FUTURE FUND CHECKLIST

The following table sets out a checklist to be referenced by a company who is seeking to access funding through the Government's matched funding scheme, the Future Fund.

Sections A and B set out Company and Investor Eligibility Criteria.

Section C sets out key considerations for the Company before committing to the scheme.

Note that the Company must satisfy **all** the Company Eligibility Criteria to gain access to the Future Fund. However, the Investor only needs to satisfy **one** of the Investor Eligibility Criteria.

The definitions used in this table are set out in Schedule 1.

(A) Company Eligibility Criteria	
The Company must have raised at least £250,000 in equity from third-party investors in previous funding rounds in the last five years (from 1 April 2015 to the Base Date, inclusive).	
If the Company is a member of a corporate group, it must be the ultimate parent company.	
The Company does not have any of its shares or other securities listed/quoted on a regulated market, a multilateral trading facility, a recognised investment exchange and/or any other similar market, stock exchange or listing venue.	
The Company must be a UK incorporated limited company.	
The Company must have been incorporated on or before 31 December 2019.	
At least one of the following must be true for the Company: - half or more employees are UK based; or - half or more revenues are from UK sales.	
(B) Investor Eligibility Criteria	
An "investment professional" within the meaning given to that term in article 19 of the FPO.	
A high net worth company, unincorporated associated or high value trust falling within article 49(2) of the FPO.	
A "certified sophisticated investor" or a "self-certified sophisticated investor" within the meaning given in articles 50 and 50A respectively of the FPO.	
A "certified high net worth individual" within the meaning of article 48 of the FPO.	
An equivalent professional, high-net worth, institutional or sophisticated investor in accordance with applicable law and regulation in such investor's home jurisdiction.	
An association of high net-worth or sophisticated investors within the meaning of article 51 of the FPO.	
Capable of being classified as a "professional client" within the meaning given in the glossary to the FCA's handbook of rules and guidance.	

(C) Company Considerations

Borrowing cost of 8%

- The Company should ensure that it is comfortable incurring the cost of borrowing under the CLA (a minimum of 8% over 3 years). Admittedly, the interest rolls up and is not payable in cash prior to conversion or maturity events.

- The Company should consider whether the benefit of receiving the substantially increased up front matched funding outweighs the cost of the Loans.

- Consider this cost of borrowing against a smaller raise in which funding is received in exchange for equity only.

Repayment with 100% premium

- If a conversion event (see below on what constitutes a Qualified Financing) does not occur within 3 years, the Loans may have to be repaid in full with a 100% premium and interest. The CLA also contains other scenarios (linked to events of default) accelerating repayment of the Loans.

- Consider whether the Company at the Maturity Date could afford this repayment. It is a bet on the success of the Company in the intervening period.

Conversion Events

- The conversion, exit, and maturity scenarios under the CLA are such that the most favourable position for the Company is to conduct a substantial fundraise (which is greater than or equal to the aggregate of the Loans) prior to the Maturity Date of 3 years. Under this scenario, a simple conversion (at the discounted rate) would occur alongside the new raise and the Company would will not be liable to repay the Loans (such repayment always including the Redemption Premium and Interest).

- Smaller raises may also trigger a conversion with the approval of a majority of Investors (i.e. other than the Future Fund) – so long as the amount raised is at least 25% of the value of the Loans. Tactically, the Company may be able to lean on its private Investors to force the Future Fund also to convert on such a smaller raise. Note that this is a discretionary right for Investors.

- In an exit scenario (broadly, a sale or IPO), the Loans will convert, but if the repayment of the Loans together with a 100% premium and interest would result in Investors receiving a higher amount than their share of the exit proceeds, then Investors can require cash repayment. In other words, the valuation needs to more than double by the point of exit to protect against the possibility of cash repayment.

- Consider whether the Company will be able to attract significant investment (or is planning an exit event) within the next 3 years, and whether it can drive sufficient increase in its valuation.

Existing Investors – dilution • The Company should carefully consider whether any of the Company's existing investors have anti-dilution rights. If so, the Company should assess whether these will be triggered by the CLA. The Company should bear in mind that even if the valuation cap provided under the CLA is the same as the valuation of a historic round, the minimum 20% discount to be applied may, in effect, create a down-round. In addition, the Company may have provided warranties in prior investment agreements that it would not issue shares at a lower valuation than those issued under such an agreement; the creation of this de facto down-round may see the Company breach these. • Consider whether any investors' anti-dilution provisions will be triggered or if the Company may breach any covenants or warranties by conducting a down-round. Obtain shareholder approval or waivers where necessary or possible.	
Existing Convertible Instruments • If the Company has existing convertible instruments or funding agreements, these may contain restrictions on the manner in which the Company can raise future funding. Additionally, these agreements, or prior investment agreements, may prevent the Company from issuing higher ranking shares than those held by a prior investor. • Consider whether any prior funding or investment agreements may prohibit the Company raising funds via the Loans, or whether specific consents may need to be sought form prior investors.	
Impact on Future Investors • The rights set out in the CLA ensure that any conversion of the Loans into equity will always be into the most senior class of shares in the Company. The CLA also contains a "most favoured nation" clause, under which the Future Fund and the Investor(s) will benefit from any more favourable terms offered to a third party investor during the term of the Loans. • Consider that the Company may be less attractive to institutional investors in future who will be used to receiving preferential rights and highest ranking shares in exchange for their investment; or, alternatively, who view the Loans as expensive debt which needs to be priced into the valuation for future investment.	

Timing of Attracting Matched Funding • The Future Fund will only match funding committed at the point of entry into the CLA. At the point of making the application, the lead investor will detail this amount of funding. It is unclear whether the Company may be able to revise this amount in the intervening period prior to entry into the CLA, should it identify further matched investment. • Unfortunately, the Company cannot use the Future Fund loan as a tool to raise subsequent matched funding to obtain a further match from the government, once the CLA is complete. There is the possibility to bring in other Investors on the terms of the CLA within the specified "Headroom Amount" during a period of 90 days without it constituting a further equity financing round potentially triggering conversion.	
Restricted Uses of the Loans • The Loans are advanced to the Company only for specific purposes as set out in the CLA. For example, the Loans cannot be used to repay shareholder loans, to pay dividends, to pay bonuses to employees (for a period of 12 months), or to pay professional fees to corporate finance houses or investment banks. • Consider whether the Company has sufficient liquidity to pay any liabilities it has in respect of those circumstances listed here without using the Loans.	
Transferability • During the term of the Loan from the Future Fund, the Future Fund has the right to assign to other governmental organisations or public bodies. Following conversion, the Future Fund (or successor) will be free to sell the shares to an institutional investor. As per the CLA, the only limit imposed on who an institutional investor may be is that, in the reasonable discretion of the Company's board, this investor shall not be a competitor of the Company. • Consider the possibility that a substantial number of the Company's shares are sold to an unknown investor in the future. For regulated companies, this may require approval of the regulator (e.g. the Gambling Commission).	
Logistical Practicalities • Only an Investor can trigger the application process by completing the required form. Do not underestimate the time and effort this will take and consider the practicalities of supporting an Investor with this process.	

SCHEDULE 1

Definitions

Base Date: means 19 April 2020 (the date on which the Future Fund was announced);

CLA: means the convertible loan agreement under which the funding will be provided;

Company: means the Company seeking to attract funding through the Future Fund;

FPO: means the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005;

Investor(s): means the third party investor(s) providing the funding which will be matched by the Future Fund;

Loans: means the loans provided by the Future Fund and the third party investor(s) under the CLA;

Maturity Date: means the date 36 months after signature of the CLA;

Qualified Financing: has the meaning given to it in the CLA (namely *"any bona fide equity financing round occurring after the date of [the CLA] in which the Company raises an amount equal to at least the aggregate amount of the Loans received by the Company at the time of such financing round, in newly committed capital prior to the Maturity Date from one or a series of related transactions involving the issue by the Company of shares to investor(s) excluding (i) any Loans made pursuant to [the CLA]; (ii) any shares issued on the exercise of any option granted to an employee, officer or consultant of the Company by way of incentive; and (iii) any issue of shares on conversion of a Loan under [the CLA]"*);

Redemption Premium: has the meaning given to it in the CLA (namely *"100% of the principal amount of [the] Loan"*);