**Annex B**

## UK Subsidy Control (formerly State Aid)

In awarding grant funding, NTCA is required as a public authority to comply with the UK’s subsidy control rules. The Subsidy Control Act 2022, which takes effect from 4th January 2023, can be found [here](https://www.legislation.gov.uk/ukpga/2022/23/enacted).

and the statutory guidance to accompany the Act can be accessed via this [link](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1117122/uk-subsidy-control-statutory-guidance.pdf).

The statutory guidance recognises that:

*“in many cases, public authorities will need to work together with beneficiaries to establish details about the beneficiaries’ plans, incentives, and previous subsidies received in order to fulfil the subsidy control requirements”.*

As such, please set out, **by answering each of the questions below**, your organisation’s views on whether your project would involve the award of a subsidy or not. NTCA will then, as the body responsible for designing financial assistance measures and assessing them against the subsidy control principles (where necessary), consider your views when deciding how the project should be structured in a subsidy compliant manner.Your answers must provide full and accurate information, including all information required for NTCA to make an assessment of whether the subsidy control rules apply (and, if so, whether the award of a subsidy would be compliant with those rules)

*(You may wish to take internal or external legal advice to assist your organisation in completing this section. Please note that where NTCA, working with the applicant as necessary, cannot establish a compliant subsidy position then we would be unable to progress your application)*

### Beneficiaries

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| **Which organisations will benefit from the funding?**  Please list all the potential beneficiaries, including the applicant, any delivery organisations and contractors, and end beneficiaries (e.g. businesses, residents etc).  For ease, classes of beneficiary may be identified (for example, contractors could be treated as a single class of potential beneficiary). |
| Please list all potential beneficiaries in the space below: |

### Compliance

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| **Which organisations are regarded not to be in receipt of a 'subsidy'?**  *Subsidy is defined at s2(1) of the Subsidy Control Act 2022 as meaning financial assistance which:*  *(a)is given, directly or indirectly, from public resources by a public authority,*  *(b)confers an economic advantage on one or more enterprises,*  *(c)is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and*  *(d)has, or is capable of having, an effect on—*  *(i)competition or investment within the United Kingdom,*  *(ii)trade between the United Kingdom and a country or territory outside the United Kingdom, or*  *(iii)investment as between the United Kingdom and a country or territory outside the United Kingdom.* |
| Please list all beneficiaries regarded not to receive a subsidy in the space below. For each beneficiary, please explain *why* they are considered not to be in receipt of a subsidy. You may find it helpful to refer to the definition above, and the guidance notes below. Again you may also wish to seek legal advice on completing this section.  ***Guidance notes:***  *Section (b) of the above test is generally the most relevant in determining whether an organisation is receiving a subsidy or not. You will note a subsidy requires an “economic advantage“ and for that advantage to be given to one or more “enterprises“.*  *So, for example, you might assert that any contractors will not receive a subsidy as they will not be receiving an “economic advantage” because their payment will be at market rates only. You would need to explain how this market rate payment will be demonstrated, for example (i) that their appointment will be via a procurement process or (ii) by benchmarking the rates payable.*  *Likewise, no subsidy is present where the recipient is not an “enterprise“. This term is used to describe an organisation offering goods and services. So, for example, it may be possible to assert that a local authority or public body receiving a benefit is not an “economic actor” (so long as they are acting within their capacity as a public authority exercising public powers, rather than offering any goods or services).*  ***Flow through***  *Depending on the structure of the project, it may also be possible to assert that an organisation acts as an intermediary, with any benefit from the subsidy flowing through to third parties, and thus the intermediary is not itself in receipt of subsidy. For this model to be applied you would need to confirm that:*   * *The totality of any benefit under the project is passed on to those third parties;* * *No residual benefit is retained by the intermediary; and* * *The intermediary is reimbursed on a cost recovery basis only, with no profit element*   *Please note the “flow through” example above is not exhaustive and there may be other available routes as to why the proposed funding does not involve a subsidy.* |
| **For those organisations that are regarded as being in receipt of a subsidy, please set out how you propose that the funding might comply with the Subsidy Control Act 2022.  If you consider your project does not involve any subsidy, this section can be left blank.**  **Options for subsidy awards include:**   1. ***Minimal Financial Assistance (“MFA“)***   *The 'Minimal Financial Assistance‘ (MFA) provision allows an enterprise to receive up to and including* ***£315,000*** *of subsidy over a time period covering:*  *- the elapsed part of the current financial year, and*  *- the two previous financial years.*  *Please see sections 36 and 37 of the Subsidy Control Act 2022 for further details. Please note cumulation rules apply to MFA, as such the following should all be taken into account during the current and previous two financial years when assessing your eligibility:*   * *MFA;* * *SPEI assistance;* * *aid given under the EU State aid de minimis regulations either before the end of the implementation period of 31 December 2020 or after this date, if by virtue of the Northern Ireland Protocol; and* * *subsidies given as small amounts of financial assistance (SAFA) under Articles 364(4) or 365(3) of the UK-EU Trade and Cooperation Agreement*  1. ***The Subsidy Control Principles***   *Before giving a subsidy via this route, NTCA must consider the 7 principles\* below and must not give the subsidy unless we are of the view the subsidy is consistent with those principles:*  ***Common interest***  *A. Subsidies should pursue a specific policy objective in order to—*  *(a)remedy an identified market failure, or*  *(b)address an equity rationale (such as local or regional disadvantage, social difficulties or distributional concerns).*  ***Proportionate and necessary***  *B. Subsidies should be proportionate to their specific policy objective and limited to what is necessary to achieve it.*  ***Design to change economic behaviour of beneficiary***  *C. (1)Subsidies should be designed to bring about a change of economic behaviour of the beneficiary.*  *(2)That change, in relation to a subsidy, should be—*  *(a)conducive to achieving its specific policy objective, and*  *(b)something that would not happen without the subsidy****.***  ***Costs that would be funded anyway***  *D. Subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy.*  ***Least distortive means of achieving policy objective***  *E. Subsidies should be an appropriate policy instrument for achieving their specific policy objective and that objective cannot be achieved through other, less distortive, means.*  ***Competition and investment within the United Kingdom***  *F. Subsidies should be designed to achieve their specific policy objective while minimising any negative effects on competition or investment within the United Kingdom.*  ***Beneficial effects to outweigh negative effects***  *G. Subsidies’ beneficial effects (in terms of achieving their specific policy objective) should outweigh any negative effects, including in particular negative effects on—*  *(a)competition or investment within the United Kingdom;*  *(b)international trade or investment*  *(\*****Note:*** *For any subsidies in relation to energy and environment, please also set out your views on how and whether you consider that these respect the additional principles at Schedule 2 of the Subsidy Control Act 2022, along with the above principles)* |
| If selecting option (a) “Minimal Financial Assistance”, please confirm that you have read and understood the rules and procedural requirements set out sections 36 and 37 of the Subsidy Control Act 2022 and that your eligibility includes any other relevant awards that must be cumulated as set out above. Where your project involves you awarding such MFA assistance to third parties, please also confirm that you will follow the above rules and procedural requirements in administering those awards.  If selecting option (b) “The Subsidy Control Principles” please describe, for *each* principle, your organisation’s views on how your project respects that principle. This will assist NTCA, as ultimate decision maker, in making the necessary assessment.  Please note that, as above, this section only needs to be completed in respect of those awards which are subsidies in the first place. |