

Self-Remediation Terms

that apply to

Contracts entered into between a Participant Developer and DLUHC

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**This document does not constitute a formal or binding offer, agreement, agreement in principle, agreement to agree, decision or commitment on the part of either party. These features are still in draft form and are not HMG policy. The terms set out are subject to change and may be revised in their entirety.*

Annex 3 Pro forma Baseline Data Report [•]

Annex 4 Pro forma Quarterly Data Report [•]

1. Introduction

This document sets out the self-remediation terms (the “**Self-Remediation Terms**”) that apply to each Contract entered into between a Participant Developer and the Secretary of State for Levelling Up, Housing and Communities (“**DLUHC**” and, together with the Participant Developer, the “**Parties**”).

2. Definitions and Interpretation

- 2.1 These Self-Remediation Terms are to be interpreted in accordance with paragraph 2 of Annex 1 (*Definitions and Interpretation*) and, unless otherwise defined, capitalised terms used in these Self-Remediation Terms have the meanings given to them in paragraph 1 of Annex 1 (*Definitions and Interpretation*).
- 2.2 Any reference to “life-critical fire-safety defects” in these Self-Remediation Terms will be construed as reference to Defects, which each Participant Developer is to remediate and/or mitigate such that it obtains a Qualifying Assessment in respect of each Building Requiring Works in accordance with and subject to the provisions of these Self-Remediation Terms (including Clause 7 (*Exceptions from the obligation to carry out Works*)).

3. Description of the Self-Remediation Terms

- 3.1 In response to the Grenfell Tower tragedy, certain residential and Mixed-Use buildings of 11 metres and over in height were identified as having fire defects. Under English law at that time, the leaseholders of such buildings would typically be obliged to fund the costs associated with any remediation of those defects. In response, HMG made financial provision through the BSF, PSCRF and SSCRF for the funding of certain remediation works relating to residential and Mixed-Use buildings of 18 metres and over in height.
- 3.2 The key purpose of the Contracts (including these Self-Remediation Terms) is to deliver safe residential and Mixed-Use buildings of 11 metres and over in height, having regard to the principles of “polluter pays”, fiscal responsibility, and protecting leaseholders from costs.
- 3.3 On 31 March 2022, DLUHC wrote to the major residential property developers with whom it had been in discussion (along with, where applicable, the major representative body for the industry, the Home Builders Federation), inviting them to sign a pledge letter and an agreed principles document (the “**Pledge Letter**”).
- 3.4 Signatories of the Pledge Letter confirmed that they agreed with the principle that leaseholders should not have to pay for any costs associated with life-critical fire-safety remediation work arising from the design, construction or refurbishment of buildings of 11 metres and above, and that they wanted to work constructively and in good faith with DLUHC and Responsible Entities to achieve this.
- 3.5 Signatories of the Pledge Letter further confirmed that they would, among other things (as applicable):

- (A) take responsibility for performing, or otherwise at their discretion, funding self-remediation and/or mitigation works to address life-critical fire-safety defects on all buildings of 11 metres and above in England that they have developed or refurbished (other than solely as a contractor); and
- (B) to the extent not already transferred and/or reimbursed, transfer their buildings from, and/or reimburse, the BSF, PSCRF and SSCRF,

on the basis of the principles set out in the “Agreed Principles” schedule to the Pledge Letter.

- 3.6 The Parties intend to enter into the Contracts (and be bound by the Self-Remediation Terms) in order to give effect to the principles set out in the Pledge Letter.

4. Commencement and duration

Each Participant Developer will be bound by the Contract (including these Self-Remediation Terms) from the time it enters into the Contract until such time as the Contract terminates in accordance with Clause [23] (*Breach and termination*).

5. Obligation to identify and assess Buildings

- 5.1 Any reference to “reasonable time”, “reasonable” target dates and “as soon as is reasonably possible” in this Clause 5 (and in these Self-Remediation Terms generally) will be interpreted having regard to:

- (A) the safety of the leaseholders of each Building;
- (B) information available in respect of each Building from time to time, including in respect of any Defect or the likelihood that there is any Defect, the level of fire risk, supply chain availability to carry out the Works, insurability, and the willingness of lenders to extend loans secured by interests in such Building or any part of it, subject to sub-Clause (C) below; and
- (C) any Guidance.

- 5.2 The Participant Developer will use its best endeavours to identify all Buildings and Buildings Requiring Works within a reasonable time after the date of the Contract (to the extent not already identified).

- 5.3 Subject to Clause [5.9] and Clause [5.10], the Participant Developer will use its best endeavours to ensure that, within the timeframe specified at Clause 5.4:

- (A) it obtains a copy of the most recent fire risk assessment for each Building;
- (B) if that fire risk assessment is not an Up-to-Date FRA (or it fails to obtain a copy within a reasonable time):

- (i) an Up-to-Date FRA is carried out; and
 - (ii) it obtains a copy of that Up-to-Date FRA;
- (C) in respect of each Building for which a FRAEW has already been carried out, it obtains a copy of that FRAEW; and
- (D) in respect of each Building:
- (i) for which there is not an Up-to-Date FRAEW (or it fails to obtain a copy of an Up-to-Date FRAEW within a reasonable time); but
 - (ii) in respect of which there is reason to suspect that a FRAEW is required having regard to the guidance in PAS 9980, or a fire risk assessment has recommended (irrespective of how that is expressed and of the circumstances giving rise to the recommendation) that a FRAEW is carried out,
- an Up-to-Date FRAEW of that Building is carried out and it obtains a copy of that Up-to-Date FRAEW.

5.4 The Participant Developer will obtain the copies referred to in Clause 5.3:

- (A) within a reasonable time; or
- (B) in the case of a Building with an identified or suspected Defect, as soon as reasonably possible after the date of the Contract,

and (in each case) in any event not later than by the relevant target dates indicated in its latest Quarterly Data Report (or, until the first Quarterly Data Report is submitted, the Baseline Data Report).

5.5 On DLUHC's request the Participant Developer will provide the copies referred to in Clause [5.3] to DLUHC promptly and (in each case) not later than within [five] Business Days:

- (A) after the date of the request, or
- (B) after the date when the relevant fire risk assessment, FRA or FRAEW has been completed and issued,

whichever is the later.

5.6 The Participant Developer will ensure that, in respect of each Building, the target dates indicated in its Data Reports for:

- (A) obtaining copies of the most recent fire risk assessment or FRA and any FRAEW; and

- (B) carrying out an Up-to-Date FRA and (if required under clause 5.3(D)) Up-to-Date FRAEW,

are as soon as reasonably possible, and are not postponed except to the extent necessary due to circumstances beyond the control of the Participant Developer that are explained in the relevant Data Report to DLUHC's reasonable satisfaction.

5.7 The Participant Developer will ensure that the Up-to-Date FRA and/or Up-to-Date FRAEW carried out in accordance with Clause [5.3] is carried out by a suitably experienced, qualified, independent and competent fire risk assessor (in the case of an Up-to-Date FRA) or external wall assessor (in the case of an Up-to-Date FRAEW) in accordance with the Fire Safety Order and PAS 79-2 or PAS 9980 (as applicable), and that assessor carries out the Up-to-Date FRA or Up-to-Date FRAEW taking into account the interests and concerns of the leaseholders and residents of the affected Building.

5.8 DLUHC may audit (such audit to be undertaken by DLUHC or such other body or person as may be nominated by DLUHC) the Up-to-Date FRA and/or Up-to-Date FRAEW provided to DLUHC (or such other body or person as may be nominated by DLUHC) in accordance with Clause [5.5], as DLUHC, in its absolute discretion, sees fit. Such audit may check, among other things, that:

- (A) the FRA assessor and/or FRAEW assessor is suitably experienced, qualified, independent and competent;
- (B) the criteria outlined in the definition of "Up-to-Date" have been satisfied; and
- (C) the conclusions of the Up-to-Date FRA and/or Up-to-Date FRAEW (as applicable) are justified, taking into account, for example:
 - (i) all relevant factors as set out in PAS 79-2 and/or PAS 9980 (as applicable);
 - (ii) any complaints that may have been received by DLUHC from a Responsible Entity, or any leaseholder; and/or
 - (iii) any discrepancies between those conclusions and conclusions of a Qualifying Assessment provided in the context of a similar Building.

5.9 Except as otherwise determined by DLUHC from time to time, the obligations of the Participant Developer under Clause 5.3 will not extend to any Building if and for so long as:

- (A) there is no information (including claims, issues or concerns raised by any person (including lenders or insurers) with DLUHC, any PD Group Company, or otherwise) that there are or may be any Defects relating to the Original Works or arising from the design, construction or refurbishment of the Building or any part of it (including external walls, fixed heating, ventilation and air conditioning systems, fire dampers, and means of escape); and

- (B) there are reasons to believe that that Building is not likely to be a Building Requiring Works,

provided that in each Data Report the Participant Developer warrants that it is not aware of any such information (including claims, issues or concerns). DLUHC may determine from time to time that this Clause [5.9] will not apply in its entirety or in part.

- 5.10 Where any fire risk assessment carried out prior to 5 April 2022 has indicated that the Building is a Building Requiring Works, the Participant Developer will not delay carrying out the Works in respect of that Building Requiring Works in accordance with Clause [6] solely because it has been unable to obtain copies of an Up-to-Date FRA or Up-to-Date FRAEW in accordance with Clause [5.3], provided the Responsible Entity and the Participant Developer agree that the Participant Developer may commence the Works in respect of the Building Requiring Works on the basis of that existing fire risk assessment. For the avoidance of doubt, where the Participant Developer commences the Works on the basis of an existing fire risk assessment in accordance with this Clause [5.10], the Participant Developer will still need to ensure that Qualifying Assessments are obtained in respect of the Building Requiring Works in accordance with Clause [6.2].
- 5.11 The Participant Developer will bear all costs in connection with obtaining all Up-to-Date FRAs and Up-to-Date FRAEWs as required under Clause 5.3, including the costs of any additional steps referred to in limbs [(B)(ii)] and [(C)(ii)] of the definition of "Up-to-Date". The obligation under this Clause [5.11] extends to any costs, including its own costs and those costs payable by Third Parties, but does not require the Participant Developer to reimburse the Responsible Entity for any costs that have already been paid by the Responsible Entity.

6. Obligation to carry out Works

- 6.1 Subject to Clause 7, the Participant Developer will, in accordance with all Applicable Law, undertake at its own cost or procure at its own cost all necessary work in relation to each Building Requiring Works so as to ensure that any and all Defects are remediated and/or fully mitigated as soon as reasonably possible (the "**Works**"). For the avoidance of doubt, such costs will include all costs of, or any costs associated with:
 - (A) carrying out the remediation and/or mitigation work;
 - (B) arranging access to the Building Requiring Works;
 - (C) any cost variations or cost overruns that may arise over the course of the Works until practical completion of the Works;
 - (D) moving residents out of the Building Requiring Works (if applicable, and including any associated accommodation costs), so the Works can be carried out;
 - (E) costs of an amount reasonably incurred for any advisers that may be appointed by any Responsible Entity or leaseholder in relation to the Works; and

- (F) costs of any amount reasonably incurred for any advisers that may be appointed by the Responsible Entity in relation to the written contract to be entered into between the Participant Developer and the Responsible Entity in accordance with Clause [6.4].
- 6.2 After the Works in respect of a Building Requiring Works achieve practical completion, the Participant Developer will ensure that Qualifying Assessments are obtained in respect of it. The Participant Developer will ensure that such Qualifying Assessments are carried out by a suitably experienced, qualified, independent and competent fire risk assessor (in the case of a FRA) or external wall assessor (in the case of a FRAEW) in accordance with the Fire Safety Order and PAS 79-2 or PAS 9980 (as applicable), and that assessor carries out the FRA or FRAEW taking into account the interests and concerns of the leaseholders and residents of the affected Building.
- 6.3 The Participant Developer will ensure that the Works are commenced and completed and the Qualifying Assessments are obtained as soon as reasonably possible (but not later than by the relevant target dates indicated in the Participant Developer's latest Data Report). Failure to commence and complete the Works by the relevant target dates indicated in the Participant Developer's latest Data Report will give DLUHC a termination right in accordance with Clause [23] (*Breach and termination*).
- 6.4 The Participant Developer will use its best endeavours to enter into a written contract (based on an industry standard form of contract and with contractual provisions (including in respect of insurance) generally aligned with those prevailing in the market) with the Responsible Entity of each Building Requiring Works providing for the carrying out of the Works, with such contract to:
- (A) contain dispute resolution provisions pursuant to which the Responsible Entity and the Participant Developer agree to use their respective best endeavours to resolve any dispute between them;
 - (B) require the Responsible Entity to Participate in and/or co-operate with any Dispute Resolution Process in accordance with Clause [16] of these Self-Remediation Terms;
 - (C) require the Responsible Entity to share with its leaseholders and residents all information that the Participant Developer provides to the Responsible Entity in accordance with Clause [8], with such information to be shared by the Responsible Entity within 10 Business Days of receipt;
 - (D) require the Responsible Entity to repay to leaseholders any amounts reimbursed to the Responsible Entity by the Participant Developer in accordance with Clause [12.3(B)(ii)(b)], Clause [12.8(C)(ii)(b)] and Clause [13.3(C)(ii)(b)] to the relevant leaseholders;
 - (E) grant the Participant Developer access to the Building so that the Participant Developer may carry out the Works (subject to compliance with Applicable Law and the terms of any leases in respect of that Building);

- (F) specify that the Participant Developer will indemnify and hold harmless the Responsible Entity against any loss, cost, liability, claim, expense or damage (including any indirect or consequential loss), whether actual, contingent or prospective, incurred or suffered by the Responsible Entity as a result of or in connection with the Works or as a result of or in connection with any default by that Participant Developer in the performance of any of its obligations under the written contract;
- (G) contain third party rights provisions in favour of DLUHC, such that DLUHC may enforce the terms of the contract;
- (H) require a dilapidations survey to be carried out in respect of the Building prior to the commencement of the Works;
- (I) specify that the Participant Developer will:
 - (i) be liable for any defect, shrinkage, snagging, warping or other fault in the Works and damage caused by the Participant Developer and/or the Works to other parts of the Building not subject to the Works; and
 - (ii) be required to remedy any Defect identified after the Qualifying Assessments are obtained,

save that such contract will not require the Responsible Entity to make payment to the Participant Developer for the carrying out of the Works.

6.5 Subject to Clause 6.6, the Participant Developer will ensure that, in respect of each Building Requiring Works, the target dates for:

- (A) commencing and completing the Works; and
- (B) carrying out the Qualifying Assessments,

indicated in its Data Reports are met as soon as is reasonably possible.

6.6 The Participant Developer may:

- (A) postpone the target dates referred to in Clause [6.5] to new target dates if there are circumstances genuinely beyond the control of the Participant Developer; or
- (B) postpone the target dates for commencing and completing of Works in respect of a Fund Building where it transpires that there are one or more Defects that were not eligible to be remediated under the relevant Fund and it would be manifestly unreasonable for the original targets to apply given the revised scope of the Works,

in each case provided such postponement is no longer than necessary and the Participant Developer obtains DLUHC written consent to the new target dates. DLUHC's consent

may be subject to such conditions as DLUHC may determine, but will not be withheld or be made conditional if and to the extent that it would be manifestly unreasonable to do so.

7. Exceptions from the obligation to carry out Works

7.1 The Participant Developer will have no obligation to carry out the Works in respect of any Defects to the extent that the Defects are solely the result of Alterations by a person other than a PD Group Company after the Original Completion Date.

7.2 The Participant Developer will not be liable in respect of its failure to carry out the Works in respect of a Building under this Contract for the sole reason that it funds the Works rather than carries out the Works itself, provided that:

(A) the Responsible Entity of the Building agrees to the Participant Developer funding (but not carrying out) the Works, provided there is no undue influence from the Participant Developer;

(B) the Participant Developer, having given due consideration to the proposed Works, reasonably considers that the funding provided to the Responsible Entity by the Participant Developer is sufficient to ensure the Works can be carried out so a Qualifying Assessment can be obtained; and

(C) the Works are carried out, and the Qualifying Assessments are obtained, in accordance with this Contract, including in respect of the dates for the commencement and completion of the Works.

7.3 The Participant Developer will not be liable in respect of its failure to carry out the Works in respect of a Stage C Fund Building or a Stage D Fund Building under this Contract, if it reimburses DLUHC in full under Clause 13.1 or 13.6.

7.4 The Participant Developer will not be liable in respect of its failure to carry out the Works in respect of a Building under this Contract for so long as it or another person engaged to carry out the Works, as the case may be, is refused access to a Building, provided that:

(A) the Participant Developer uses its best endeavours to obtain consent to such access; and

(B) engages with DLUHC on options to resolve the issue of access; and this Clause 7.4 only applies to Buildings to which no PD Group Company has a right of access to carry out the Works.

7.5 This Contract does not require the Works to cover any betterment work which goes beyond that required in order to remedy the Defects and obtain Qualifying Assessments in respect of each Building, other than betterment work:

(A) that is necessary or expedient for undertaking the Works;

- (B) that is fundamentally or inherently incidental to the Works; or
- (C) that relates to the replacement of goods, materials, and/or products (regardless of life-cycle stage), necessary to obtain a Qualifying Assessment.

8. Obligation to engage with Third Parties

8.1 If it has not already done so, the Participant Developer will as soon as reasonably possible, and in any event not later than [30] Business Days after entering into the Contract or a building being identified as a Building Requiring Works, whichever is the later:

- (A) contact the relevant Responsible Entity of each Building Requiring Works and each Building in respect of which information has been received that it may be a Building Requiring Works in order to confirm:
 - (i) that their Building is covered by the Contract and these Self-Remediation Terms;
 - (ii) the next steps that they intend to take to meet their obligations under the Contract and the target dates; and
 - (iii) the methods by which the Responsible Entity and the leaseholders and residents of the Building are able to contact the Participant Developer (such method to include email and postal addresses and telephone details and, if applicable, a web portal that a Participant Developer has set up for this purpose),

and/or such other matters as may be provided for in any Guidance; and

- (B) establish effective processes to receive and promptly respond to communications from such Third Parties using each Third Party's preferred contact method, and describe those processes to DLUHC.

8.2 Each Participant Developer will:

- (A) From first notifying the Responsible Entity in accordance with Clause [8.1] above until the commencement of the Works, keep the Responsible Entities of each Building Requiring Works updated as often as reasonably necessary (and not less than annually) in respect of the next steps to the commencement of the Works.
- (B) From the commencement of the Works until practical completion of the Works, keep the Responsible Entities of each Buildings Requiring Works updated as often as reasonably necessary in respect of the progress of the Works. This includes, at a minimum, updates at least once in every three-month period throughout the duration of any Works and these updates should include reasonable detail on the progress of the Works.

If there is any change to the initial timetable and scope of the proposed Works that impacts the leaseholders and residents, such change should be communicated to the Responsible Entities promptly and in any event before the proposed Works are commenced.

- 8.3 Each Participant Developer will request that the Responsible Entity shares with its leaseholders and residents all information in writing that the Participant Developer provides to the Responsible Entity in accordance with this Clause 8, such information to be shared by the Responsible Entity within 10 Business Days of receipt.
- 8.4 If the Responsible Entity does not share with its leaseholders and residents all information in writing that the Participant Developer has provided to it in accordance with Clause [8.3], the Participant Developer will share such information directly with the Responsible Entity's leaseholders and residents.
- 8.5 The obligations in this Clause 8 are subject to, and will be carried out in accordance with, any Guidance. This Clause 8 is without prejudice to the generality of Clause 10.1(E).

9. Reporting of assessments and Works

9.1 The Participant Developer will:

- (A) on or prior to the date of the Contract, submit a Baseline Data Report to DLUHC; and
- (B) by the tenth Business Day after each Reporting Date, an updated Quarterly Data Report,

in each case subject to and in accordance with the provisions of this Clause 9.

9.2 The following information submitted by the Participant Developer to DLUHC on or prior to the date of the Contract will be set out in Schedule 5 (*Baseline Data Report*) to the Contract:

- (A) a description of the process followed by the Participant Developer to ascertain the lists of Buildings and Buildings Requiring Works, and if that process has not been completed, the methodology and target date for the completion of that process;
- (B) lists of buildings that are not listed in a Schedule to the Contract as a Building or a Building Requiring Works, but in respect of which information has been received by a PD Group Company to the effect that the building is, or may be, a Building or a Building Requiring Works, respectively;
- (C) in respect of each Building, the target dates referred to in Clauses 5.6 (or, in the case of each Building falling within Clause [5.9], the explanation and warranty referred to in that Clause);

- (D) in respect of each Building:
- (i) whether the Building is the subject of:
 - (a) an Up-to-Date FRA;
 - (b) an Up-to-Date FRAEW; and/or
 - (c) a fire risk assessment that contains a recommendation (irrespective of how it is expressed and of the circumstances giving rise to the recommendation) that a fire risk appraisal of external walls is carried out; and
 - (ii) the dates, Types and other details of all fire risk assessments and FRAEW of which the Participant Developer is aware, and whether a copy of each such assessment/FRAEW is in the possession of the Participant Developer;
 - (iii) the details of the assessor that has carried out the fire risk assessment, FRA and/or FRAEW, with such details to include the name, experience and qualification details of the assessor;
 - (iv) whether it is a Stage A Fund Building, Stage B Fund Building, Stage C Fund Building or a Stage D Fund Building (if applicable);
 - (v) if it is a Stage A Fund Building, a Stage B Fund Building or, if transferred to the Participant Developer in accordance with Clause [13], a Stage C Fund Building, the target dates for commencing, carrying out and completing the works that would apply were the Building not transferred from the relevant Fund to the Participant Developer;
- (E) the Buildings in respect of which an Up-to-Date FRA and/or an Up-to-Date FRAEW are required to be carried out in accordance with Clause 5, listed in the order in which such assessments/appraisals are to be carried out, the Types of such assessments, and an explanation of the Participant Developer's reasons for determining the order and those Types, such determination to have regard to
- (i) the safety of the leaseholders and residents of each Building Requiring Works;
 - (ii) information available in respect of each Building Requiring Works from time to time, including in respect of any Defect or the likelihood that there is any Defect, the level of fire risk, supply chain availability to carry out the Works, insurability, and the willingness of lenders to extend loans secured by interests in such Building or any part of it, subject to Clause (iii) below; and
 - (iii) any Guidance,

(the “**Assessment Order and Method Statement**”);

- (F) the Buildings Requiring Works listed in the order in which Works are to be completed, and an explanation of the Participant Developer’s reasons for determining that order, such determination to have regard to:
- (i) the safety of the leaseholders and residents of each Building Requiring Works;
 - (ii) information available in respect of each Building Requiring Works from time to time, including in respect of any Defect or the likelihood that there is any Defect, the level of fire risk, supply chain availability to carry out the Works, insurability, and the willingness of lenders to extend loans secured by interests in such Building or any part of it, subject to Clause (iii) below; and
 - (iii) any Guidance,

(the “**Works Order and Method Statement**”);

- (G) in respect of each Building Requiring Works, the details of the Defects and of the scope of Works;
- (H) whether:
- (i) it is engaged in any Third Party Dispute; or
 - (ii) so far as it is aware, there is any fact or circumstance likely to give rise to any Third Party Dispute; and
- (I) if either sub-Clause (H)(i) or (ii) applies, a brief summary of the nature of the Third Party Dispute or the facts or circumstances likely to give rise to any Third Party Dispute (as applicable),

in accordance with the pro forma baseline data report included at Annex 3 (*Pro forma Baseline Data Report*) (as such pro forma may be updated by DLUHC from time to time) (each a “**Baseline Data Report**”).

9.3 By the tenth Business Day after:

- (A) the first Reporting Date following the date of its Contract with DLUHC; or
- (B) if such first Reporting Date is less than two months after the date of the Contract, the second Reporting Date following the date of the Contract,

each Participant Developer will submit to DLUHC a report reflecting the position as at that Reporting Date, including among other things, to DLUHC’s reasonable satisfaction:

- (i) updated Schedules to the Contract, where applicable;
- (ii) updated Assessment Order and Method Statement and Works Order and Method Statement in accordance with Clause 9.5;
- (iii) a description of the progress it plans to make in complying with Clause 5 and 6 in the period until the next Data Report, the progress made in so complying since the last Data Report, and an explanation of any failure to achieve in that period any plans mentioned in the last Data Report;
- (iv) confirmation that it has complied with its obligations under Clause 8;
- (v) a description and an explanation of any variation compared to the previous Data Report (including, with respect to the target dates);
- (vi) any risks to meeting the target dates indicated in the report, and any other issues faced by the Participant Developer;
- (vii) its latest annual consolidated financial statements (unless provided previously);
- (viii) details of any disposal or acquisition by or of any PD Group Company since the date of the last Data Report, including details of any persons that became PD Group Companies and of any buildings that became Buildings as a result of any such acquisition;
- (ix) whether or not it has complied with any Dispute Recommendation, and explain any non-compliance (if applicable);
- (x) copies of any information provided to Responsible Entities in accordance with Clause 8; and
- (xi) whether:
 - (a) it is engaged in any Third Party Dispute; or
 - (b) so far as it is aware, there is any fact or circumstance likely to give rise to any Third Party Dispute;

in accordance with the pro forma quarterly data report included at Annex 4 (*Pro forma Quarterly Data Report*) (as such pro forma may be updated by DLUHC from time to time, which updates may require the Participant Developer to provide information not mentioned above) (each a “**Quarterly Data Report**”).

9.4 By the tenth Business Day after each Reporting Date following the delivery of the first Quarterly Data Report by the Participant Developer, the Participant Developer will submit to DLUHC either:

- (A) an updated Quarterly Data Report reflecting the position as at that Reporting Date; or
- (B) written confirmation that the Quarterly Data Report previously provided remains true and accurate in all respects.

9.5 The Participant Developer will have a continuing duty to keep under review:

- (A) the lists of Buildings and Buildings Requiring Works set out in the Schedules to the Contract and in the updated Schedules provided in the Quarterly Data Reports; and
- (B) the Assessment Order and Method Statement and the Works Order and Method Statement.

9.6 As part of the Baseline Data Report and each Quarterly Data Report, the directors of the Participant Developer will provide formal attestation confirming that to the best of their information, knowledge and belief having made all reasonable enquiries:

- (A) the content of the Baseline Report or the Quarterly Data Report (as applicable) is true and accurate; and
- (B) each warranty set out in clause 3.1 of the Contract is true and accurate.

9.7 DLUHC may from time to time issue Guidance to Participant Developers in relation to the Assessment Order and Method Statement and the Works Order and Method Statement.

10. DLUHC's monitoring and other rights

10.1 The Participant Developer will promptly comply with each reasonable requirement from DLUHC (as may be given to it by DLUHC from time to time) for the Participant Developer:

- (A) to provide information relating to the performance of the Contract, the Buildings, the Works, or the financial condition, assets and operations of any PD Group Company;
- (B) to meet with DLUHC to discuss the performance of the Contract (and ensure that appropriate representatives of the Participant Developer attend any such meeting);
- (C) to remedy any defect of any Data Report or any other failure by the Participant Developer to comply with the terms of the Contract;
- (D) to provide further information on any matters set out in any Data Report or to remedy any deficiency in any Data Report; or
- (E) to ensure that leaseholders and residents of flats or other premises in each Building have such access to such information in the possession of the

Participant Developer relating to the Building as DLUHC may from time to time reasonably require.

10.2 DLUHC or such other body or person as may be nominated by DLUHC will be entitled to audit the information used in the preparation of any Data Report as DLUHC, in its absolute discretion, sees fit (the “**Data Report Audit**”), and the Participant Developer will ensure that DLUHC or its nominees have reasonable access to the employees, books and records of the PD Group Companies for the purposes of such audit.

10.3 The Participant Developer agrees (on its own behalf and on behalf of each PD Group Company) that DLUHC may from time to time publish or disclose to any person, or require that the Participant Developer publishes or discloses to any person, any information relating to the Buildings, including information provided to it by the Participant Developer in connection with this Contract. The Participant Developer will also make any such information available on its website, if and to the extent required by DLUHC from time to time.

11. Practical completion of the Works

11.1 After practical completion of the Works in respect of each Building Requiring Works, each Participant Developer will provide the Qualifying Assessments obtained in accordance with Clause [6.2] to DLUHC (or such other body or person as may be nominated by DLUHC) within [20] Business Days of the date of each such Qualifying Assessment.

11.2 DLUHC may audit (such audit to be undertaken by DLUHC or such other body or person as may be nominated by DLUHC) the Qualifying Assessments provided to DLUHC (or such other body or person as may be nominated by DLUHC) in accordance with this Clause 11, as DLUHC, in its absolute discretion, sees fit. Such audit may check, among other things, that:

- (A) the FRA assessor and/or FRAEW assessor is suitably experienced, qualified, independent and competent;
- (B) the conclusions of the FRA and/or FRAEW (as applicable) are justified, taking into account, for example:
 - (i) all relevant factors as set out in PAS 79-2 and/or PAS 9980 (as applicable);
 - (ii) any complaints that may have been received by DLUHC from a Responsible Entity, or any leaseholder; and/or
 - (iii) any discrepancies between those conclusions and conclusions of a Qualifying Assessment provided in the context of a similar Building.

11.3 Each Participant Developer will give DLUHC (or such other body or person as may be nominated by DLUHC) reasonable access to all documentation, and will instruct the Participant Developer’s directors and employees to, and will ensure that each PD Group

Company will, give promptly all information and explanations to DLUHC (or such other body or person as may be nominated by DLUHC) as DLUHC may request, in each case as is required in order to enable DLUHC (or such other body or person as may be nominated by DLUHC) to carry out the audit envisaged above in this Clause.

- 11.4 If DLUHC notifies the Participant Developer that any documents submitted by it as Qualifying Assessments are not in accordance with Applicable Law or the Contract (whether following DLUHC's audit or otherwise) and provides explanation of its reasoning, the Participant Developer will as soon as reasonably possible submit Qualifying Assessments that are in accordance with all Applicable Law and the Contract.

Transfer from, and/or reimbursement of, the Building Safety Fund, Private Sector ACM Cladding Remediation Fund and Social Sector ACM Cladding Remediation Fund

12. BSF and other Funds – Transfer

Stage A

- 12.1 The Participant Developer agrees that it will accept any transfer to it of a Stage A Fund Building out of the relevant Fund, and will carry out Works in respect of that Stage A Fund Building in accordance with these Self-Remediation Terms.
- 12.2 The date a Stage A Fund Building is transferred out of the relevant Fund will be confirmed to the Participant Developer by DLUHC.
- 12.3 Accordingly, the Participant Developer will, from the date a Stage A Fund Building is transferred to it:
- (A) carry out and complete the Works in respect of that Stage A Fund Building in accordance with these Self-Remediation Terms to ensure, for the avoidance of doubt, that Qualifying Assessments are obtained in respect of such Stage A Fund Building; and
 - (B) reimburse on demand:
 - (i) to DLUHC any costs incurred or irrevocably committed by the relevant Fund (whether historical or otherwise), such costs to include:
 - (a) any amounts of pre-tender support provided to Responsible Entities by the relevant Fund;
 - (b) any cost variations or cost overruns that the relevant Fund would otherwise have to cover; and
 - (c) costs incurred or irrevocably committed prior to the point the Stage A Fund Building is transferred to the Participant Developer in accordance with this Clause [12.3], even if those costs are not identified or paid until after that point; and

- (ii) to the Responsible Entity any costs:
 - (a) incurred or irrevocably committed by the Responsible Entity; or
 - (b) charged by the Responsible Entity to its leaseholders (provided the Responsible Entity repays such reimbursed amounts to the relevant leaseholders in accordance with Clause [6.4(D)]),in each case in connection with any works to which the relevant Fund relates.

12.4 The obligation set out in Clause [12.3(B)] applies only to costs incurred or irrevocably committed up to the point the Stage A Fund Building is transferred to the Participant Developer in accordance with Clause [12.3].

12.5 If a Stage A Fund Building is not transferred out of the relevant Fund to the Participant Developer in accordance with Clause [12.3], the Participant Developer will be liable to reimburse the relevant Fund in accordance with Clause [13].

Stage B

12.6 The Participant Developer agrees that it will accept any transfer to it of a Stage B Fund Building out of the relevant Fund, and will carry out Works in respect of that Stage B Fund Building in accordance with these Self-Remediation Terms.

12.7 The date a Stage B Fund Building is transferred out of the relevant Fund will be confirmed to the Participant Developer by DLUHC.

12.8 Accordingly, each Participant Developer will, from the date a Stage B Fund Building is transferred to it:

- (A) carry out and complete the Works in respect of that Stage B Fund Building in accordance with these Self-Remediation Terms to ensure, for the avoidance of doubt, that Qualifying Assessments are obtained in respect of such Stage B Fund Building;
- (B) subject to Clause [6.6], ensure that the target dates for commencing, carrying out and completing the Works in respect of that Building indicated in its Data Reports are not later than the corresponding dates that would have applied to that Building had it not been transferred from the relevant Fund to the Participant Developer; and
- (C) reimburse on demand:
 - (i) to DLUHC any costs incurred or irrevocably committed by the relevant Fund (whether historical or otherwise), such costs to include:

- (a) any amounts of pre-tender support provided to the Responsible Entities by the relevant Fund;
 - (b) any cost variations or cost overruns that the relevant Fund would otherwise have to cover; and
 - (c) costs incurred or irrevocably committed prior to the point the Stage B Fund Building is transferred to the Participant Developer in accordance with this Clause [12.8], even if those costs are not identified or paid until after that point; and
- (ii) to the Responsible Entity any costs:
- (a) incurred or irrevocably committed by the Responsible Entity; or
 - (b) charged by the Responsible Entity to its leaseholders (provided the Responsible Entity repays such reimbursed amounts to the relevant leaseholders in accordance with Clause [6.4(D)]),

in each case in connection with the works to which the relevant Fund relates,

provided the Stage B Fund Building will not be transferred to the Participant Developer in accordance with this Clause [12.8] unless the Participant Developer confirms in its Data Reports that the target dates for completing the Works are not later than the corresponding dates that would have applied to that Building had it not been transferred from the relevant Fund to the Participant Developer.

- 12.9 The obligation set out in Clause [12.8(C)] applies to costs incurred or irrevocably committed up to the point the Stage B Fund Building is transferred to the Participant Developer in accordance with Clause 12.7.
- 12.10 If a Stage B Fund Building is not transferred out of the relevant Fund to the Participant Developer in accordance with Clause [12.8], the Participant Developer will be liable to reimburse the relevant Fund in accordance with Clause [13].

Confirmation to Responsible Entities of a transfer

- 12.11 Promptly following:
- (A) a Stage A Fund Building being transferred to a Participant Developer in accordance with Clause [12.3]; or
 - (B) a Stage B Fund Building being transferred to a Participant Developer in accordance with Clause [12.8].

the Participant Developer will engage with the Responsible Entity and use its best endeavours to fulfil its obligations in accordance with this Clause 12; and DLUHC may write to the affected Responsible Entities (as applicable) to confirm that:

- (C) no further funding will be awarded to the Responsible Entity out of the relevant Fund (as the Participant Developer will be carrying out and completing the relevant Works instead); and
- (D) the Responsible Entity should reach agreement with the Participant Developer so the Participant Developer may progress the Works in respect of such Building in accordance with these Self-Remediation Terms; and
- (E) the Responsible Entity should share information with the relevant Participant Developer so the Participant Developer may progress the Works in respect of such Building in accordance with these Self-Remediation Terms.

13. BSF and other Funds – Reimbursement

Stage C

13.1 Subject to Clause 13.2, each Participant Developer will, in respect of each of its Stage C Fund Buildings, on demand pay to DLUHC (or such other body or person as may be nominated by DLUHC) such amount as is required to reimburse and hold harmless DLUHC for any and all funding awarded but not yet paid by DLUHC from the relevant Fund. For the avoidance of doubt, such amounts will include:

- (A) any amounts of pre-tender support provided to Responsible Entities by the relevant Fund;
- (B) any cost variations or cost overruns that the relevant Fund would otherwise have to cover; and
- (C) any amounts advanced to Responsible Entities by the relevant Fund and any amounts provided on and/or after practical completion of the relevant works.

A Participant Developer will not be required to make a payment in accordance with this Clause 13.1 if it requests to DLUHC (and DLUHC accepts such request) that the relevant Stage C Fund Building is transferred out of the relevant Fund to the Participant Developer, for the Participant Developer to carry out the relevant Works in respect of it.

13.2 The date a Stage C Fund Building is transferred out of the relevant Fund will be confirmed to the Participant Developer by DLUHC.

13.3 Subject to a Participant Developer making a request to DLUHC in accordance with Clause 13.1 above (and DLUHC accepts such request, and confirms the Stage C Fund Building is transferred in accordance with Clause [13.2]), the relevant Participant Developer will:

- (A) carry out and complete the relevant Works in respect of those Stage C Fund Buildings in accordance with these Self-Remediation Terms to ensure, for the avoidance of doubt, that Qualifying Assessments are obtained in respect of such Stage C Fund Building;
- (B) subject to Clause [6.6], ensure that the target dates for commencing, carrying out and completing the Works in respect of that Building indicated in its Data Reports are not later than the corresponding dates that would have applied to that Building had it not been transferred from the relevant Fund to the Participant Developer; and
- (C) reimburse on demand:
 - (i) to DLUHC any costs incurred or irrevocably committed by the relevant Fund; and
 - (ii) to the Responsible Entity any costs:
 - (a) incurred or irrevocably committed by the Responsible Entity; or
 - (b) charged by the Responsible Entity to its leaseholders (provided the Responsible Entity repays such reimbursed amounts to the relevant leaseholders in accordance with Clause [6.4(D)]),

in each case in connection with any works to which the relevant Fund relates.

provided the Stage C Fund Building will not be transferred to the Participant Developer in accordance with this Clause [13.3] unless the Participant Developer confirms in its Data Reports that the target dates for commencing, carrying out and completing the Works are not later than the corresponding dates that would have applied to that Building had it not been transferred from the relevant Fund to the Participant Developer.

- 13.4 The obligation set out in Clause [13.3(C)] applies only to costs incurred or irrevocably committed up to the point the Stage C Fund Building is transferred to the Participant Developer in accordance with Clause [13.3].

Confirmation to Responsible Entities of a transfer

- 13.5 Promptly following a Stage C Fund Building being transferred to a Participant Developer in accordance with Clauses 13.1 and 13.2, the Participant Developer will engage with the Responsible Entity and use its best endeavours to ensure it fulfils its obligations in accordance with this Clause 13, and DLUHC may write to the affected Responsible Entities (as applicable) confirming that:
- (A) no further funding will be awarded to the Responsible Entity out of the relevant Fund unless the Participant Developer fails to fulfil its obligations in accordance

with this Clause 13 (as the Participant Developer will be carrying out and completing the relevant Works instead); and

- (B) the Responsible Entity should reach agreement with the Participant Developer so the Participant Developer may progress the Works in respect of such Building in accordance with these Self-Remediation Terms; and
- (C) the Responsible Entity should share information with the relevant Participant Developer so the Participant Developer may progress the Works in respect of such Building in accordance with these Self-Remediation Terms.

Stage D

13.6 Each Participant Developer will, in respect of each of its Stage D Fund Buildings, on demand pay to DLUHC (or such other body or person as may be nominated by DLUHC) such amount as is required to reimburse and hold harmless DLUHC for any and all funding paid from the relevant Fund. For the avoidance of doubt, such amounts will include:

- (A) any amounts of pre-tender support provided to Responsible Entities by the relevant Fund;
- (B) any cost variations or cost overruns that the relevant Fund would otherwise have to cover; and
- (C) any amounts advanced to Responsible Entities by the relevant Fund and any amounts provided on and/or after practical completion of the works.

Confirmation to Responsible Entities of a reimbursement

13.7 Promptly following confirmation to DLUHC by a Participant Developer that it will reimburse to DLUHC any and all funding paid from the relevant Fund in accordance with this Clause 13, DLUHC may inform the relevant Responsible Entity that:

- (A) the relevant Participant Developer will reimburse to DLUHC any and all funding paid from the relevant Fund in accordance with these Self-Remediation Terms; and
- (B) their application to the relevant Fund will continue accordingly.

13.8 Any amounts reimbursed to DLUHC by a Participant Developer in accordance with this Clause [13] will be payable on demand by DLUHC to the bank account specified by DLUHC from time to time. Such amounts reimbursed will be used for the purpose of funding schemes to remediate fire-safety defects, noting that DLUHC may use a third party administrator to hold and apply these funds on its behalf.

13.9 DLUHC will take all reasonable steps to transfer Fund Buildings to Participant Developers in accordance with Clause [12] and this Clause [13] as soon as reasonably possible.

- 13.10 Subject to the Participant Developer complying with its obligations in accordance with the Contract and these Self-Remediation Terms, where a Responsible Entity refunds to the relevant Fund any amounts it has recovered (for example, under any contracts of insurance), DLUHC will pay such amounts to the Participant Developer as soon as reasonably possible following receipt of the refund by the relevant Fund.
- 13.11 In addition to the requirements set out at Clause 9, the Participant Developer will submit to DLUHC on a monthly basis an update in respect of commencing, carrying out and completing the Works that apply to Fund Buildings that are transferred to Participant Developers in accordance with Clause [12] and this Clause [13].
- 13.12 DLUHC will as soon as reasonably possible provide the Participant Developer with notice of any cost variations or cost overruns that the relevant Fund would otherwise have to cover and which the Participant Developer is to reimburse in accordance with this Clause [13]. For the avoidance of doubt, DLUHC will retain full control, oversight and discretion with regard to:
- (A) approving any such cost variations or cost overruns; and
 - (B) the funding of Buildings remaining in the Funds, in accordance with the rules applicable to the relevant Funds.

14. Costs of a Responsible Entity – Fund transfer and/or reimbursement

Each Participant Developer will reimburse to any Responsible Entity on demand all reasonable costs and expenses including:

- (A) costs of any amount reasonably incurred for any advisers that may be appointed by any Responsible Entity or leaseholder; and
- (B) costs of any amount reasonably incurred for any advisers that may be appointed by the Responsible Entity in relation to the written contract to be entered into between the Participant Developer and the Responsible Entity in accordance with Clause [6.4]

in connection with the carrying into effect of the Participant Developer's obligations in accordance with Clauses 12 and 13.

15. Participant Developer Feedback and Third Party Feedback

- 15.1 Reference to DLUHC in this Clause [15] will be deemed to include reference to DLUHC or such other body or person as may be nominated by DLUHC.
- 15.2 Each Participant Developer will share with DLUHC:
- (A) details of best practice;
 - (B) learning or guidance notes or similar;

- (C) any issues it may have encountered; and
- (D) any other information reasonably requested by DLUHC,

in each case in relation to the performance of its obligations under the Contract, its Works, PAS 79-2 and/or PAS 9980 (as applicable) ("**Participant Developer Feedback**"), as DLUHC may request from time to time, provided such Participant Developer Feedback may be provided through roundtables, forum, consultation or similar with DLUHC, or in such appropriate medium as DLUHC and the Participant Developers may from time to time agree.

- 15.3 DLUHC reserves the right to request from any relevant Third Party, and each Third Party will be able to share with DLUHC, feedback in relation to the relevant Participant Developer's Works or any action or omission of that Participant Developer in the performance of its Contract ("**Third Party Feedback**").
- 15.4 DLUHC may from time to time issue Guidance, statements, directions, recommendations or similar to any or all Participant Developers that takes into account, as DLUHC in its absolute discretion sees fit, Participant Developer Feedback, Third Party Feedback, the Works Order and Method Statements and/or Dispute Recommendations, and such Guidance or similar may include reference to specific Participant Developers. The Participant Developer will be expected to implement and comply with such Guidance, statements, directions, recommendations or similar.

16. Dispute Resolution between Participant Developers and Third Parties

- 16.1 In the event of a dispute between a Participant Developer and any Third Party in relation to any element of that Participant Developer's Works or any other action or omission of that Participant Developer in the performance of its Contract (a "**Third Party Dispute**"), the Participant Developer will use its best endeavours to resolve the Third Party Dispute fairly and as expeditiously as possible.
- 16.2 DLUHC will facilitate the establishment or adoption of a dispute resolution process (for example an ombudsman or other suitable dispute resolution process) (the "**Dispute Resolution Process**") to assist with the resolution of any Third Party Dispute that is referred to such Dispute Resolution Process, including by the issuing of guidance, statements, directions, recommendations or similar (each a "**Dispute Recommendation**"), or otherwise. Each Participant Developer agrees that it will:
 - (A) participate in and/or cooperate with any such Dispute Resolution Process as required;
 - (B) to the extent applicable, confirm in its Quarterly Data Report whether or not it has complied with any Dispute Recommendation, and explain any non-compliance (if applicable); and
 - (C) use its best endeavours to procure that the relevant Third Party participates in and/or cooperate with any such Dispute Resolution Process as required.

17. Liability

The Participant Developer will:

- (A) be liable for any defect, shrinkage, snagging, warping or other fault in the Works and damage caused by the Participant Developers and/or the Works to other parts of the Building not subject to the Works; and
- (B) be required to carry out the Works in accordance with this Contract, any Applicable Law and any written contract with the Responsible Entity entered into in accordance with Clause 6.4 to remedy any Defect identified after the Qualifying Assessments are obtained (notwithstanding any confirmation from DLUHC in respect of these Qualifying Assessments).

18. Claims between Participant Developers and Third Parties

- 18.1 Nothing in the Contract or these Self-Remediation Terms is to be construed as an admission of liability on the part of the Participant Developer in respect of obligations that may be owed by it to Third Parties.
- 18.2 All civil claims (including under contracts of insurance or warranties and against contractors) available to Participant Developers, Responsible Entities, leaseholders and/or residents' management companies remain capable of assertion to their fullest possible extent.
- 18.3 For the avoidance of doubt, nothing in these Self-Remediation Terms and/or the Contract should be construed as DLUHC releasing or discharging the Participant Developer from any claims, rights, causes of action or similar that DLUHC and/or Third Parties may have against the Participant Developer in relation to this Contract.

19. Participant Developers and counterparties

- 19.1 The obligation to undertake at its own cost or procure at its own cost the Works in accordance with the Contract and these Self-Remediation Terms lies solely with each Participant Developer.
- 19.2 Allocation of costs between a Participant Developer and any counterparties (for example, joint venture counterparties) is outside the scope of the Contract and these Self-Remediation Terms and is a matter for the Participant Developer.

20. Indemnity in favour of certain Third Parties

To the extent not already recoverable under the written contract referred to at Clause [6.4], the Participant Developer will indemnify and hold harmless on an after-Tax basis each person with a freehold or leasehold interest in, or who has a right to reside in, the Building or any part of the Building (including any premises), and each Responsible Entity (each, an "**Indemnified Party**"), against any loss, cost, liability, claim, expense or damage (including any indirect or consequential loss), whether actual, contingent or prospective,

incurred or suffered by the Indemnified Party as a result of any default by that Participant Developer in the performance of any of its obligations under the Contract.

21. Payment

- 21.1 If, pursuant to these Self-Remediation Terms, the Participant Developer (or any member of its group for VAT purposes) makes a supply for VAT purposes and the relevant Participant Developer (or any member of its group for VAT purposes) is required to account to a Tax Authority for VAT in respect of that supply, the relevant Participant Developer (or a member of its group for VAT purposes) shall account to such Tax Authority for such VAT and DLUHC (or such other body or person as DLUHC may nominate) shall not be required to pay to the relevant Participant Developer an amount equal to or in respect of that VAT.
- 21.2 All payments made pursuant to these Self-Remediation Terms by a Participant Developer will be made gross, free of any deduction, set-off or withholding of any kind other than any deduction or withholding required by law.
- 21.3 If a Participant Developer makes a deduction or withholding required by law from a payment made pursuant to these Self-Remediation Terms, the sum due from the relevant Participant Developer will be increased to the extent necessary to ensure that, after the making of any deduction or withholding, the recipient of the payment receives a sum equal to the sum it would have received had no deduction or withholding been made.

22. Interest

Any Participant Developer which fails to pay any sum payable by it under these Self-Remediation Terms to DLUHC on the due date for payment will pay interest on that sum for the period from and including the due date up to the date of actual payment (after as well as before judgment) at the rate of four per cent per annum above the Bank of England base rate.

23. Breach and termination

- 23.1 If DLUHC considers that a Participant Developer:
- (A) is in material or persistent breach of the terms and/or spirit of these Self-Remediation Terms and/or the Contract; and/or
 - (B) has engaged or is engaging in actual, apparent or attempted direct or indirect avoidance of its obligations in relation to these Self-Remediation Terms and/or the Contract,

(in each case after having given the Participant Developer: (i) prior written notice setting out its concerns in reasonable detail; and (ii) a reasonable opportunity to make representations to DLUHC in response to such concerns) DLUHC can:

- (C) pursue any of the remedies available to it at law for such breach, including those remedies referred to at Clause [30.5]; and
- (D) terminate the Contract with immediate effect on written notice to the Participant Developer.

23.2 DLUHC may take the following into account in considering whether Clause 23.1 applies:

- (A) Third Party Feedback;
- (B) failure to commence and complete the Works by the relevant target dates indicated in the Participant Developer's latest Data Report;
- (C) failure to reimburse any amounts to DLUHC or any other person in accordance with or as contemplated by this Contract in accordance with Clause [13]; and/or
- (D) if any of the warranties or formal attestations provided by a Participant Developer in accordance with these Self-Remediation Terms or under the Contract are not complete, true and accurate in all respects or are misleading.

24. DLUHC's power to assign, novate and delegate

DLUHC may, at its discretion, from time to time assign or novate its rights and/or obligations under this Contract, in full or in part, to any other person, including any statutory successor body, and/or to nominate any other body or person to perform DLUHC's obligations or exercise its rights under the Contract in full or in part, or withdraw any such nomination.

25. Variation

DLUHC may amend these Self-Remediation Terms from time to time, acting reasonably, provided that:

- (A) DLUHC will invite the Participant Developers to make representations on the proposed amendments within a reasonable period of time;
- (B) DLUHC may invite affected Third Parties to make representations on the proposed amendments within a reasonable period of time; and
- (C) DLUHC will provide the Participant Developer with prior reasonable written notice (which may be given via the Website) of such amendments before they come into effect and the date of their entry into effect.

26. Participant Developer asset maintenance

26.1 The Participant Developer undertakes that for as long as any of its obligations under Clause [5] or [6] of this Contract remain outstanding:

- (A) it will not; and
- (B) it will procure that none of its PD Group Companies will,

take any action (including transferring all or any part of its assets) if such transfer or other action would or would reasonably be expected to result in the Participant Developer being unable to fulfil its obligations under Clause [5] or [6] of this Contract (unless the Participant Developer procures a financial and performance guarantee and indemnity, in a form satisfactory to DLUHC (acting reasonably), in respect of the Participant Developer's obligations under Clause [5] or [6] of this Contract from another person which has a financial covenant equal to or better than that of the Participant Developer:

- (C) immediately prior to such transfer or other action; or
- (D) on entry into the Contract

(whichever is the higher)).

27. Participant Developer not to bind DLUHC and no partnership

- 27.1 The Participant Developer will not say or do anything which may bind DLUHC or that may lead any other person to believe that the Participant Developer is acting as or on behalf of DLUHC.
- 27.2 The Participant Developer is an independent contractor with respect to the implementation of these Self-Remediation Terms and the Works and neither the Participant Developer nor any of its subcontractors shall be deemed to be the servants or employees of DLUHC. Neither the Contract nor the performance by the Parties of their respective obligations under the Contract shall constitute a partnership between the Parties.

28. No fettering of discretion or statutory powers

Nothing contained in or carried out pursuant to the Contract and no consents given by HMG will unlawfully prejudice HMG's rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

29. Disclaimer, DLUHC's advice and consents, non-reliance

- 29.1 DLUHC will not be liable to the Participant Developer for any advice given by a representative of DLUHC.
- 29.2 Any approval of, or consent to, any matter by DLUHC or any person on behalf of DLUHC under or in connection with the Contract will not be treated as DLUHC's agreement that:
 - (A) any matters referred to by the Participant Developer in connection with seeking such consent are true, accurate or complete or not misleading; or

(B) any target dates or other matters to which the approval or consent relates are, or will continue to be, “reasonable” for the purposes of this Contract.

29.3 Except in the case of fraud, each party acknowledges that it is entering into the Contract in reliance upon only the Self-Remediation Terms and that it is not relying upon any other pre contractual statement.

29.4 For the purposes of this clause, “pre contractual statement” means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of these Self-Remediation Terms made or given by any person at any time prior to the Contract becoming legally binding.

30. Remedies and waivers

30.1 Subject to Clause [31] (*Time is of the essence*), no delay or omission by any party to this Contract in exercising any right, power or remedy provided by law or under this Contract (or any other documents referred to in it) will:

(A) affect that right, power or remedy; or

(B) operate as a waiver of it.

30.2 The single or partial exercise of any right, power or remedy provided by law or under this Contract will not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

30.3 Any sums owed under this Contract by the Participant Developers to DLUHC which are not paid on demand and remain outstanding after written notice has been served, will become immediately recoverable as debt with the same rights and remedies available as those normally attaching to debt recovery actions.

30.4 The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

30.5 If DLUHC terminates the Contract in accordance with Clause [23] or if DLUHC considers the Participant Developer is in breach of the provisions of the Contract in accordance with Clause [23], notwithstanding any express remedies provided under the Contract and without prejudice to any other right or remedy which any Party may have, the Participant Developers acknowledge that damages alone may not be an adequate remedy for any breach of the provisions of the Contract. Accordingly, each Participant Developer agrees that DLUHC may pursue any available remedies at law for breach, including injunction and specific performance. The Participant Developers also agree that DLUHC may seek damages commensurate with the costs associated with the Works which the Participant Developer in breach would otherwise have met under the Contract and, at DLUHC's sole discretion, losses which may be suffered by affected Third Parties.

31. Time is of the essence

Except as otherwise expressly provided, time is of the essence in respect of a Participant Developer's performance of its obligations under the Contract.

32. Contracts (Rights of Third Parties) Act 1999

32.1 Clause 20 (*Indemnity in favour of certain Third Parties*) (the "**Third Party Rights Provisions**") of the Self-Remediation Terms confer a benefit on certain persons named therein who are not a party to this Contract (each for the purposes of this clause a "**Third Party Beneficiary**") and, subject to the remaining provisions of this clause, is intended to be enforceable by each Third Party Beneficiary by virtue of the Contracts (Rights of Third Parties) Act 1999.

32.2 The parties to the Contract do not intend that any term of this Contract, apart from the Third Party Rights Provisions, should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Contract.

32.3 Notwithstanding Clause [32.1]:

- (A) this Contract may be varied in any way and at any time by the parties to this Contract without the consent of any Third Party Beneficiary; and
- (B) no Third Party Beneficiary may enforce, or take any step to enforce, the Third Party Rights Provisions without the prior written consent of DLUHC, which may, if given, be given on and subject to such terms as DLUHC may determine.

Annex 1 Definitions and Interpretation

1. Definitions

In these Self-Remediation Terms:

“Alterations” means: (i) substantial changes to the fabric and/or structure of a Building; and/or (ii) substantial failure by a Responsible Entity to maintain the Building in accordance with good and prudent industry practice.

“Applicable Law” means all applicable statutes and laws (including, for the avoidance of doubt, common law), including the Construction Act 1996 and any applicable orders, rules, requirements, regulations, directions, guidelines and codes of practice issued by any governmental authority, in each case having the force of binding law.

“Assessment Order and Method Statement” has the meaning given to that term in Clause 9.2(E).

“Baseline Data Report” has the meaning given to that term in Clause [9.2].

“BSF” means HMG’s building safety fund.

“Building” means any residential and/or Mixed-Use building in England with an effective height of 11 metres and above in the development or refurbishment of which, at any time in the 30 years prior to 5 April 2022, a PD Group Company played a role, subject to the following:

- (A) for this purpose, a PD Group Company will include each person that:
 - (i) was a PD Group Company at the time of the relevant development or refurbishment; or
 - (ii) became a PD Group Company at any time thereafter (whether before or after the date of the Contract),

provided that a person will not be treated as a PD Group Company for the purposes of this definition if that person:
 - (iii) ceased to be a PD Group Company prior to 5 April 2022; and
 - (iv) continues to not be a PD Group Company.
- (B) this extends to any role played by a PD Group Company, whether on its own behalf or on behalf of others (including in relation to development or refurbishment for registered providers under Section 106), and whether directly, indirectly, formally or otherwise;
- (C) a PD Group Company will be considered to have played such a role where:

- (i) it was held out as a developer or refurbisher (including as one of the developers or refurbishers, in any form of joint venture or otherwise) in respect of that building (whether as a result of a trade name or brand of that PD Group Company having been used, or otherwise); or
 - (ii) it was in effect entitled, directly or indirectly, and irrespective of the legal form of the relevant arrangement, to all or any part of any economic profit and/or other financial compensation in respect of the development or refurbishment of that building or in respect of all or part of the project of which the development or refurbishment of that building formed part (and for these purposes this will include all such buildings within the entirety of that project notwithstanding that any buildings and/or projects may have passed to any registered provider under Section 106 or otherwise),
- (D) notwithstanding the foregoing, a PD Group Company will not be considered to have played any such role where the Participant Developer shows to DLUHC's reasonable satisfaction that the role of the PD Group Company in the development or refurbishment was solely as a contractor undertaking construction works, with no entitlement to any proceeds in excess of arms-length contracting fees on a "construction cost plus overheads and profit" basis.

"Building Requiring Works" means each Building in respect of which there is any Defect and in respect of which Qualifying Assessments have not been obtained.

"Business Day" means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.

"Contract" means the contract entered into between DLUHC and a Participant Developer on the basis of the pro-forma included at Annex 2 (*Pro forma contract to be entered between the Secretary of State for Levelling Up, Housing and Communities and individual Participant Developers*), which includes these Self-Remediation Terms.

"Control" means the power of a person, directly or indirectly, to direct that the management, policies, activities or business of another person are conducted in accordance with the wishes of that person, whether through ownership of voting shares, by contract or otherwise, and a person will be deemed to have Control of a company if that person: (A) possesses or is entitled to acquire the majority of the issued share capital or the voting rights in that company; (B) has the right to receive the majority of the income of that company on any distribution by it of all of its income or the majority of its assets on a winding up; (C) has the power to nominate a majority of the board of directors of that company; or (D) is a parent undertaking (as defined in section 1162 of the Companies Act 2006) in relation to that company, and **"Controlled"**, **"Controlling"**, and **"Controls"** will be interpreted accordingly.

"Data Report" means a Baseline Data Report or a Quarterly Data Report (as applicable).

"Data Report Audit" has the meaning given to that term in Clause [10.2].

“Defect” means, in respect of a Building, each fire safety defect relating to the Original Works or arising from the design, construction or refurbishment of the Building or any part of it (including external walls, fixed heating, ventilation and air conditioning systems, fire dampers, and means of escape, and regardless of the life-cycle stage of the relevant goods, materials and/or products), except where:

- (A) the FRA (that considers that defect in respect of that Building) assesses the level of fire risk as “trivial” or “tolerable” in accordance with PAS 79-2; or
- (B) in the case of a defect relating to external wall construction or cladding, the FRAEW assesses the level of fire risk arising from it in that Building as:
 - (i) “low risk” as set out in PAS 9980; or
 - (ii) “medium risk” as set out in PAS 9980 where, if no action is taken, the residual risk is tolerable,

provided that each of the following is an example (for the avoidance of doubt, subject to paragraph 2(l) of Annex 1) of a fire safety defect that arises from the design, construction or refurbishment of a building:

- (a) the absence of adequate levels of compartmentation between floors and between flats and the common escape routes;
- (b) the absence of reasonable limitation of linings to escape routes that might promote fire spread;
- (c) the absence of reasonable fire separation within any roof space;
- (d) the absence of adequately fire protected service risers and/or ducts in common areas that will restrict the spread of fire;
- (e) the absence of a communal fire detection and fire alarm system; and
- (f) the absence of emergency escape lighting;
- (g) the absence of a lightning protection systems; and
- (h) structural fire safety deficiencies.

“DLUHC” means the Secretary of State for the Department for Levelling Up, Housing and Communities, or any other successor HMG department.

“Dispute Recommendation” has the meaning given to that term in Clause [16.2].

“Dispute Resolution Process” has the meaning given to that term in Clause [16.2].

“**EIRs**” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice relating to them.

“**Exempted Information**” means any Information that is designated as falling or potentially falling within any applicable exemption to disclosure of information under the FOIA or the EIR.

“**Fire Safety Order**” means The Regulatory Reform (Fire Safety) Order 2005.

“**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation made under it and any guidance and/or codes of practice issued relating to it.

“**FRA**” means a fire risk assessment carried out in accordance with the Fire Safety Order and PAS 79-2, the Type, scope and objectives of which are such as to enable the identification, at the very least, of all Defects the possibility of which there is a reason to suspect.

“**FRAEW**” means a fire risk appraisal of external walls carried out in accordance with the Fire Safety Order and PAS 9980.

“**Fund**” means the BSF, the PSCRF or the SSCRF (as applicable).

“**Fund Building**” means a Building that has been, or is to be, remediated with funds from the BSF, the PSCRF or the SSCRF (as applicable) and includes a Stage A Fund Building, a Stage B Fund Building, a Stage C Fund Building and a Stage D Fund Building.

“**Guidance**” means any guidance in relation to the Contract issued by DLUHC (or another person designated by DLUHC) from time to time, which may be in one or more separate documents, and which Participant Developers are expected to implement and comply with.

“**HMG**” means Her Majesty’s Government.

“**Indemnified Party**” has the meaning given to that term in Clause [20].

“**Information**” means:

- (A) in relation to FOIA the meaning given under section 84 of FOIA; and
- (B) in relation to EIRs the meaning given under the definition of “environmental information” in section 2 of the EIRs.

“**Mixed-Use**” means any Building which incorporates both residential and commercial units.

“**Original Completion Date**” means, in respect of a Building, the date of practical completion of the most recent Original Works for that Building (or, if later, the date of the relevant final building control certificate in respect of such Original Works).

“**Original Works**” means the works for the development or refurbishment referred to in the definition of “Building” in which a PD Group Company played a role (in accordance with that definition).

“**PAS 79-2**” means Publicly Available Specification 79-2, as amended from time to time.

“**PAS 9980**” means Publicly Available Specification 9980:2022, as amended from time to time.

“**Participant Developer**” means, with respect to each Contract, the person who entered into that Contract with DLUHC.

“**Participant Developer Feedback**” has the meaning given to that term in Clause [15.2].

“**Parties**” has the meaning given to that term in Clause [1].

“**PD Group Company**” means (i) the Participant Developer and each person Controlled by, Controlling, or under common Control with, the Participant Developer from time to time; and (ii) each person managed jointly or on a unified basis with any person falling within limb (i), or over which any person falling within limb (i) exercises dominant influence, including through centralised co-ordination of decisions.

“**Pledge Letter**” has the meaning given to that term in Clause [3.3].

“**PSCRF**” means HMG’s private sector ACM cladding remediation fund.

“**Qualifying Assessments**” in respect of a Building means:

- (A) a Qualifying FRA; or
- (B) if any fire risk assessment in respect of the Building contains a recommendation (irrespective of how it is expressed and of the circumstances giving rise to the recommendation) that a fire risk appraisal of external walls is carried out, then both:
 - (i) a Qualifying FRA; and
 - (ii) an Up-to-Date FRAEW that confirms that the risk posed by the external wall construction and cladding of the Building is:
 - (a) “low risk” as set out in PAS 9980; or
 - (b) “medium risk” as set out in PAS 9980 where, if no action is taken, the residual risk is tolerable when considered in the broader context of the Building’s Qualifying FRA.

“**Qualifying FRA**” means an Up-to-Date FRA in respect of the relevant Building, other than where the FRA and/or any other fire risk assessments or FRAEW in respect of that Building taken together indicate, irrespective of how this is expressed, that there are any Defects that have not been remedied.

“**Quarterly Data Report**” has the meaning given to that term in Clause [9.3].

“Reporting Date” means each of 30 April, 31 July, 31 October and 31 January if such date is a Business Day or, if not a Business Day, the date of the immediately following Business Day.

“Responsible Entity” means, in respect of a Building, the owner of a superior leasehold or a freehold interest in the relevant land and building(s) that is or includes the Building, or the person appointed to manage the Building pursuant to the terms of a management agreement or the relevant lease documents, and their nominated advisers.

“RFI” has the meaning given to “request for information” in the FOIA, and includes any apparent request for information under the FOIA or the EIRs or the Freedom of Information Code of Practice.

“Section 106” means section 106 of the Town and Country Planning Act 1990.

“Self-Remediation Terms” has the meaning given to that term in Clause [1].

“SSCRF” means HMG’s social sector ACM cladding remediation fund.

“Stage A” means a tender has not been returned to the Responsible Entity in relation to its application to the relevant Fund.

“Stage B” means at least one tender has been returned to the Responsible Entity in relation to its application to the relevant Fund.

“Stage A Fund Building” means a Building where:

- (A) an application made by the Responsible Entity to the relevant Fund is at Stage A; and
- (B) DLUHC has not communicated an award of funding for the full costs of any remediation and/or mitigation work from the relevant Fund to the Responsible Entity,

which, as at the date of the Participant Developer’s Contract with DLUHC, includes the Buildings listed in Part C (*Stage A Fund Building*) of Schedule 2 (*Buildings*) of the Participant Developer’s Contract (such list to be updated from time to time).

“Stage B Fund Building” means a Building for which:

- (A) an application made by the Responsible Entity to the relevant Fund is at Stage B; and
- (B) DLUHC has not communicated an award of funding for the full costs of any remediation and/or mitigation work from the relevant Fund to the Responsible Entity,

which, as at the date of the Participant Developer's Contract with DLUHC, includes the Buildings listed in Part D (*Stage B Fund Buildings*) of Schedule 2 (*Buildings*) of the Participant Developer's Contract (such list to be updated from time to time).

"Stage C Fund Building" means a Building for which:

- (A) DLUHC has communicated an award of funding for the full costs of any remediation and/or mitigation work from the relevant Fund to the Responsible Entity; and
- (B) DLUHC has not signed a funding agreement with the applicant Responsible Entity,

which, as at the date of the Participant Developer's Contract with DLUHC, includes the Buildings listed in Part E (*Stage C Fund Buildings*) of Schedule 2 (*Buildings*) of the Participant Developer's Contract (such list to be updated from time to time).

"Stage D Fund Building" means a Building for which:

- (A) DLUHC has communicated an award of funding for the full costs of any remediation and/or mitigation work from the relevant Fund to the Responsible Entity; and
- (B) DLUHC has signed a funding agreement with the applicant Responsible Entity,

which, as at the date of the Participant Developer's Contract with DLUHC, includes the Buildings listed in Part F (*Stage D Fund Buildings*) of Schedule 2 (*Buildings*) of the Participant Developer's Contract (such list to be updated from time to time).

"Tax" means all taxes, levies, duties and imposts and any charges, deductions or withholdings in the nature of tax, together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them.

"Tax Authority" means any authority responsible for the collection or management of any Tax.

"Third Party" means any person who is not a party to a Contract between a Participant Developer and DLUHC and includes managing agents, building owners, Responsible Entities of buildings, leaseholders, freeholders, residents, lenders and insurers.

"Third Party Dispute" has the meaning given to that term in Clause [16.1].

"Third Party Feedback" has the meaning given to that term in Clause [15.3].

"Third Party Beneficiary" has the meaning given to that term in Clause [32.1].

"Third Party Rights Provisions" has the meaning given to that term in Clause [32.1].

“Type”, in respect of a fire risk assessment, means a Type 1 risk assessment, Type 2 risk assessment, Type 3 risk assessment or Type 4 risk assessment, each as defined in PAS 79-2.

“Up-to-Date” means, in respect of a FRA or FRAEW, that it satisfies each of the following criteria:

- (A) that FRA or FRAEW was carried out after the Original Completion Date, or, in the case of a Building Requiring Works, after the date of practical completion of the Works (or, if later, the date of the relevant final building control certificate in respect of such Works), but, in any event, not earlier than 31 December 2020;
- (B) in the case of a FRA:
 - (i) it does not recommend, irrespective of how this is expressed, that additional steps are taken (including the carrying out of an FRA of a different Type or of an FRAEW) in order to ascertain whether there are any defects which may amount to Defects; and
 - (ii) that was carried out after a previous FRA which recommended any such steps, then such steps have been taken and (where required) have been considered as part of that later FRA;
- (C) in the case of a FRAEW:
 - (i) it does not recommend, irrespective of how this is expressed, that additional steps are taken (including in-depth technical assessment, fire testing or specialist advice) that may have a bearing on the outcome of the FRAEW;
 - (ii) if any previous FRAEW recommended any such steps, then such steps have been taken and have been considered as part of that later FRAEW; and
 - (iii) after the date of the FRAEW, no updated or new information or knowledge has become available relating to the fire performance of materials used in the external wall construction and cladding of the Building that may have a bearing on the outcome of the FRAEW (as envisaged in clause 7.4 of PAS 9980); and
- (D) it was carried out by a suitably experienced, qualified, independent and competent fire risk assessor (in the case of a FRA) or external wall assessor (in the case of a FRAEW) in accordance with the Fire Safety Order and PAS 79-2 or PAS 9980 (as applicable), and that assessor carried out the FRA or FRAEW taking into account the interests and concerns of the leaseholders and residents of the affected Building.

“VAT” means:

- (A) any value added tax imposed by the Value Added Tax Act 1994 and legislation and regulations supplemental thereto;
- (B) to the extent not included in paragraph (A) above, any Tax imposed in compliance with the council directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (C) any other Tax of a similar nature to the Taxes referred to in paragraph (A) or paragraph (B) above, whether imposed in a member state of the EU in substitution for, or levied in addition to, the Taxes referred to in paragraph (A) or paragraph (B) above or imposed elsewhere.

“Website” means <https://www.gov.uk/government/organisations/department-for-levelling-up-housing-and-communities> or such URL as may be notified to Participant Developers by DLUHC from time to time, from which Participant Developers will be provided with web-based access to these Self-Remediation Terms and associated information.

“Works” has the meaning given to that term in Clause 6.1.

“Works Order and Method Statement” has the meaning given to that term in Clause [9.2(F)].

2. Interpretation

In these Self-Remediation Terms, unless the context requires otherwise:

- (A) the headings to Clauses and Annexes are inserted for convenience only and do not affect the interpretation of these Self-Remediation Terms;
- (B) references to Clauses and Annexes are to Clauses of, and Annexes to, these Self-Remediation Terms, and references to a part or paragraph are to a part or paragraph of an Annex to these Self-Remediation Terms;
- (C) the Annexes form part of these Self-Remediation Terms and will have the same force and effect as if expressly set out in the body of these Self-Remediation Terms, and any reference to these Self-Remediation Terms will include the Annexes;
- (D) references to these Self-Remediation Terms or to any specified provision of these Self-Remediation Terms are to these Self-Remediation Terms or that specified provision of these Self-Remediation Terms as from time to time amended in accordance with the terms of these Self-Remediation Terms;
- (E) a reference to any statutory instrument, statute or statutory provision will be construed as a reference to the same as it may have been, or may from time to time (including after the date of any Contract) be, amended, modified or re-enacted;

- (F) words importing the singular include the plural and vice versa and words importing a gender include every gender;
- (G) references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing will in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term;
- (H) references to time are to London time;
- (I) the rule known as the eiusdem generis rule will not apply, and accordingly words introduced by words and phrases such as “include”, “including”, “other”, “in particular”, “for example” and “examples” will not be given a restrictive meaning or limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible;
- (J) the word “company” will be deemed to include any partnership, undertaking or other body or person, whether incorporated or not incorporated and whether now existing or formed after the date of these Self-Remediation Terms;
- (K) references to a “person” will be construed so as to include any individual, firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality), but references to an “individual” will mean an individual natural person only;
- (L) references to “DLUHC” will mean DLUHC or any body or person that DLUHC has outsourced the performance of its obligations under the Self-Remediation Terms to in accordance with the terms of these Self-Remediation Terms;
- (M) references to writing will include any modes of reproducing words in a legible and non-transitory form, and accordingly will exclude e-mail and other transitory modes;
- (N) any reference to a “day” (including within the phrase “Business Day”) will mean a period of 24 hours running from midnight to midnight;
- (O) general words will not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (P) a reference to any statute or statutory provision (whether of the UK or elsewhere) includes any subordinate legislation (within the meaning of section 21(1) Interpretation Act 1978) made under it;
- (Q) a reference to any other statute or statutory provision (whether of the UK or elsewhere) includes any provision which it has superseded or re-enacted (with or without modification), and any provision superseding it or re-enacting it (with or

without modification), except to the extent that the liability of any person is thereby increased or extended;

- (R) references to “costs” and/or “expenses” incurred by a person shall not include any amount in respect of VAT comprised in such costs or expenses for which either that person or, if relevant, any other member of the VAT group to which that person belongs is entitled to credit as input tax; and
- (S) references to DLUHC determining any matter or issuing any Guidance are to DLUHC doing so at its sole discretion.

Annex 2 Pro forma contract to be entered between the Secretary of State for Levelling Up, Housing and Communities and individual Participant Developers

DATED [_____] 20[22]

THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

and

[PARTICIPANT DEVELOPER NAME TO BE INSERTED]

DEED OF BILATERAL CONTRACT
relating to developer self-remediation
to deliver safe residential and Mixed-Use
buildings of 11 metres and over in height

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THIS CONTRACT IS MADE AS A DEED on [] 20[22]

BETWEEN:

1. **THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES**
("DLUHC")

AND

2. [*Insert details of the participant developer*] [] of [] (registered in [●] No. []) (the "**Participant Developer**")

WHEREAS:

- (A) in [●] 2022 the Secretary of State for Levelling Up, Housing and Communities set out self-remediation terms to deliver safe residential and Mixed-Use buildings of 11 metres and over in height (as varied from time to time, and including all annexes to it, the "**Self-Remediation Terms**").
- (B) The Participant Developer has agreed to be bound by the Contract, including the Self-Remediation Terms.

1. Interpretation

1.1 In this Contract, unless otherwise specified:

- (A) terms used but not defined have the meaning given to them in the Self-Remediation Terms;
- (B) headings to clauses and schedules are for convenience only and do not affect the interpretation of this Contract.

2. Self-Remediation Terms

The Participant Developer will adhere to the Self-Remediation Terms, as set out in Schedule 1 (*Self-Remediation Terms*), as varied from time to time in accordance with Clause 25 (*Variation*). The Self-Remediation Terms are part of and will be deemed incorporated into this Contract.

3. Participant Developer's warranties

3.1 The Participant Developer represents and warrants to DLUHC that:

- (A) Incorporation: it is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;

- (B) Power and capacity: it has full power and capacity to own its assets, to carry on its business as it is now being conducted and to enter into and perform its obligations under this Contract;
- (C) Corporate authorisations: it has taken all necessary action to authorise the execution, delivery and performance of this Contract in accordance with its terms, and the execution, delivery and performance by it of this Contract complies with its constitution or other constituent documents;
- (D) Binding obligations: this Contract constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms;
- (E) Transaction permitted: the execution, delivery and performance by it of this Contract complies with its constitution or other constitutional documents;
- (F) Solvency:
 - (i) it is not insolvent or unable to pay its debts as they fall due;
 - (ii) there are no proceedings in relation to any compromise or arrangement with creditors or any winding up, bankruptcy or other insolvency proceedings concerning any PD Group Company which may adversely affect the ability of the Participant Developer to comply with the Contract;
 - (iii) so far as it is aware, no steps have been taken to enforce any security over any assets of any member of any PD Group Company which may adversely affect the ability of the Participant Developer to comply with the Contract;
- (G) except as fairly disclosed by it to DLUHC before the entry into the Contract in writing making express reference to this clause:
 - (i) Information: all information provided by it or on its behalf to DLUHC in connection with the entry into and performance of this Contract, including all information in the Schedules to this Contract, is (to the best of its knowledge and belief, having made due and careful enquiries):
 - (a) in respect of Buildings built or refurbished by a PD Group Company more than 20 years prior to 5 April 2022, as accurate as reasonably possible having regard to the age of those Buildings; and
 - (b) in all other cases, complete, true and accurate in all respects and not misleading;
 - (ii) TopCo: there are no PD Group Companies other than PD Group Companies that are Controlled by the Participant Developer and

indicated in Schedule 4 (*List of PG Group Companies and corporate chart*) to this Contract; and

- (iii) so far as it is aware, having made all reasonable enquiries:
- (a) there are no Buildings other than those set out at Part A (*Buildings*) of Schedule 2 (*Buildings*) to this Contract;
 - (b) there are no Buildings Requiring Works other than those set out at Part B (*Buildings Requiring Works*) of Schedule 2 (*Buildings*) to this Contract;
 - (c) there are no Stage A Fund Buildings other than those set out at Part C (*Stage A Fund Buildings*) of Schedule 2 (*Buildings*) to this Contract;
 - (d) there are no Stage B Fund Buildings other than those set out at Part D (*Stage B Fund Buildings*) of Schedule 2 (*Buildings*) to this Contract;
 - (e) there are no Stage C Fund Buildings other than those set out at Part E (*Stage C Fund Buildings*) of Schedule 2 (*Buildings*) to this Contract; and
 - (f) there are no Stage D Fund Buildings other than those set out at Part F (*Stage D Fund Buildings*) of Schedule 2 (*Buildings*) to this Contract.

4. Notices

4.1 A notice under this Contract will only be effective if it is in writing. This includes e-mails.

4.2 Notices under this Contract will be sent to a party at its [physical] address [or number] [and][or][e-mail address] and for the attention of the individual set out below:

<u>Party and title</u>	<u>[Physical]</u>	<u>[E-mail]</u>
<u>of individual</u>	<u>Address</u>	<u>address]</u>

[its registered office from time to time]

4.3 Provided that a party may change its notice details on giving notice to the other party of the change in accordance with this clause, that notice will only be effective on the date falling five clear Business Days after the notification has been received or such later date as may be specified in the notice.

4.4 Any notice given under this Contract will, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (A) if delivered personally, on delivery;
- (B) if sent by first class inland post, two clear Business Days after the date of posting;
- (C) if sent by airmail, six clear Business Days after the date of posting; and
- (D) if sent by e-mail, [when sent / at the expiration of 48 hours after the time it was sent].

5. Announcements

5.1 No announcement concerning this Contract or any ancillary matter will be made by the Participant Developer without the prior written approval of DLUHC, such approval not to be unreasonably withheld or delayed. This clause does not apply in the circumstances described in clause 5.2.

5.2 The Participant Developer may make an announcement concerning the transaction contemplated by this Contract or any ancillary matter if required by:

- (A) law; or
- (B) any securities exchange or regulatory or governmental body to which that party is subject, wherever situated, including (amongst other bodies) the Stock Exchange, the Financial Conduct Authority, the Prudential Regulation Authority or The Panel on Takeovers and Mergers, whether or not the requirement has the force of law,

in which case the Participant Developer will take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such announcements with DLUHC before making such announcements.

5.3 The restrictions contained in this clause will continue to apply after the termination of this Contract without limit in time.

6. Confidentiality

6.1 Except as otherwise allowed under the Self-Remediation Terms, the Participant Developer will treat as confidential all non-public information obtained as a result of entering into or performing this Contract.

6.2 The Participant Developer will:

- (A) not disclose any such confidential information to any person other than any of its directors or employees who need to know such information in order to discharge their duties; and

(B) procure that any person to whom any such confidential information is disclosed by it complies with the restrictions contained in this clause as if such person were a party to the Contract.

6.3 Notwithstanding the other provisions of this clause, the Participant Developer may disclose any such confidential information:

(A) to the extent required by law or for the purpose of any judicial proceedings;

(B) to the extent required by any securities exchange or regulatory or governmental body to which that party is subject, wherever situated, including (amongst other bodies) the Stock Exchange, the Financial Conduct Authority, the Prudential Regulation Authority or The Panel on Takeovers and Mergers, whether or not the requirement for information has the force of law;

(C) to its professional advisers, auditors and bankers provided they have a duty to keep such information confidential;

(D) to the extent the information has come into the public domain through no fault of that party; or

(E) to the extent DLUHC has given prior written consent to the disclosure.

6.4 Any information to be disclosed pursuant to sub-clauses (A), (B), (C) or (D) above will be disclosed only after, to the extent permitted by law, consultation with DLUHC.

6.5 The restrictions contained in this clause will continue to apply after the termination of the Contract without limit in time.

6.6 Notwithstanding the other provisions of this clause, DLUHC reserves the right to disclose a pro-forma version of the Self-Remediation Terms (including the pro-forma Contract) on the Website.

7. Freedom of Information

7.1 The Participant Developer acknowledges that DLUHC is:

(A) subject to legal duties which may require the release of information under FOIA and/or EIR; and

(B) may be under an obligation to provide Information subject to a RFI.

7.2 DLUHC will be responsible for determining in its absolute discretion whether:

(A) any Information is Exempted Information or remains Exempted Information; and/or

(B) any Information is to be disclosed in response to a RFI;

and in no event will the Participant Developer respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to DLUHC (unless expressly authorised to do so by DLUHC).

7.3 The Participant Developer will assist and co-operate as requested by DLUHC to enable DLUHC to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular will (and will use reasonable endeavours to procure that its agents contractors and sub-contractors will) at their own cost:

- (A) transfer any RFI received to DLUHC as soon as practicable after receipt and in any event within five (5) Working Days of receiving a RFI;
- (B) provide all such assistance as may be required from time to time by DLUHC and supply such data, documents or information as may be requested by DLUHC;
- (C) provide DLUHC with any data, documents or information in its possession or power in the form that DLUHC requires within five (5) Working Days (or such other longer period as DLUHC may specify) of DLUHC requesting that Information;
- (D) permit DLUHC to inspect any records as requested from time to time.

7.4 Nothing in the Contract will prevent DLUHC from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR (in relation to any Exempted Information or otherwise), or disclosing information to parliament, parliamentary committees or other HMG departments or any auditors or such similar bodies.

8. Further assurance

The Participant Developer will at its own cost, from time to time on request of DLUHC, now or at any time in the future, do or procure the doing of all acts and/or execute or procure the execution of all documents in a form satisfactory to DLUHC which DLUHC may reasonably consider necessary for giving full effect to this Contract and securing to DLUHC and the Third Party Beneficiaries the full benefit of the rights, powers and remedies conferred upon them in the Contract.

9. Entire Agreement

9.1 This Contract and any other documents referred to in it constitute the whole and only agreement between the parties relating to its subject matter. In entering into this Contract, the Participant Developer acknowledges that it is not relying upon any pre-contractual statement which is not expressly set out in them.

9.2 Except in the case of fraud, the Participant Developer will not have any right of action against DLUHC arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Contract.

9.3 For the purposes of this clause, “pre-contractual statement” means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of the Contract made or given by any person at any time prior to the date of this Contract.

10. Counterparts

10.1 This Contract may be executed in any number of counterparts, and by the parties on separate counterparts, but will not be effective until each party has executed at least one counterpart.

10.2 Each counterpart will constitute an original of this Contract, but all the counterparts will together constitute but one and the same instrument.

11. Costs and expenses

Each party will pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Contract.

12. Termination

This Contract will continue unless and until it is terminated in accordance with Clause [23] of the Self Remediation Terms.

13. Choice of governing law

This Contract is to be governed by and construed in accordance with English law. Any matter, claim or dispute arising out of or in connection with this Contract, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

14. Jurisdiction

14.1 The courts of England are to have exclusive jurisdiction to settle any dispute, whether contractual or non-contractual, arising out of or in connection with this Contract. Any proceeding, suit or action arising out of or in connection with this Contract or the negotiation, existence, validity or enforceability of this Contract (“**Proceedings**”) will be brought only in the courts of England.

14.2 Each party waives (and agrees not to raise) any objection, on the ground of forum non conveniens or on any other ground, to the taking of Proceedings in the courts of England. Each party also agrees that a judgment against it in Proceedings brought in England will be conclusive and binding upon it and may be enforced in any other jurisdiction.

14.3 Each party irrevocably submits and agrees to submit to the jurisdiction of the courts of England.

Schedule 1
Self-Remediation Terms

[Insert the Self-Remediation Terms]

**Schedule 2
Buildings**

Part A Buildings

[To be listed]

Part B Buildings Requiring Works

[To be listed]

Part C Stage A Fund Buildings

[To be listed]

Part D Stage B Fund Buildings

[To be listed]

Part E Stage C Fund Buildings

[To be listed]

Part F Stage D Fund Buildings

[To be listed]

Schedule 3
Basic information about the Participant Developer

1.	Registered number : [:]		[]
2.	Date of incorporation	:	[]
3.	Place of incorporation	:	[]
4.	Address of registered office	:	[]
5.	Class of company	:	[]
6.	Authorised share capital (if any)	:	[]
7.	Issued share capital	:	[]
8.	Details of any people with significant control	:	[]
9.	Directors Full name:	Service address	Nationality
[
]
10.	[Secretary] [Full name:]	[Service address]	
[]
	<i>or</i>		
	[No secretary]		
11.	Accounting reference date	:	[]
12.	Auditors	:	[]
13.	Tax residence	:	[]

Schedule 4
List of PG Group Companies and corporate chart

[to be inserted]

Schedule 5
Baseline Data Report

[to be inserted]

[Signature blocks for [DLUHC] and the Participant Developer to be inserted. To be executed as a deed]

Annex 3 [Pro forma Baseline Data Report]

[to be inserted]

[Note: DLUHC is working on the pro forma Baseline Data Report – to be included in a later draft]

Annex 4 [Pro forma Quarterly Data Report]

[to be inserted]

[Note: DLUHC is working on the pro forma Quarterly Data Report – to be included in a later draft]