

DATED

2012

(1) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

and

(2) HBF INSURANCE PCC LIMITED

(Transacting on behalf of its Cells)

NEWBUY INDEMNITY SCHEME

DEED OF GUARANTEE

CONTENTS

1.	INTERPRETATION	2
2.	COMMENCEMENT AND TERM	8
3.	GUARANTEE	9
4.	EXTENT OF LIABILITY FOR INDIVIDUAL POLICY LOSSES	9
5.	MAXIMUM LIABILITY: INDIVIDUAL CELLS	9
6.	OVERALL GUARANTEE LIMIT	9
7.	CONDITIONS FOR SECRETARY OF STATE'S LIABILITY	9
8.	LIABILITY TO INDIVIDUAL CELL	10
9.	PAYMENT AND SETTLEMENT IN RESPECT OF POLICY LOSSES	10
10.	EXERCISE OF RIGHTS ETC UNDER POLICIES	10
11.	AUDIT	11
12.	INFORMATION TO BE PROVIDED TO SECRETARY OF STATE	12
13.	£500M, £750M AND £900M THRESHOLDS: NOTICE	12
14.	£1BN THRESHOLD: CLOSURE NOTICE	12
15.	SUSPENSION OF GUARANTEE IN RELATION TO INDIVIDUAL CELLS	13
16.	SUSPENSION OF GUARANTEE	16
17.	ASSIGNMENT	18
18.	TERMINATION	18
19.	RECONCILIATION AFTER TERMINATION DATE	19
20.	AMENDMENTS TO TERMS	19
21.	RECOVERED MONIES	21
22.	THIRD PARTY RIGHTS	21
23.	OUTSOURCING	21
24.	AMENDMENTS AND ALTERATIONS	22
25.	INVALIDITY AND SEVERABILITY	22
26.	WAIVER	22
27.	CUMULATIVE RIGHTS	23
28.	COUNTERPARTS	23

29.	NO PARTNERSHIP	23
30.	FURTHER ASSURANCE	23
31.	COSTS	23
32.	NOTICES	23
33.	DATA PROTECTION	24
34.	CONFIDENTIALITY	25
35.	LAW AND JURISDICTION	27
	SCHEDULE 1: ELIGIBILITY CRITERIA	30
	SCHEDULE 2: INFORMATION TO BE PROVIDED TO SECRETARY OF STATE	31

THIS DEED is entered into on the day of 2012

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT** (the "**Secretary of State**"); and
- (2) **HBF INSURANCE PCC LIMITED**, transacting on behalf of its Cells (as defined below) from time to time, a protected cell company incorporated in Guernsey with Company No. [●] and whose registered office is at Mill Court, La Charroterie, St Peter Port, Guernsey ("the **PCC**").

WHEREAS:

- (A) The NewBuy Scheme ("the Scheme") is an arrangement between the PCC, JLT Specialty Limited, the Builders, the Lenders and the Secretary of State to provide insurance cover (backed by the Secretary of State's liability under this Guarantee) in respect of loans eligible under the Scheme with a view to promoting the wider availability of 95% Loan-to-Value mortgage lending in the new build residential property market in the United Kingdom.
- (B) The PCC is a protected cell company incorporated in Guernsey and owned by the Home Builders Federation Limited.
- (C) The purpose of the PCC is to provide insurance against the risk of Lenders suffering losses in relation to Insured Loans covered by the terms of each Policy.
- (D) The Secretary of State has agreed to guarantee the liabilities of each Cell of the PCC under each Policy to the extent set out in this Guarantee.
- (E) The terms of this Guarantee may in principle be made available (subject to compliance with the terms of the Scheme and with any other applicable legal, regulatory, financial or other requirements) in respect of any undertaking whose business includes the construction and sale of New Build Properties in England, and in respect of any lender who provides mortgage finance for the purchase of such properties.

(F) Similar provision to that made under this Guarantee may be made available (subject to agreement between the relevant public authorities and builders and lenders who wish to participate, and to any applicable legal, regulatory or other requirements) in respect of the construction and sale of New Build Properties in Scotland, Wales and Northern Ireland.

In consideration of the mutual undertakings contained herein **IT IS NOW HEREBY AGREED:**

1. INTERPRETATION

1.1 In this Guarantee the following definitions shall have the following meanings:

- "Builder"** means a Company whose business includes the construction and sale of New Build Property in England, and which is party to a Framework Agreement in respect of which Insured Loans have or may be made (and "Builders", as the context requires, means any or all such Companies);
- "Business Day"** means a day other than a Saturday, Sunday or a public holiday in England and Wales;
- "Cell Payment"** in relation to a Framework Agreement has the same meaning as in the Agreement;
- "Cell"** means each (or, as the context may require, any) cell established by the PCC which is subject to a Framework Agreement;
- "Closure Date"** means the earlier of-
- (i) the third anniversary of the Commencement Date, (or such later date as may be agreed between the Parties in writing), or
 - (ii) the date a Closure Notice takes effect as specified

	in paragraph 14.2;
"Closure Notice"	shall have the meaning given to it in paragraph 14.1;
"Commencement date"	means the date of this Guarantee;
"Commercial Fee"	means the Commercial Fee payable by a Lender to the Secretary of State in return for the benefit of this Guarantee under an agreement between the Lender and the Secretary of State (and " Commercial Fee Agreement ") shall be construed accordingly);
"Company"	means a limited liability company that is subject to the Companies Act 2006;
"Data Controller", "Data Processor" "Process" and "Processing"	have the meanings ascribed to them in the Data Protection Legislation;
"Data Protection Legislation"	means the Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, any and all subordinate legislation enacted thereunder and any applicable decisions or guidance issued by the UK Information Commissioner's Office, all as the same may be amended or re-enacted from time to time; and (where relevant) all provisions having the same, or substantially the same effect that form part of the law of Guernsey;
"Eligible loan"	means an Insured Loan (other than an Excluded Loan) which meets the Eligibility Criteria set out in Schedule 1 ;
"Event of Insolvency"	in relation to a person other than a natural person

means any one or more of:

- (a) the inability of the person to pay its debts as they fall due,
- (b) the entry into liquidation either compulsory or voluntary (except for the purpose of amalgamation or reconstruction) of the person,
- (c) the passing of a resolution for a creditor's winding up of the person,
- (d) the making of a proposal by the person to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, other than any composition or arrangement entered into by a Party in connection with the refinancing and/or restructuring of liabilities owed to its financial creditors, or
- (e) the application to the court for an administration order or any steps taken in relation to the appointment of a receiver or administrative receiver or administrator of or in relation to the person or any of its assets;

"Excluded Loan"

means a loan granted (i) after the **Closure Date** (unless the Mortgage Offer in relation to the loan was made before that Date and the loan is made within six months of the date of the offer), or (ii) without the Secretary of State's prior written consent whilst the operation of this Guarantee is suspended pursuant to

paragraphs 15.1 to 15.8 (in relation to the relevant Cell) or 16.1 to 16.11;

“Framework Agreement”

means a Framework Agreement between a Lender, a Builder, the PCC, JLT Specialty Ltd, JLT Insurance Management (Guernsey) Ltd and the Home Builders Federation Limited;

“Group”

in relation to a person other than a natural person means the person, any holding company and any subsidiary of any holding company of that person for the time being;

“Inception Date”

in relation to a Cell means the date on which the first loan insured under a Policy issued by the Cell is drawn down to purchase a Property (and the loan thereby becomes the first Insured Loan under the Policy);

“Insured Loan”

means a loan which is an “Insured Loan” as defined in a Policy applicable in relation to the loan;

“Lender”

means any entity which:

(i) is an undertaking whose business includes the provision of mortgage loans to persons in the United Kingdom;

(ii) which has a permission under Part IV of the Financial Services and Markets Act 2000 to enter into regulated mortgage contracts; and

(iii) which is entitled to the benefit of insurance provided by a Policy

(and "Lenders", as the context requires, means all or any such entities);

"Loan to Value" in relation to an Insured Loan has the meaning given to it in the Policy applicable to the loan;

"Mortgage Offer" has the same meaning as in a Policy;

"New Build Property" has the meaning given in Schedule 1;

"Nominated Account" means a bank account established in accordance with a Framework Agreement;

"Parties" means the parties to this Guarantee;

"Personal Data" means any and all personal data that is transferred in connection with this Guarantee and with respect to which a Party is a Data Controller, where "personal data" has the meaning ascribed to it in the Data Protection Legislation;

"Policy" means the agreed form mortgage insurance policy issued by the PCC on behalf of a Cell to a Lender (as the "Insured") and entered into pursuant to a Framework Agreement;

"Policy Loss" means a "Loss" as defined in a Policy;

"Quarter" means the period from 1 January to 31 March, 1 April to 30 June, 1 July to 30 September and 1 October to 31 December;

"Recovered Monies" in relation to a Policy has the same meaning as in the Policy;

"Sale Price" has the meaning given in the Policy;

"the Scheme"	has the meaning given in Recital (A) above;
"Term"	means the period beginning on the Commencement Date and ending on the Termination Date;
"Termination Date"	means the later of: <ul style="list-style-type: none"> (a) 23:59 Greenwich Mean Time on the 31st March 2022; or (b) the date on which all obligations and liabilities of the Secretary of State under this Guarantee in relation to Policies have been discharged in full in accordance with this Guarantee.

1.2 In this Guarantee and its schedules (unless an express provision or the context requires otherwise):

1.2.1 terms defined in, or whose interpretation is provided for in, a Policy have the same meaning when used in this Guarantee;

1.2.2 references to **paragraphs** and **schedules** are to paragraphs of, and schedules to, this Guarantee respectively and references in a schedule or part of a schedule to **paragraphs** are to paragraphs of that schedule or that part of that schedule respectively;

1.2.3 references to **this Guarantee** or any other document are to this Guarantee or that document as in force and amended from time to time;

1.2.4 the headings and contents table in this Guarantee are for convenience only and do not affect its interpretation;

1.2.5 references to **persons** include bodies corporate, firms, unincorporated associations and governmental, semi-governmental and local authorities or agencies;

1.2.6 references to any English legal term shall, for any jurisdiction other than England

and Wales, be deemed to include a reference to the term which most nearly approximates to the English legal term in that jurisdiction;

1.2.7 a reference to any statute or any section of any statute, or any Treaty or article of a Treaty include a reference to that statute or section or Treaty or article as amended, modified or re-enacted or re-adopted from time to time, and to instruments, regulations, directions or guidance or other measures made under it and in force from time to time;

1.2.8 references to any codes of practice include any amendments or revisions to them from time to time; and

1.2.9 in relation to companies incorporated in the United Kingdom, words and phrases which are generally defined for the purposes of the Companies Act 2006 bear the meanings attributed to them by that Act save that references to the term subsidiary shall include subsidiary undertaking as defined in that Act and shall include a company which would be a subsidiary undertaking within the meaning of section 1162 of that Act but for any security subsisting over the shares in that company from time to time; and references to the term holding company shall include parent undertaking as defined in that Act and shall include a company which would be a parent undertaking within the meaning of section 1162 of that Act but for any security granted by that undertaking over the shares it holds in another undertaking from time to time.

1.2.10 in relation to the PCC, words and phrases which are generally defined for the purposes of the Companies (Guernsey) Law 2008 have the meaning given in that Law.

2. COMMENCEMENT AND TERM

2.1 This Guarantee shall come into effect on the Commencement Date and terminate on the Termination Date.

3. GUARANTEE

3.1 The Secretary of State irrevocably guarantees to the PCC and each Cell that it shall pay all Policy Losses, subject to the terms of this Guarantee.

3.2 Subject to the terms of this Guarantee, the liability of the Secretary of State under this Guarantee in respect of each Cell shall commence on the Inception Date and expire simultaneously and automatically with the expiry of the liability of each Cell under Policies issued by them.

4. EXTENT OF LIABILITY FOR INDIVIDUAL POLICY LOSSES

4.1 The Secretary of State's liability in respect of any Policy Loss shall be the amount payable by the PCC on behalf of a Cell in accordance with the terms of the Policy.

5. MAXIMUM LIABILITY: INDIVIDUAL CELLS

5.1 Subject to paragraph 7.1 the Secretary of State's maximum liability under this Guarantee in respect of any Cell shall be limited to 5.5% of the aggregate of the Sale Price of all New Build Properties which are subject to Eligible Loans.

5.2 The reference in paragraph 5.1 to Eligible Loans includes a reference to such Loans made after the Closure Date where the Mortgage Offer in relation to the Loan was made by the Relevant Lender before the Closure Date and the Loan is made within six months of the date of the Mortgage Offer.

6. OVERALL GUARANTEE LIMIT

6.1 Subject to paragraph 14, the Secretary of State's maximum liability under this Guarantee shall be £1,000,000,000 (one billion pounds sterling).

7. CONDITIONS FOR SECRETARY OF STATE'S LIABILITY

7.1 The Secretary of State's liability under this Guarantee in respect of any Cell is subject to:

7.1.1 the Cell having become liable under a Policy in relation to an Eligible Loan;

7.1.2 the funds standing to the credit of the Cell's Nominated Account to discharge the liability of the Cell (disregarding, for this purpose, any funds representing accrued interest) being insufficient for that purpose.

8. LIABILITY TO INDIVIDUAL CELL

8.1 The PCC shall not have any right to claim on behalf of one Cell an indemnity against the Secretary of State in respect of Policy Losses covered by a Policy issued by another Cell.

9. PAYMENT AND SETTLEMENT IN RESPECT OF POLICY LOSSES

9.1 Within ten Business Days of the end of each Quarter in which a liability under this Guarantee arises, the PCC shall submit to the Secretary of State a report detailing the Policy Losses in respect of which liabilities under this Guarantee have arisen, and the amount of those liabilities (a "**Policy Loss Report**").

9.2 Within ten (10) Business Days of the receipt of a Policy Loss Report in accordance with paragraph 9.1 the Secretary of State shall pay all sums due as detailed in the Policy Loss Report to the Nominated Account of the relevant Cell.

9.3 Any payment made by the Secretary of State in accordance with paragraph 9.2 shall be a good and sufficient discharge in of the Secretary of State's liability under this Guarantee to the Cell in respect of liabilities for which the payment is made.

10. EXERCISE OF RIGHTS ETC UNDER POLICIES

10.1 Any liability of the Secretary of State under this Guarantee in respect of a Policy shall be subject to the terms and conditions of the Policy and he shall not be entitled to dispute his obligation to pay under clause 9 of this Guarantee other than under Article VII (Disputed Claims) of the Policy.

10.2 Where any such liability has arisen:

10.2.1 the PCC, on behalf of the relevant Cell, shall:

(a) use its best endeavours to ensure that Policy Losses are met in accordance

with the terms and conditions of the Policy, and that its rights, powers, discretions and obligations under the relevant Policy are exercised in a proper and timely manner, and

- (b) consult the Secretary of State (allowing a reasonable time for consideration of the Secretary of State's response) before exercising any right, power or discretion under the Policy where the exercise of the right, power or discretion could have a substantial effect on the extent of the Secretary of State's liabilities under this Guarantee;
- (c) comply with any direction given in writing by the Secretary of State as to the exercise of any right, power or discretion under the Policy;

10.2.2 the Secretary of State may exercise any right, power or discretion under the Policy as a third party where the PCC is unable or unwilling to comply with a direction under paragraph 10.2.1(c).

10.3 The Secretary of State must act reasonably in giving a direction under paragraph 10.2.1(c) to the PCC, and must not give the direction unless he has first consulted the PCC (allowing a reasonable time for consideration of the PCC's response).

11. AUDIT

11.1 Within 10 Business Days of the completion of any audit carried out under a Policy the PCC on behalf of the relevant Cell shall send to the Secretary of State a written statement of its conclusions (including any remedial action it proposes to take under the terms of the Policy), together with a statement of the evidence upon which its conclusions are based.

11.2 If the Secretary of State considers it appropriate to do so, he may communicate in writing to the PCC and the Lender to whom the audit relates any concerns he has in relation to an audit, and the PCC and the Lender shall take those concerns into account in any actions they take in relation to the Policy.

11.3 Paragraphs 11.1 and 11.2 are without prejudice to the Secretary of State's rights under

paragraphs 10.1 to 10.3 of this Guarantee.

12. INFORMATION TO BE PROVIDED TO SECRETARY OF STATE

12.1 The PCC on behalf of its Cells shall provide the information described in Schedule 2 in writing to the Secretary of State within fifteen (15) Business Days following the end of each calendar month during the Term.

13. £500M, £750M AND £900M THRESHOLDS: NOTICE

13.1 Where the Secretary of State is of the view that his total contingent liability under this Guarantee has reached, or is approaching each of £500,000,000 (five hundred million pounds sterling) and £750,000,000 (seven hundred and fifty million pounds sterling) and £900,000,000 (nine hundred million pounds sterling) he shall give a written notice to the PCC to that effect (“a **Threshold Notice**”).

13.2 Within 5 Business Days of the receipt of a Threshold Notice the PCC shall forward a copy of the notice to each Lender and each Builder.

14. £1BN THRESHOLD: CLOSURE NOTICE

14.1 Where the Secretary of State is of the view that his total contingent liability under this Guarantee has reached, exceeded or is approaching £1,000,000,000 (one billion pounds sterling) he shall give a written notice to the PCC to that effect (a “**Closure Notice**”).

14.2 A Closure Notice takes effect at the beginning of the fifty-eighth (58th) day after the day on which the Notice is given to the PCC.

14.3 Before the end of fifth Business Day following the day on which a notice under paragraph 14.1 was received by it, the PCC shall forward a copy of the notice to each Lender and each Builder.

14.4 Subject to paragraph 14.5, the Secretary of State is not liable under this Guarantee for any Policy Losses in relation to any loan granted after the Closure Date, unless the loan is granted with his prior written consent.

- 14.5 Notwithstanding paragraphs 14.2 and 14.4, the Secretary of State shall be liable under this Guarantee for any Policy Losses in relation to an Insured Loan made after the Closure Date where the Mortgage Offer in relation to the Loan was made prior to the Closure Date and the loan is made within six months of the date of the Mortgage Offer.
- 14.6 The Secretary of State's consent under paragraph 14.4 may be given in relation to specific Insured Loans, or categories of Insured Loans, and may be given subject to any conditions the Secretary of State considers appropriate.
- 14.7 The Secretary of State may serve a written notice (a "**Revocation Notice**") on the PCC to the effect that a Closure Notice is revoked from a date specified in the Notice; and if a Revocation Notice so states the Secretary of State shall be liable for any Policy Losses in relation to any Insured Loan made after the date specified in the Revocation Notice.
- 14.8 Before the end of the fifth Business Day following the day on which a notice under paragraph 14.7 was received by it, the PCC shall forward a copy of the notice to each Lender and each Builder.
- 14.9 Subject to paragraphs 14.5 and 14.7 a Closure Notice causes this Guarantee to cease to apply in relation to new loans.
- 14.10 A Closure Notice does not otherwise affect any liability incurred under this Guarantee.

15. SUSPENSION OF GUARANTEE IN RELATION TO INDIVIDUAL CELLS

- 15.1 Where the Secretary of State is of the opinion that-
- (a) the terms of a Policy issued by a Cell or the Framework Agreement for the Cell (as agreed by the Secretary of State prior to the commencement of the Scheme) have been amended in any material respect without his prior written consent; or
 - (b) an amount due to the Secretary of State by way of a Commercial Fee in

accordance with a Commercial Fee Agreement between the Secretary of State and the Lender for a particular Cell remains outstanding more than three months after the due date for payment; or

- (c) amounts due by a particular Builder or Builders by way of Cell Payments to the PCC in relation to a particular Cell remain outstanding more than three months after the date on which they were due to be paid, and no satisfactory response has been received to the Secretary of State's request to the PCC that the situation be rectified (but in such case a Notice given under this paragraph shall relate to the particular Builder or Builders only); or
- (d) material information required to be provided to the Secretary of State under paragraph 12.1 has not been provided in accordance with that paragraph for at least three consecutive months; or
- (e) the obligations of a Lender, or the PCC on behalf of a Cell in relation to audit under the terms of a Policy have not been carried out substantially in accordance with the terms of the Policy and as a result the Secretary of State is unable properly to evaluate the degree of compliance by the Cell with the terms of the Scheme, or the financial position of the Cell; or
- (f) the benefit to home buyers from the operation of the Cell has been non-existent or minimal (due to the volume of business by the Cell or for any other reason); or
- (g) there has been a material breach of a Framework Agreement relating to a Cell which has been notified to the party in breach in accordance with the Agreement and not remedied;

he may give a written notice (a "**Cell Suspension Notice**") to the PCC, the Lender and the Builder specifying:

15.1.1 the Cell or Cells to which it relates; and

15.1.2 (if applicable) the Builder or Builders to whom it relates; and

- 15.1.3 the detail of matters giving rise to such notice.
- 15.2 A Cell Suspension Notice takes effect at the beginning of the fifty-eighth (58th) day after the day on which the Notice is given to the PCC (“the **Cell Suspension Date**”).
- 15.3 Before the end of the fifth Business Day following the day on which a Cell Suspension Notice was received by it, the Cell shall forward a copy of the notice to each Lender and each Builder.
- 15.4 Subject to paragraph 15.5, the Secretary of State shall not be liable for any Policy Losses in relation to any loan made (or, if the Notice relates only to a particular Builder or Builders, any loan made to purchase a Property made available for purchase by that Builder or Builders only) after the Cell Suspension Date, unless the loan is granted with his prior written consent.
- 15.5 Notwithstanding paragraphs 15.2 and 15.4, the Secretary of State shall be liable under this Guarantee for any Policy Losses in relation to an Insured Loan made by the Lender after the Cell Suspension Date where the Mortgage Offer in relation to the Loan was made by the Lender prior to the Cell Suspension Date and the loan is made within six months of the date of the Mortgage Offer.
- 15.6 The Secretary of State’s consent under paragraph 15.4 may be given in relation to specific Insured Loans, or categories of Insured Loans, and may be given subject to any conditions the Secretary of State considers appropriate.
- 15.7 The Secretary of State may serve a written notice (“a **Cell Revocation Notice**”) on a Cell of the PCC to the effect that a Cell Suspension Notice is revoked; and if a revocation notice so states the Secretary of State shall be liable for any Policy Losses in relation to any Insured Loan made after the date specified in the Cell Revocation Notice.
- 15.8 Subject to paragraphs 15.5 and 15.7 a Cell Suspension Notice causes this Guarantee to cease to apply in relation to any new business undertaken by the Cell to which the Notice relates, but does not otherwise affect any liability incurred under this Guarantee.

16. SUSPENSION OF GUARANTEE

16.1 Where the Secretary of State is of the view that-

- (a) an Event of Insolvency has occurred or is likely to occur in respect of the PCC or JLT Insurance Management (Guernsey) Limited or JLT Specialty Limited; or
- (b) without his prior written consent a person other than JLT Insurance Management (Guernsey) Limited has been appointed to provide the Management Services (as defined in the Management Agreement between JLT Insurance Management (Guernsey) Limited and the PCC); or
- (c) he or Her Majesty's Government is the subject of proceedings commenced in relation to this Guarantee or the Scheme brought under the Treaty on the Functioning of the European Union (or any legislation having force under that Treaty) and the suspension is necessary to comply with a decision of the European Commission, the Court of Justice of the European Union or a court in the United Kingdom, or to reach or give effect to an agreed resolution of any such proceedings; or
- (d) it is necessary to suspend the operation of the Guarantee in the interests of safeguarding the use of public money, his Department's budgetary position, the proper functioning of the mortgage market or competition in the market for the construction of New Build Properties;

he may serve a written notice on the PCC to that effect (a "**Guarantee Suspension Notice**").

16.2 Before the end of the fifth Business Day following the day on which a Guarantee Suspension Notice was received by it, the PCC shall forward a copy of the notice to each Lender and each Builder.

16.3 Subject to paragraphs 16.4 and 16.5, the Secretary of State shall not be liable for any Policy Losses in relation to any loan granted after the end of the twentieth (20th)

Business Day (or such later day as may be specified in the Notice)(“**the Guarantee Suspension Date**”) following the day on which a Guarantee Suspension Notice was received pursuant to paragraph 16.2, unless the loan is granted with his prior written consent.

- 16.4 Notwithstanding paragraph 16.3, the Secretary of State shall be liable under this Guarantee for any Policy Losses in relation to an Insured Loan made by a Lender after the Guarantee Suspension Date where the Mortgage Offer in relation to the Loan was made by the Lender prior the Guarantee Suspension Date and the loan is made within six months of the date of the Mortgage Offer.
- 16.5 A Guarantee Suspension Notice suspends the operation of this Guarantee in respect of all Cells in accordance with paragraphs 16.3 and 16.4 but does not otherwise affect any liability incurred under this Guarantee.
- 16.6 The Secretary of State’s consent under paragraph 16.3 may be given in relation to specific Insured Loans, or categories of Insured Loans, and may be given subject to any conditions the Secretary of State considers appropriate.
- 16.7 The Secretary of State may serve a written notice (“a **Revocation Notice**”) on a Cell of the PCC to the effect that a Guarantee Suspension Notice is revoked; and if a revocation notice so states the Secretary of State shall be liable for any Policy Losses in relation to any Insured Loan made before the date specified in the Revocation Notice.
- 16.8 The reference in paragraph 16.1(c) to the commencement of proceedings includes a reference to the initiation of action by the European Commission under Article 258 of the Treaty on the Functioning of the European Union by notice given by letter to Her Majesty’s Government.
- 16.9 The application of paragraph 16.1(c) or (d) is a matter to be determined by the Secretary of State.
- 16.10 Subject to paragraph 16.11 the Secretary of State shall consult the PCC and each Lender before deciding to serve a Guarantee Suspension Notice.

16.11 Paragraph 16.10 does not apply where the Secretary of State considers that prior consultation could materially prejudice his, or Her Majesty's Government's rights or interests, or that it is not practicable in the circumstances (but in such a case the Secretary of State shall undertake such consultation (if any) as he is reasonably able to undertake, as soon as he is reasonably able to undertake it).

17. ASSIGNMENT

17.1 This Guarantee is binding on the Secretary of State and the PCC and their successors and permitted assigns. Neither party may assign or transfer any rights, interests or obligations under this Guarantee to any person or entity without the written consent of the other party, which shall not be unreasonably withheld, and any effort to so assign such rights, interests or obligations without the consent of the other party shall be null and void.

17.2 If a Lender assigns to another person its interest in an Insured Loan, this Guarantee continues to apply in relation to liabilities arising in connection with that Insured Loan provided that the assignment is to:

- (a) any member of the Lender's Group, or if relevant, a member of the Lender's Group may assign back to the Lender, or
- (b) any body corporate in the course of securitisation of any other process whereby funding is raised on the security of Insured Loans (save that any administration in respect of Insured Loans shall be carried out by a member of the Insured's Group),

but in relation to an assignment of the Insured's rights and benefits under this Policy pursuant to paragraph (a) above, if such assignee ceases to be a member of the Insured's Group, such assignee will procure that the rights and benefits of this Policy are assigned to another member of the Insured's Group or back to the Insured, providing that the Insured retains control over the administration of the Insured Loans.

18. TERMINATION

18.1 This Guarantee shall not have effect in respect of any Policy Losses incurred after the expiry of the Term, unless the Term is extended by agreement between the Parties.

19. RECONCILIATION AFTER TERMINATION DATE

19.1 As soon as reasonably practicable after the Termination Date (and in any event within forty Business Days after that Date) the PCC must prepare and give to the Secretary of State an account of all monies paid out pursuant to this Guarantee during the Term (“the **Reconciliation Account**”).

19.2 The Reconciliation Account shall include a statement, in respect of each Cell, of:

19.2.1 the aggregate of the Sale Price of all New Build Properties which were during the Term subject to Insured Loans for which the Cell had liability;

19.2.2 the amounts paid in respect of Insured Loans without recourse to this Guarantee; and

19.2.3 the amount paid in respect of Insured Loans pursuant to this Guarantee.

19.3 Where, in respect of any Cell the amount paid pursuant to this Guarantee exceeds the Secretary of State’s maximum liability determined in accordance with paragraph 5.1 the PCC shall advise the relevant Lender to that effect in writing within ten Business Days following the day on which the Reconciliation Account is given to the Secretary of State under paragraph 19.1.

20. AMENDMENTS TO TERMS

20.1 Subject to paragraph 20.3 the Secretary of State may, at any time and at his exclusive and absolute discretion, amend or supplement the terms of this Guarantee upon giving written notice to each Party and to each Lender and each Builder, provided that such amendment or supplement does not-

20.1.1 prejudicially affect, or purport prejudicially to affect any liabilities of the Secretary of State incurred under the Guarantee before such amendment or supplement takes

- 20.1.2 otherwise have retrospective effect (unless it is to correct an error or omission of a wholly technical nature and the correction is not prejudicial to the rights or interests of any party).
- 20.2 An amendment or supplement under paragraph 20.1 may be made where the Secretary of State or Her Majesty's Government is the subject of proceedings commenced in relation to this Guarantee or the Scheme brought under the Treaty on the Functioning of the European Union (or any legislation having force under that Treaty) and the amendment or supplement is necessary to comply with a decision of the European Commission, the Court of Justice of the European Union or a court in the United Kingdom, or to reach or give effect to an agreed resolution of any such proceedings.
- 20.3 The Secretary of State shall consult with the Parties and the Council of Mortgage Lenders, the Home Builders Federation and take into account each of their opinions and comments before making any amendment or supplement under paragraph 20.1, unless the Secretary of State determines that the proposed amendment or supplement should be implemented as a matter of urgency and it is not practicable for such consultation to take place.
- 20.4 An amendment or supplement under paragraph 20.1 does not take effect until the expiry of a period of twenty (20) Business Days following the day on which the amendment or supplement is made.
- 20.5 The Secretary of State must act reasonably when making any amendment or supplement under paragraph 20.1
- 20.6 The reference in paragraph 20.2 to the commencement of proceedings includes a reference to the initiation of action by the European Commission under Article 258 of the Treaty on the Functioning of the European Union by notice given by letter to Her Majesty's Government.
- 20.7 The application of paragraph 20.2 is a matter to be determined by the Secretary of

State.

21. RECOVERED MONIES

- 21.1 Where a Cell of the PCC is in receipt of any Recovered Monies under a Policy that are to be allocated to it in accordance with the terms of the Policy, it shall be liable to pay to the Secretary of State an amount equal to that proportion of those monies (if any) attributable to payments made by the Secretary of State pursuant to this Guarantee.
- 21.2 The Cell shall pay to the Secretary of State any amount due to him under paragraph 21.1 at or before the end of the Quarter in which the Recovered Monies were received by the Cell.

22. THIRD PARTY RIGHTS

- 22.1 Subject to paragraph 22.2 a person who is not a party to this Guarantee has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Guarantee.
- 22.2 The obligation of the Secretary of State under paragraph 9.2 of this Guarantee is owed to each Lender in respect of Policy Losses relating to that Lender, and each Lender may enforce the terms of that paragraph in relation to those Policy Losses as if it were a party to this Guarantee and for this purpose-
- (a) references to the PCC in the context of the Secretary of State's obligations shall be construed accordingly; and
 - (b) the provision of a Policy Loss Report (as defined in the applicable Policy) by the Lender shall be sufficient for the purposes of paragraph 9.1.

23. OUTSOURCING

- 23.1 The Secretary of State may outsource any aspect of the administration of his obligations under this Guarantee to another person, provided he gives prior written notice to the PCC.
- 23.2 Where a party subcontracts any of its obligations under this Guarantee, that Party

shall not be relieved of any of its liabilities or obligations under this Guarantee by entering into any subcontract and that Party accepts liability for the acts and omissions of any contractor or any member of staff as fully as if they were the acts or omissions of that Party.

24. AMENDMENTS AND ALTERATIONS

24.1 This Guarantee may be changed, altered or amended as the parties may agree, provided such amendment is evidenced in writing and executed by both parties and subject to the prior written agreement of each Lender and each Builder.

25. INVALIDITY AND SEVERABILITY

25.1 Notwithstanding that any part of this Guarantee may prove to be invalid, illegal or unenforceable, in whole or in part, the other provisions of this Guarantee shall nevertheless continue in full force and effect.

25.2 If any invalid, illegal or unenforceable provision would be valid, legal and enforceable if some part of it were deleted, the provision will apply with whatever modification is necessary to make it valid, legal or enforceable.

26. WAIVER

26.1 Delay in exercising, or failure to exercise, any right or remedy in connection with this Guarantee shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Guarantee in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Guarantee shall, in any event, be effective unless it is in writing, refers expressly to the paragraph under which such right or remedy is created, is duly signed by or on behalf of the Party granting it and is communicated to the other Parties in accordance with paragraphs 32.1 to 32.5.

26.2 No waiver in connection with this Guarantee shall be effective without the prior written agreement of all Lenders and all Builders whose rights or interests could potentially be prejudiced by the proposed waiver.

27. CUMULATIVE RIGHTS

27.1 Each Party's rights and remedies contained in this Guarantee are cumulative and not exclusive of rights or remedies provided by law.

28. COUNTERPARTS

28.1 This Guarantee may be entered into in any number of counterparts and by the Parties on separate counterparts, all of which taken together shall constitute one and the same instrument.

29. NO PARTNERSHIP

29.1 Nothing in this Guarantee is to be construed as establishing or implying any partnership or joint venture between the Parties, or as appointing any Party as the agent or employee of any other Party. No Party shall hold out any other Party as its partner or joint venturer. Except, and to the extent, that this Guarantee expressly states otherwise, no Party may incur any expenses or negotiate on behalf of any other Party or commit any other Party in any way to any person without that other Party's prior written consent.

30. FURTHER ASSURANCE

30.1 Each Party shall do and execute, or arrange and procure for the doing and executing of, any act and/or document reasonably requested of it by any other Party to implement and give full effect to the terms of this Guarantee.

31. COSTS

31.1 Each Party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Guarantee.

32. NOTICES ETC.

32.1 A notice or other communication required or permitted to be given pursuant to this Guarantee shall be sent by email to an email address specified by the recipient party in advance, and where the recipient is a Party to this Guarantee shall be marked as described in paragraph 32.5.

- 32.2 A notice or other communication sent in accordance with paragraph 32.1 shall be taken as delivered 1 Business Day after being sent by email to the address specified.
- 32.3 Where a party entitled to receive it so requests in advance (either generally or in relation to specific notices or other communications), a notice or other communication required or permitted to be given under this Guarantee shall also be delivered by hand at or mailed by first class certified mail to the address set forth at the start of this Guarantee in the case of the Parties, and in the case of any other person, at or to the usual business address of the recipient.
- 32.4 A notice or other communication sent by first class certified mail pursuant to paragraph 32.3 shall be taken to be sufficiently served and delivered 2 Business Days after the date of posting.
- 32.5 A notice or other communication shall be marked for a Party as set out below:
- in the case of the Secretary of State
- Attention: the Director, Housing Growth and Affordable Housing,
Department for Communities and Local Government
- in the case of the PCC
- Attention: the Managing Director, JLT Insurance Management (Guernsey)
Ltd; and the Director-General, Home Builders' Federation Limited.
- 32.6 A Party may change the details recorded for it in paragraph 32.5 or give a different address in the United Kingdom or Guernsey (in the case of the PCC) to which notices or communications are to be sent, by notice to the other Party in accordance with paragraphs 33.1 to 33.4.

33. DATA PROTECTION

- 33.1 Notwithstanding the remaining provisions hereof, each of the Parties hereby warrants and represents to the other Party that in the event that it Processes any Personal Data in connection with this Guarantee or a Policy it shall comply with all

Data Protection Legislation (to the extent directly applicable to the Party in question) and such compliance shall include, but not be limited to, maintaining a valid and up to date registration or notification (where applicable) under the relevant Data Protection Legislation.

- 33.2 Each Party that transfers Personal Data in its capacity as a Data Controller (the "disclosing Party") to another Party (the "receiving Party") hereby warrants and represents to the receiving Party that it has collected all necessary consents and done all such things as are required under the Data Protection Legislation, to enable the disclosing Party to transfer such Personal Data to the receiving Party for the purposes of the receiving Party Processing it in accordance with the receiving Party's obligations under this Guarantee.
- 33.3 Each Party when acting in its capacity as a Data Processor ("**Data Processing Party**") shall not Process, transfer or permit access to any Personal Data outside the European Economic Area except for Guernsey (but may do so to a country which is the subject of a finding of adequacy by the European Commission) without having obtained the prior written consent of the Party that is the Data Controller of such Personal Data ("**Data Controlling Party**") to such Processing, transfer and/or access. Any such consent shall be conditional upon the Data Processing Party having put in place all measures required to ensure that such Processing, transfer or access shall not put the Data Controller in breach of any Data Protection Legislation as a result of such Processing, transfer or access.
- 33.4 The Data Processing Party shall notify the Data Controlling Party promptly and in any event within twenty-four hours of becoming aware of any actual, suspected or alleged loss, leak or unauthorised Processing of any Personal Data in respect of which the Data Controlling Party is the Data Controller.
- 33.5 The Data Processing Party shall notify the Data Controlling Party promptly and in any event within twenty four hours of the receipt of:
- 33.5.1 any complaint from any individual; or

33.5.2 any communication (whether orally or in writing) from any regulatory or law enforcement body,

relating to the Processing of any Personal Data in respect of which the Data Controlling Party is the Data Controller under this Guarantee.

33.6 The Data Processing Party shall not do or omit to do anything which would put the Data Controlling Party in breach of that Data Controlling Party's obligations under the Data Protection Legislation.

33.7 The Data Processing Party hereby warrants and represents to the Data Controlling Party that in the event it Processes any Personal Data on behalf of the Data Controlling Party, it shall:

33.7.1 only Process such Personal Data in accordance with the instructions of the Data Controlling Party and the terms of this Guarantee;

33.7.2 ensure that all appropriate technical and organisation measures are in place to prevent unauthorised or unlawful Processing of such Personal Data or accidental loss or destruction of, or damage to, such :Personal Data; and

33.7.3 take all reasonable steps to ensure the reliability of any staff who will have access to the Personal Data processed in relation to this Guarantee.

33.8 Each Party shall indemnify, defend and hold harmless the other Party in respect of any and all Losses incurred or suffered by or made against the other Party arising out of the indemnifying Party's breach of its obligations under this clause 33.

34. CONFIDENTIALITY

34.1 Subject to paragraphs 34.2 and 34.3, each Party shall, and shall procure that its officers and employees shall, keep confidential all confidential information relating to any other Party (and any other Party's business affairs) that it obtains in connection with this Guarantee, a Policy or the negotiations leading up to it. Each Party shall only use such information in the proper performance of its obligations and exercise of its rights under this Guarantee or the Policies and shall not divulge any of such

information to any other person without the prior written consent of the other, unless permitted to do so by paragraph 35.2 or 35.3.

34.2 A Party may disclose information if and to the extent that:

34.2.1 that Party is required to disclose the information by law or by any competent regulatory body; or

34.2.2 the information is properly disclosed pursuant to an applicable rule, order or award in the course of proceedings before any court (or any other person to whom a dispute is referred in accordance with this Guarantee) to which that Party is a party; or

33.3.3 the information is disclosed on a confidential basis to that Party's professional advisers for the purpose of advising that Party in connection with this Guarantee or a Policy; or

34.2.3 the information is disclosed on a confidential basis either (a) to that Party's officers or employees; or (b) to officers or employees of the PCC or any company in its Group, to the extent necessary for the proper management and administration of the PCC's business; or

34.2.4 the disclosure is agreed in writing from time to time by the Parties; or

34.2.5 the disclosure is to a ratings agency or an auditor of the PCC and is necessary to comply with a requirement of the agency or auditor.

34.3 Paragraph 35.1 shall not apply to a Party in relation to confidential information to the extent that that Party can show:

34.3.1 that the information was already, or has subsequently become, published or publicly available for use other than through a breach of this Guarantee or of any confidentiality obligation owed by that Party; or

34.3.2 that the information was already lawfully in its possession (without restriction on disclosure or use) before it obtained the information in connection with this

Guarantee or the negotiations leading up to it; or

34.3.3 that the information has subsequently lawfully been disclosed to it (without restriction on disclosure or use) by a person who is not a party to this Guarantee and who itself lawfully obtained the information and is not under any obligation restricting its disclosure or use; or

34.3.4 from its records that it has derived the same information independently of that obtained by it in connection with this Guarantee or the negotiations leading up to it.

34.4 Paragraph 34.1 does not prevent the Secretary of State disclosing information to Her Majesty’s Treasury for the purpose of enabling them to carry out any function of theirs in relation to the Scheme, provided that the information is communicated subject to the restrictions set out in paragraphs 34.1 to 34.3 and 34.5.

34.5 The obligations in paragraphs 34.1 to 34.3 (together with any applicable exceptions and qualifications set out in those paragraphs) shall survive the termination of this Guarantee.

35. LAW AND JURISDICTION

35.1 This Guarantee shall be governed by and construed in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts in relation to all matters pertaining to this Guarantee.

IN WITNESS whereof this Guarantee has been executed as a deed on the date first above written.

Executed and delivered as a deed by)
THE SECRETARY OF STATE FOR)
COMMUNITIES AND LOCAL GOVERNMENT)
.....

Executed and delivered as a deed by)
HBF Insurance PCC Limited)
acting for and on behalf of itself and its Cells)

.....

SCHEDULE 1
ELIGIBILITY CRITERIA

1. In order for an Insured Loan to be an Eligible Loan under this Guarantee, the Loan must:

- (i) be secured by a repayment mortgage; and
- (ii) not be a Publicly-Assisted Loan;
- (iii) have been granted on the security of a first mortgage finance the purchase of a New Build Property the Sale Price of which was £500,000 or less; and
- (iv) have a Loan to Value of at least 90% and at most 95%;
- (v) have been granted to one or more individuals who:
 - a. at least one of whom was or were UK citizens or had indefinite leave to remain in the United Kingdom at the time the Loan was made; and
 - b. purchased the New Build Property:
 - i. as their sole or principal residence; and
 - ii. as sole owner of the equity in it, or as the only co-owners of their equity in it (and not as part of a shared ownership or shared equity scheme).

2. In this Schedule:

- (i) A loan is a Publicly-Assisted Loan if the deposit for the purchase of the Property for which the Loan is granted is paid in whole or in part by a local authority, or by any other public authority (and for this purpose a public authority includes a person who makes funds available for deposits using money for the expenditure of which a local authority or other public authority is accountable).
- (ii) “New Build Property” means a Residential Dwelling in England which has not previously been sold, or let (other than by the Builder Group) as a Residential Dwelling in its current form, and for this purpose a dwelling that has been converted from a single dwelling into

flats, or substantially renovated or refurbished shall be regarded as in a form different to that of the original dwelling.

- (iii) "Residential Dwelling" means a building or part of a building constructed or adapted for use as a residence.

SCHEDULE 2

INFORMATION TO BE PROVIDED TO SECRETARY OF STATE

For Cells activated during the month (if any):

- (I) the Cell identifier number for the purposes of The Scheme;
- (II) the names and addresses of the Lenders and Builders participating in the Cell;
- (III) the date the Cell was activated;
- (IV) (if so requested by the Secretary of State) a copy of any Policy issued by the Cell.

For all Cells:

- (V) the number of mortgages covered by the Cell to date;
- (VI) the average size of the loan secured by those mortgages at the point of purchase;
- (VII) the average value of the property over which those mortgages were granted at the point of purchase;
- (VIII) the number of loans secured by mortgages covered by the Cell that have been in arrears for more than six months, expressed as a percentage of the total number of mortgages covered by the Cell to date;
- (IX) the number of Claims to date under Policies issued by the Cell;
- (X) the total Policy Losses to date in respect of the Cell;
- (XI) the amount of the funds remaining in the Cell contributed by Builders pursuant to

Policies;

- (XII) the amount potentially payable under this Guarantee in respect of mortgages covered by Policies issued by the Cell;
- (XIII) all of the postcodes (or if not available the first half of the postcodes) of the areas where New Build Properties over which mortgages covered by the Cell have been granted are located;
- (XIV) the number of new mortgages that have been covered by the Cell in the preceding:
 - i. 3 months,
 - ii. 6 months,
 - iii. 9 months, and
 - iv. 12 months;
- (XV) Whether any Cell Payments due to be made to the Cell are overdue and if so, the amounts outstanding and the identity of the Builder or Builders by whom the amounts are owed.