SECRETARY]

[TWO DIRECTORS]

[A DIRECTOR AND A WITNESS]

Name of Director: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Signature of Director:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Name of [Secretary][Director]:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature of [Secretary][Director]:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In the presence of

Signature of Witness:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Name (in BLOCK CAPITALS):**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Address:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Executed as a deed by affixing the common seal of [the Digarbon Loan Funding Recipient] acting by

[A DIRECTOR AND ITS SECRETARY]

[TWO DIRECTORS]

[A DIRECTOR AND A WITNESS]

Name of Director: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Signature of Director:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Name of [Secretary][Director]:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature of [Secretary][Director]:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In the presence of

Signature of Witness:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Name (in BLOCK CAPITALS):**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Address:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Executed as a deed by affixing the common seal of [the Landlord] acting by

[A DIRECTOR AND ITS SECRETARY]

[TWO DIRECTORS]

[A DIRECTOR AND A WITNESS]

Name of Director: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Signature of Director:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Name of [Secretary][Director]:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature of [Secretary][Director]:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In the presence of

Signature of Witness:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Name (in BLOCK CAPITALS):**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

Address:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**\_

SCHEDULE 1

RECOVERY FORMULA

$$\left(\frac{Measure Loan Funding \left(£\right)}{Measure Loan Funding Period(Calendar Days)}\right)X Remaining Measure Loan Funding Period (Calendar Days) = sum owed to Salix (£)$$

Example:

A project includes the following measures across the relevant time periods; a heat pump (Loan Funding : £60,000, Measure Loan Funding Period: 20 years) and loft insulation (Loan Funding : £30,000, Lifetime Loan Funding Period: 27 years).

If the Digarbon Loan Funding Recipient has vacated the Premises due to Early Termination after 5 years, the below calculation shall apply:

Heat Pump = (£60,000 / 7300[[1]](#footnote-2) days) x 5475 days = £45,000

Loft insulation = (£30,000 / 9855 days) x 8030 days = £24,444

Total owed by Landlord to Funder = £69,444

1. Note this example does not take account of leap days. However, any calculation under this Financial Recovery Agreement of the Measure Loan Funding Period or Remaining Measure Loan Funding period should be inclusive of leap days. [↑](#footnote-ref-2)