



Homes
England

Date: 28 July 2023

Our Ref: RFI4334

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

The Housing and Regeneration Agency

By Email Only

Information Governance Team
Homes England
Windsor House
6th Floor
42-50 Victoria Street
London
SW1H 0TL
United Kingdom

Dear [REDACTED]

RE: Request for Information – RFI4334

Thank you for your recent email, which was processed under the Environmental Information Regulations 2004 (EIR).

You requested the following information:

Please could you provide the following information in relation to any of the Devonshire Mansions buildings:

- 1. Copies of the contracts between Homes England or DLUHC and the applicant to the extent they are in your possession or under your control or you can require their production**
- 2. Copies of the contracts with any party with the subcontractor completing the works to the extent they are in your possession or under your control or you can require their production**
- 3. Any other contracts which may be relevant to the design and workmanship of the remedial work completed or proposed at the above blocks to the extent they are in your possession or under your control or you can require their production**
- 4. Design drawings of the remediation works proposed**
- 5. Full details of any variations sought from the Building Safety Fund, Homes England or DLUHC under the Funding Contract**
- 6. Copies of all correspondence between Homes England and the Fund applicant, where they can be easily obtained.**

Response

We can confirm that we do hold the information in scope of your request, which is information surrounding and including the Building Safety Fund (BSF) Grant Funding Agreement (GFA) between The Secretary of State for Levelling Up, Housing and Communities, Homes and Communities Agency (trading as

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Homes England) and Devonshire Court (Eastbourne) Management Company Limited. The GFA and supporting information is exempt from disclosure into the public domain under the following exception in the EIR:

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

Under regulation 12(5)(e) of the EIR, Homes England may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. Four elements are required for Regulation 12(5)(e) to be engaged:

- 1) The information is commercial or industrial in nature;
The funding amounts detailed in the GFA represents funds for works at this building. Therefore, it is commercial in nature as it relates to commercial activity.
- 2) Confidentiality is provided by law;
The withheld information is subject to confidentiality provided by law under a common law duty of confidence. The information has a common law duty of confidence because it is not trivial and not in the public domain. The information was created by parties who have entered into contractually binding confidentiality terms. These show that the parties had the intention that a duty of confidentiality would be created between them. Homes England therefore recognises that this information was intended to be held in confidence between the parties.
- 3) The confidentiality is providing a legitimate economic interest;
If the confidentiality of this information was breached it would harm the ability of the entity in receipt of the funding to achieve value for money on the necessary works the funding is provided for. If potential providers of services knew the amount of funding requested the costs of works could be inflated and not represent best value for money. There is a legitimate economic interest in protecting the ability of Homes England via the receiving entity to negotiate in current and future commercial agreements.
- 4) The confidentiality would be adversely affected by disclosure;
Disclosure would result in third parties gaining access to commercially valuable information. Disclosure of the confidential information would harm the ability of Homes England to achieve good value for public money.

Public Interest Test

Regulation 12(5)(e) is subject to the public interest test. Once the exception has been engaged it is then necessary to consider the balance of the public interest in maintaining the exception or disclosing the information.

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Under regulation 12(2) the public authority must apply a presumption in favour of disclosure, in both engaging the exception and carrying out the public interest test. In relation to engaging the exception, this means that there must be clear evidence that disclosure would have the adverse effect listed in 12(5).

Factors in favour of disclosure:

- Homes England acknowledge that there is a presumption in disclosure regarding environmental information as well as a public interest in promoting transparency in how we undertake our work and allocate public money; and
- Homes England acknowledge that there is a personal interest from the requestor who may be a leaseholder at the building in question.

Factors in favour of withholding:

- The amounts of funding contained within would reveal the estimation by Homes England and the Department for Levelling Up, Housing and Communities (DLUHC) of the assumed cost of potential works required at this building, based on the submissions received and evaluations undertaken. Release of information under the EIR is considered to be 'to the world at large'. Therefore, if this information were in the public domain, third parties would be likely to use this information to influence the cost of any proposals for tenders or works at this building. This could result in inflated value or cost if third parties were aware of the potential amount allocated by Homes England and DLUHC available to be spent. This would not be in the public interest as it would be likely to result in mis-allocation of public funds and greater cost to the public purse;
- Furthermore, release of the amount of funding for this particular building would be likely to impact on the wider BSF scheme and other applicants to the scheme. If other funding recipients or applicants were able to compare applications and amounts of funding that relate to those applications future applications could be presented in a way that resulted in mis-allocation of funds. This would not be in the public interest as it would put public funds at risk and could result in buildings that require remediation having issues accessing the funding they are entitled to;
- Whilst we acknowledge the personal interest of the requestor, any disclosure under EIR would be 'to the world at large' and Homes England publish all responses to requests for information on our disclosure log. To release the application to the public domain would be likely to breach the confidentiality agreements between ourselves and the applicant as information contained within the GFA reflects information provided to Homes England by the applicant in confidence. To make this information public would be likely to ultimately affect the leaseholders of the building if the applicant were unable to trust that Homes England would not reveal sensitive application data to the wider public. This would put the funding application as a whole at risk and may result in the cladding remediation not progressing. The requestor should pursue alternative methods of obtaining the information from the managing agent that would not put the information in the public domain;
- Furthermore, release would also be likely to put remediation at other buildings allocated funding under the BSF at risk. Homes England has to protect relationships with all parties and other recipients of BSF allocations. If other applicants became aware that Homes England were sharing

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confidential information other applicants may be distrustful of accessing the scheme for their own buildings. This would be likely to result in buildings that require cladding remediation not undergoing the remediation required. This would have a significant impact on the individuals living at or owning properties in these buildings; and

- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of Regulation 12(5)(e) in the legislation can be found via the following link:

<https://www.legislation.gov.uk/uksi/2004/3391/regulation/12/made>

Template Grant Funding Agreement

Whilst the detail contained within the GFA between the parties is sensitive to release to the public domain as detailed above, we can provide the template GFA entered into between the parties. The template GFA sets out the standard terms and conditions, however, please note that clause 5.2.4 does not apply in this case. The template is enclosed with this response as Annex A.

Right to make Representations

If you are not happy with the information that has been provided or the way in which your request has been handled, you may request a reconsideration of our response (Internal Review). You can make this representation by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: infogov@homesengland.gov.uk

The Information Governance Team
Homes England
6th Floor
Windsor House
42-50 Victoria Street
London
SW1H 0TL

Your request for reconsideration must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response (Reg 11(2)). Failure to meet this criteria may lead to your request being refused.

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Upon receipt, your request for reconsideration will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner's Office (ICO) however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link:

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

The Information Governance Team
For Homes England

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Department for Levelling Up,
Housing & Communities

Building Safety Fund

Grant Funding Agreement – Homes England

[DLUHC REFERENCE – BUILDING ADDRESS]



Department for Levelling Up,
Housing & Communities

DATED _____ 2022

(1) THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES

(2) HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)

(3) [NAME OF APPLICANT]



**GRANT FUNDING AGREEMENT
in respect of**

Unsafe Non-ACM Cladding Remediation

THIS AGREEMENT is made on the [] day of [] 2022

BETWEEN:-

- (1) **THE SECRETARY OF STATE FOR LEVELLING UP, HOUSING AND COMMUNITIES**
(the "DLUHC");
- (2) **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)** ("Homes England");
and
- (3) **[INSERT APPLICANT NAME]** (Company Number: **[INSERT CO. NO]**) whose registered address is
at **[INSERT CH REGISTERED ADDRESS]** (the "**Applicant**").

together the "**Parties**".

BACKGROUND:-

- (A) The Ministry of Housing, Communities and Local Government (now the Department for Levelling Up, Housing and Communities) issued the Prospectus in May 2020 to invite applications for funding to assist the private, Registered Provider and local authority sectors to fund the removal and replacement of the Unsafe Non-ACM Cladding on residential buildings which are 18 metres or over.
- (B) Homes England is responsible for the administration of the Programme and dispersal of funding made available under the Programme within England (other than Greater London) until the Date of Practical Completion at which point responsibility for the same will revert to DLUHC.
- (C) DLUHC has agreed to make the Funding available to the Applicant via Homes England on the terms of this Agreement.
- (D) DLUHC and Homes England have agreed to provide such Funding to the Applicant on the terms contained in this Agreement.

IT IS AGREED as follows:-



Department for Levelling Up, Housing & Communities

1. DEFINITIONS

1.1 In this Agreement (including in the Background and Schedules) the following words and expressions have the following meanings:-

"Accounting Standards"	means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Council
"ACM Cladding"	means aluminium composite material cladding which shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, fixing gaskets and sealants
Applicant Guidance	means the "Guidance on Subsidy Control for Applicants" published by DLUHC in force at the date of this Agreement which was last updated in April 2022.
"Applicant's Representative"	means each person appointed by the Applicant (and agreed by Homes England) to act as its representative from time to time for the purposes of this Agreement and in respect of which an Applicant's Representative Declaration has been made
"Applicant's Representative Declaration"	means each declaration confirming the appointment of an Applicant's Representative in substantially the form set out in Schedule 7.
"Application"	means the application(s) for the Project submitted by the Applicant through the Portal
"Approved Inspector"	means a private sector Building Control approved inspector who is appropriately qualified to assess compliance with the Building Regulations under The Approved Inspectors Regulations 2010 and act in compliance with the DCLG: Building Control Performance Standards (January 2017)
"Availability Period"	means period from and including the date of this Agreement to the date falling 3 months after the Date of Practical Completion.
"Base Interest Rate"	means the base rate of Barclays Bank plc
"Best Practice"	means such information as Homes England may determine in accordance with Clause 11.4
"Budgeted Costs"	means the anticipated costs, fees and expenses (including, Contingencies) (including in each case such part thereof that represents VAT) incurred or to be incurred by or on behalf of the Applicant in connection with the Project details of which have been confirmed to Homes England via the Portal
"Building"	means all that [freehold / leasehold] land and buildings known as [●] being the land comprised within title number [●] and "Buildings" shall mean all of them taken together



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"Building Control Sign-Off"	means the issue of completion certificate by the relevant building control body confirming that the Works have been approved and that, in so far as it is reasonable to determine, the Works have been carried out in accordance with the Building Regulations 2010.
"CDM Regulations"	means the Construction (Design and Management Regulations) 2015 S.I No 2015/51
"Certificate of Compliance"	means a certificate of compliance with Building Safety Fund requirements in the form set out in Schedule 9 (or in such other form as Homes England may prescribe from time to time)
"Certificate of Practical Completion"	means any certificate or statement to be issued in accordance with a Works Contract certifying that Practical Completion has taken place in respect of the relevant Works
"CIS"	means the Construction Industry Scheme established by Chapter 3 of Part 3 of the FA and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) each as amended, supplemented or replaced from time to time
"Cladding"	means the components that are attached to the primary structure of a building to form a non-structural surface and includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets, sealants and (where applicable) sheathing boards
"Claim"	means a request for payment of the relevant Qualifying Expenditure in accordance with the terms of this Agreement
"Claim Date"	means the date on which a Claim is, or is to be, made
"Class A1"	means European Classification Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30 th March 2007 and amended in November 2009
"Class A2-s1,d0"	means European Classification A2-s1, d0 classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30 th March 2007 and amended in November 2009
"Clean-Up Event of Default"	means any Event of Default referred to in Schedule 1 (<i>Events of Default</i>) at paragraphs 1.4, 1.6, 1.7, 1.8, 1.9 (in respect of the Principal Contractor only), 1.10 (in respect of the Principal Contractor only), 1.11 (in respect of the Principal Contractor only), 1.13, 1.14, 1.16, 1.17 and 1.18.
"Clean-Up Period"	the period beginning on the date of the notification of the relevant Clean-Up Event of Default to the Applicant in accordance with Clause 9.1, and ending on the date falling six months after such date.



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"Client Side Adviser"	means such client side adviser appointed by DLUHC to assist the Applicant in the delivery of the Project
"Collateral Warranty"	means a collateral warranty in a form substantially the same as the form provided to the Applicant immediately prior to signing this Agreement given by a Development Party in favour of DLUHC (and for the avoidance of doubt, including step-in rights in favour of DLUHC) in relation to the Project in form and substance satisfactory to Homes England
"Commercial Unit"	means any private unit of accommodation forming part of the Building which is used solely for commercial purposes
"Confidential Information"	<p>means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Agreement including but not limited to:-</p> <ul style="list-style-type: none">(a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);(b) the existence or terms of any Project Document or other information relating to the Project;(c) Personal Data;(d) information relating to a Party's business and affairs, its customers, employees and suppliers; <p>in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information</p>
"Connected"	shall have the meaning set out in Section 839 of the Income and Corporation Taxes Act 1988 (as amended)
"Consents"	includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any governmental or other authority, the local planning authority, landlords, funders, adjoining land owners or any other person in relation to the Project or otherwise required to enable delivery of the Project
"Considerate Constructors Scheme"	means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website from time to time
"Constitutional Documents"	means the relevant of the Applicant's articles of association, memorandum of association, rules, members' agreement, certificate of incorporation and any certificate of change of name



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"Contingency"	means any of the items of costs and expenses and funding specified in either the Budgeted Costs or the Projected Costs in the self-certified information submitted to Homes England via the Portal prior to the First Funding Date described as a contingency (all such sums being the " Contingencies ")
"Contractor"	means a contractor appointed by the Applicant for the delivery of Works
"Controller"	has the meaning given to that expression under the Data Protection Legislation
"Coronavirus"	means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and COVID-19 (the official designation of the disease which can be caused by SARS-CoV-2)
"Cost Consultant"	means [INSERT COST CONSULTANT NAME] (Company Number: [INSERT CO. NO]) whose registered address is at [INSERT CH REGISTERED ADDRESS], appointed by the Applicant or the Principal Contractor, being the person who is responsible for preparing the Final Account Document and being suitably qualified in accordance with Good Industry Practice
"Cost Overrun"	means the amount by which Homes England determines that the Projected Costs (excluding any amount of finance costs) exceed the Budgeted Costs (excluding any amount of finance costs) as set out in the self-certified information submitted to Homes England via the Portal prior to the First Funding Date
"Data Protection Legislation"	means all applicable Law relating to the Processing of Personal Data and privacy including without limitation (i) the General Data Protection Regulation (EU) 2016/679 as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (the GDPR); (ii) the Data Protection Act 2018; and (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003
"Date of Practical Completion"	means the later of:- (a) the date certified in the relevant Certificate of Practical Completion as the date when Practical Completion of all Works was achieved and if more than one such Certificate of Practical Completion is required the latest date certified in the required certificates; and (if applicable) (b) in the case of any Works on which no Certificate of Practical Completion would be issued under the Works Contract, the date on which Homes England is satisfied that the last of those Works have been completed in accordance with this Agreement and the relevant Works Contract; and (in all cases) (c) the date on which Building Control Sign-Off for all Works has been obtained , and if more than one Building Control



Sign-Off is required the date on which the last required Building Control Sign-Off is obtained.

"Declaration"	<u>means a</u> declaration from a Leaseholder which is an Economic Actor substantially in the form set out in Schedule 5 and signed by the Leaseholder or by a person authorised to bind that Leaseholder
"Default Interest Rate"	means interest at a rate per annum equal to two percentage points (2%) above the Base Interest Rate
"De Minimis Provision"	means the provision contained in paragraph 4 of Article 364 in Chapter 3 of Title XI of Part 2 of the TCA (which exempts from that Chapter subsidy that does not exceed 325,000 Special Drawing Rights)
"De Minimis Subsidy"	means subsidy permitted by the De Minimis Provision
"Design Party"	means any professional consultant with material design responsibility for all or any material part of the Project
"Determining Authority"	means [INSERT AUTHORITY NAME] Council or any statutory successor or Unitary Authority
"Development Party"	means the Contractor and any Design Party, in each case appointed by the Applicant
"DLUHC Data"	the Personal Data that is processed by Homes England on behalf of DLUHC in accordance with this Agreement
"DLUHC Representative"	means such person or persons as DLUHC may nominate to act as its representative from time to time for the purposes of this Agreement
"DLUHC's Fund Requirements"	means the requirements set out in the fund application guidance and technical annex in force at the date of this Agreement which has been published at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887231/Annex_A_technical_information.pdf
"Duty of Care Deed"	means a duty of care deed for the benefit of DLUHC from the Cost Consultant
"Economic Actor"	means an entity or a group of entities constituting a single economic entity, regardless of its legal status, that is engaged in an economic activity by offering goods or services on a market (as defined in accordance with Article 363 in Chapter 3 of Title XI of Part 2 of the TCA) in relation to all or part of the Building.



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**"Economic Actor
Schedule"**

means the spreadsheet uploaded by the Applicant to the Portal that, in relation to the Building, contains, inter alia, details of

- (a) the Building
- (b) all Leaseholders that are an Economic Actor and their categorisation as to whether they hold residential or commercial status
- (c) (where necessary) whether any Leaseholder that is an Economic Actor has provided details of any De Minimis Subsidy received in the current or previous two fiscal years and
- (d) service charge liability and allocations

"EIR Exception"

means any applicable exemption to disclosure of information under the EIRs

"EIRs"

means the Environmental Information Regulations 2004 and any guidance and/or codes of practice relating to them

"Environment"

means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- (c) land (including, without limitation, land under water)

"Environmental Law"

means any applicable law or regulation which relates to:

- (a) the pollution or protection of the Environment;
- (b) the conditions of the workplace; or
- (c) the generation, handling, storage, use, release or spillage of any substance which, alone or in combination with any other, is capable of causing harm to the Environment, including, without limitation, any waste

"Event of Default"

means each event set out in Schedule 1



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"Excluded Expenditure"

means costs for which the Applicant cannot make a Claim which shall include:

- (a) any internal works;
- (b) the replacement of any windows, window spandrel panels and infill panels;
- (c) the replacement of any balconies (except where it would be necessary to remove balconies in order to access any part of the external wall system to facilitate remediation of Unsafe Non-ACM Cladding and provided that in each such case the prior written approval of the Cost Consultant has been obtained);
- (d) any interim fire safety measures;
- (e) any other non-Cladding related costs;
- (f) ongoing revenue costs, such as the costs of interim fire safety measures; and
- (g) any structural works which are not directly related to the remediation of Unsafe Non-ACM Cladding

"Exempted Information"

means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions

"Extension Event"

means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Applicant and/or any relevant Contractor has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government or any local or public authority of any statutory power which directly affects the execution of the Works necessary to the delivery of the Project by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the Applicant from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such Works;
- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, escape of water from any of water tank, apparatus or pipes, ionising radiation, earthquakes, riot, civil commotion, aircraft or other aerial devices or articles dropped therefrom;



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- (f) the carrying out by any statutory undertaker, utility company or other like body of work in relation to the Works, or the failure to carry out such work;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) any:
 - (i) official or unofficial strike;
 - (ii) lockout;
 - (iii) go-slow; or
 - (iv) other industrial disputegenerally affecting the construction industry or a significant sector of it;
- (k) the appointment of any Contractor under any Works Contract to which it is a party has been terminated or any such Works Contract has been terminated;
- (l) any failure by any Contractor under the terms of any Works Contract which delays the Applicant's compliance with the Start on Site Date or the Required Completion Date and which did not result from the Applicant's failure effectively to manage the Works Contract;
- (m) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any default, whether by act or omission, of the Applicant;
- (n) a delay to the carrying out of the Works as a result of any change after the date of this Agreement to the recommendations set out in Version 6 of the "Site Operating Procedures during Covid-19" issued by the Construction Leadership Council and/or any other restriction arising as a consequence of Coronavirus (or the UK Government's response to its outbreak in the UK) and/or reduced availability of equipment, plant or materials due to Coronavirus related closures or capacity reductions in the relevant manufacturing, transport, warehousing, wholesaling, retailing or hiring businesses to the extent that they are more extensive or onerous, and affect the execution of the Works to a greater extent, than those



which were in existence on or prior to the date of this Agreement;

- (o) any delay in the importation of goods, products and materials required for the carrying out of the Works or any labour shortages directly affecting the carrying out of the Works which:

- (1) are generally known within the Contractor's trade and the construction industry to be in short supply; and
- (2) are properly evidenced by the Contractor including the provision of mitigation strategies and alternative sourcing solutions as appropriate and are not a result of any act, omission, or default of the Contractor (including its officers, employees, servants, agents, suppliers, sub-contractors and/or sub-consultants)

provided that in either case the Applicant has used reasonable and prudent endeavours to mitigate any unavailability or delay; or

- (p) a change in the scope of the Works after the Works Contract has been entered into that would not have been foreseen as likely by an experienced and prudent contractor at the date of the Works Contract acting in good faith and on commercially sensible terms and which properly entitles the contractor under the Works Contract to an extension of time

unless:

- (1) any of the events arise as a result of any wilful or negligent default or wilful or negligent act of the Applicant; or
- (2) in respect of the event referred to in (f) above, such event arises as a result of any failure by the Applicant (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Applicant to commence the Project by the Start on Site Date and/or achieve Practical Completion of the Project by the Required Completion Date

"FA"

means the Finance Act 2004



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"Final Account Document"	means a final account document certified by the Cost Consultant confirming the actual costs of the completed Works, including the costs of any agreed variations to the Works
"Fire Engineer"	means a fire engineer appointed by the Applicant who is responsible for confirming the Works are compliant with DLUHC Fund Requirements and being suitably qualified in accordance with Good Industry Practice
"First Claim"	means the Claim to be made on the First Funding Date
"First Funding Date"	means the date on which the First Claim is, or is to be made
"FOIA Exemption"	means any applicable exemption to disclosure of information under the FOIA
"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
"Fourth Claim"	means the Claim to be made on the Fourth Funding Date
"Fourth Funding Date"	means the date on which the Fourth Claim is, or is to be made
"Full Plans Approval"	means approval by the Determining Authority or an Approved Inspector of all plans relating to the Works for which approval is necessary under the Building Regulations 2010 as supplemented by detailed technical guidance contained in supplementary guidance published by DLUHC titled 'Approved Documents' Parts A – P.
"Funding"	means the amounts of funding paid or to be paid to the Applicant pursuant to the terms of this Agreement
"Funding Date"	means a date on which Funding is to be paid to the Applicant
"Funding Date Certificate"	means a certificate in the form set out in Schedule 10 (or in such other form as Homes England may prescribe from time to time)
"General Data Protection Regulation and GDPR"	means Regulation (EU) 2016/679
"Good Industry Practice"	means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person (engaged in the same type of undertaking as that of the Applicant and/or any Contractors (as applicable)) under the same or similar circumstances
"Good Procurement Practice"	means that all goods, works and services required for the delivery of the Project will be procured in accordance with the principles of best consideration, appropriate skill and experience, value for money, transparency and otherwise in accordance with best procurement practice



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"Guidance"		means the guidance on the Remediation of non-ACM Buildings in force at the date of this Agreement which has been published at: https://www.gov.uk/guidance/remediation-of-non-acm-buildings
"HMRC"		means Her Majesty's Revenue & Customs
"Homes Representative"	England	means such person or persons as Homes England may nominate to act as its representative from time to time for the purposes of this Agreement
"HS Act"		means the Health and Safety at Work etc. Act 1974
"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
"Intellectual Property Rights"		shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or unregistered and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person
"Interest"		means interest accruing on the relevant amount at the Base Interest Rate from the date of receipt of that amount by the Applicant up to and excluding the date of payment by the Applicant to Homes England or after the Date of Practical Completion, to DLUHC
"Joint Controller"		means where two or more Controllers jointly determine the purposes and means of processing
"Law"		means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation
"Lease Documents"		each lease of a Residential Unit or a Commercial Unit (a reference to a Lease Document is a reference to any of the lease documents)



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"Leaseholder"	(a) a person (other than the Applicant) that is a party to a Lease Document; (b) any person that controls any person (other than the Applicant) that is a party to a Lease Document; (c) any sub-lessees in respect of any Lease Document, and " control " means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise
"Letter"	means a letter drafted by and in the name of the DLUHC to be sent by the Applicant on behalf of either the DLUHC or Homes England to a Leaseholder which is an Economic Actor in substantially the form set out in Schedule 6
"Management Interest"	has the meaning given to such term in Clause 3.2.1(a)
"Material Adverse Effect"	means any present or future event or circumstances which could: (a) have a material adverse effect on the ability of the Applicant to perform and comply with its obligations under any Project Document; or (b) have a material adverse effect on the business, assets or financial condition of the Applicant;
"Maximum Sum"	(subject to Clauses 4 and 9) means £[] which sum includes any prior PTS Funding awarded to the Applicant
"Milestone Failure"	means: (a) Start on Site does not occur on or before the Start on Site Date; or (b) Practical Completion does not occur on or before the Required Completion Date, or Homes England (acting reasonably) forms the opinion that Practical Completion will not occur on or before the Required Completion Date in which case Homes England shall notify the Applicant of the same in writing
"Minimum Standards"	means the minimum standards for Works Contracts, as more particularly described in the Guidance
"New Economic Actor"	has the meaning given to such term in Clause 6.4.2(b)
"Non-ACM Remedies"	has the meaning given to such term in Clause 5.4.1
"Non-Qualifying Expenditure"	means expenditure which is not Qualifying Expenditure
"Notification"	has the meaning given to such term in Clause 6.4.2(b)



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"Officer's Certificate"	means a certificate in the form set out in Schedule 4 (or in such other form as Homes England (acting reasonably) may prescribe from time to time) signed by the Applicant or such other person as may be agreed by Homes England from time to time
"Party"	means a party to this Agreement.
"Personal Data"	has the meaning given to that expression under the Data Protection Legislation
"Portal"	means, unless otherwise specified by Homes England, Homes England's on-line grant application and management system from time to time, currently OPS, or any replacement thereof
"Practical Completion"	means when the Certificate of Practical Completion is issued for all the Works and if more than one such Certificate of Practical Completion is issued the date stated in the latest such certificate
"Principal Contractor"	means the contractor defined as such under the CDM Regulations
"Processing"	has the meaning given to that expression under the Data Protection Legislation and " Process " and " Processed " will be construed accordingly
"Processor"	has the meaning given to that expression under the Data Protection Legislation
"Prohibited Act"	means any one or more of the following:- <ul style="list-style-type: none">(a) offering, giving, agreeing to give or attempting to give to the DLUHC or Homes England, or any employee, agent, or other representative of DLUHC or Homes England any gift or consideration of any kind as an inducement or reward:<ul style="list-style-type: none">(i) for himself or DLUHC or Homes England (as applicable) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a Project Document; and/or(ii) for himself or DLUHC or Homes England (as applicable) showing or not showing favour or disfavour to any person in relation to a Project Document;(b) entering into a Project Document in connection with which commission (or equivalent) has been paid or has been agreed to be paid by the Applicant or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission (or equivalent) including but not limited to the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to DLUHC and Homes England and Homes England has approved the same in writing ; and/or



- (c) committing any offence:
- (i) under Statutory Requirements creating offences in respect of fraudulent acts including but not limited to the Bribery Act 2010;
 - (ii) at common law in respect of fraudulent acts in relation to any Project Document; and/or
 - (iii) defrauding or attempting to defraud or conspiring to defraud DLUHC or Homes England
- "Project"** means the removal of the Unsafe Non-ACM Cladding on each of the Buildings and replacement with Cladding that is of Class A1 or Class A2-s1, d0 standard and any other works to be carried out under a Works Contract
- "Project Charter"** means the latest version of the Applicant side charter published on or before the date of this Agreement by DLUHC detailing the behaviours and obligations expected from Applicants
- "Project Document"** means this Agreement and the Works Contracts
- "Project Know-how"** shall have the meaning set out in **Clause 11.1**
- "Projected Costs"** means, at any time, the latest certified estimate provided to Homes England via the Portal of each of the items of costs and expenses and funding specified in the Budgeted Costs incurred and to be incurred
- "Prospectus"** means the prospectus published by DLUHC on 26 May 2020 relating to the Building Safety Fund for the remediation of Non-ACM Cladding Systems (England only).
- ["PTS Agreement"** means any pre-tender financial support agreement made between the Applicant and Homes England¹
- ["PTS Funding"** means £[●] being the amount of the pre-tender financial support provided to the Applicant by Homes England pursuant to the terms of the PTS Agreement]²
- "Qualifying Expenditure"** means the reasonable costs which are capable of being capitalised and which relate to the removal and replacement of the Unsafe Non-ACM Cladding at each Building (including insulation) such as access (e.g. scaffolding or mast climber), removal and disposal of the Unsafe Non-ACM Cladding, replacement materials, labour and reasonable on-costs together with any VAT which Homes England is satisfied have been reasonably and properly incurred by the Applicant for delivery of the Project and which do not include Excluded Expenditure

¹ To be included if a pre tender support agreement has been entered into

² To be included if a pre-tender support agreement has been entered into



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"Registered Provider"

means (as appropriate) a local authority or a profit making and/or a non-profit organisation entered on the register maintained by the Regulator of Social Housing (or any similar future authority, including any statutory successor, carrying on substantially the same regulatory or supervisory functions) pursuant to Section 111 of the Housing and Regeneration Act 2008

"Regulatory Body"

means any UK Government department or agency or any other regulatory body having jurisdiction whether regional, national or local, the Department for Levelling Up, Communities and Local Government, the National Audit Office, UK central Government, the Regulator of Social Housing (as constituted by s80A of the Housing and Regeneration Act 2008), any local authority or any successor of such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of DLUHC or Homes England

**"Request for Information"
or "RFI"**

has the meaning in the FOIA or the EIRs or any apparent request for information under the FOIA or the EIRs or the Freedom of Information Code of Practice

**"Required Completion
Date"**

means [●], subject to any amendment granted by Homes England in accordance with Clause 5.5 from time to time

"Residential Unit"

means any private residential unit of accommodation forming part of the Building which is used for residential purposes

"RIDDOR"

means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as may be amended from time to time)

"Second Claim"

means the Claim to be made on the Second Funding Date

"Second Funding Date"

means the date on which the Second Claim is, or is to be made

"Senior Officers"

has the meaning given to that term in Clause 25.1

"Site"

means (i) the Building and (ii) any other land and buildings (in addition to the Building) which the Applicant will or may require access to and/or use of and/or to undertake works on in order to implement the Works

"Start on Site"

means the date identified in the Portal on which:

- (a) the Applicant and Contractor have entered into the Works Contract in respect of a Building for the installation of the replacement Cladding that is of Class A1 or Class A2-s1, d0 standard;
- (b) the Contractor has taken possession of the relevant part of the Site; and
- (c) the Works under the Works Contract for the installation of the replacement Cladding that is of Class A1 or Class A2-s1, d0 standard have commenced



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"Start on Site Date"	means [●], subject to any amendment agreed by Homes England in accordance with Clause 5.5 from time to time
"Statutory Deduction"	means the deduction under the CIS referred to in Section 61(1) FA or such other deduction as may be in force at the relevant time
"Statutory Requirements"	means all or any of the following:- (a) Acts of Parliament and any statutory instruments rules orders regulations notices directions bye-laws and permissions for the time being made under or deriving validity from an Act of Parliament; and (b) regulations orders bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Works
"Subsidy Control Law"	means:- (a) Chapter 3 of Title XI of Part 2 of the TCA as incorporated into the law of the United Kingdom by section 29 of the European Union (Future Relationship) Act 2020; and (b) any other legislation which is in force and/or applies in the United Kingdom which regulates any financial assistance or any other aid, funding, assets or advantage granted or directed by a public sector body in the United Kingdom
"Superior Interest"	has the meaning given to such term in Clause 3.2.1(a)
"Tax"	means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and " Taxation " and " Taxes " shall be construed accordingly
"TCA"	means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part as revised in accordance with Article FINPROV.9 (now Article 780) of that Agreement
"Termination Date"	means the 12 th anniversary of the Date of Practical Completion
"Third Claim"	means the Claim to be made on the Third Funding Date
"Third Funding Date"	means the date on which the Third Claim is, or is to be made
"UK Procurement Requirements"	means the Public Contracts Regulations 2015 (SI2015/102) (as amended) and any replacement or successor legislation and implementing measures concerning the procurement of works, supplies or services
"Unutilised Sum"	has the meaning given to such term in Clause 4.5.4



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"Unsafe ACM Cladding"

means any ACM Cladding which has been identified as containing combustible materials (e.g. a polyethylene core in an aluminium composite panel) and which failed the series of BS8414 tests commissioned by the government over summer 2017. Full details are set out in the consolidated advice note published by the Building Safety Programme on 5 September 2017, available here:

<https://www.gov.uk/government/publications/building-safety-programme-update-and-consolidated-advice-for-building-owners-following-large-scale-testing>

"Unsafe Non-ACM Cladding"

means any:

- (i) cladding systems (other than cladding systems which include Unsafe ACM Cladding) which incorporate panels achieving European Class C-s1,d0 or worse in combination with any class of insulation; and/or
- (ii) cladding systems (other than cladding systems which include Unsafe ACM Cladding) with insulation or filler achieving Class B-s1,d0 or lower that is not installed in line with a cladding system that has a BR135 certificate pursuant to a BS8414 test,

and both (i) and (ii) shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, fixings, gaskets, sealants and sheathing boards,

which has been identified by DLUHC and communicated to the Applicant prior to the date of this Agreement.

"Utilised Funding"

is any amount of the Funding:

- (a) which has been validly utilised by the Applicant for the purpose of paying for any Qualifying Expenditure relating to the Works that are in compliance with DLUHC's Fund Requirements as assessed and confirmed by Homes England or a Homes England Representative in their absolute discretion; and
- (b) to which the Applicant is otherwise validly committed under the Works Contract(s) in relation to Works completed upon the happening of a relevant Event of Default but remaining unpaid by the Applicant as assessed and confirmed by Homes England or a Homes England Representative in their absolute discretion

"Variation"

means any alteration to the scope of the Works including, without limitation, in the form of an addition, substitution or omission from the original scope of Works

"Working Day"

means a day which is not a Saturday or Sunday or a bank or national holiday in England



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"Works" means the building works to be undertaken pursuant to the Works Contracts

"Works Contracts" means the contracts for the design and delivery of the Project, between each Contractor and the Applicant, and/or each Design Party and the Applicant which meet the Minimum Standards and 'Works Contract' shall mean a reference to any one.

1.2 In this Agreement, save where the context requires otherwise, the following words, terms and expressions have the meanings given to them below:-

1.2.1 any reference to this **"Agreement"** includes any subsequent variations and any supplemental agreement made from time to time by agreement between the Parties;

1.2.2 any reference to the **"DLUHC"**, **"Homes England"**, and/or the **"Applicant"** includes reference to any statutory successors;

1.2.3 words importing any gender include any other gender;

1.2.4 words in the singular include the plural and words in the plural include the singular;

1.2.5 the term **"person"** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;

1.2.6 the words "include", "including" and "in particular" will be construed so as not to limit the generality of any words or expressions in connection with which they are used;

1.2.7 headings and the contents table are inserted for convenience only and will have no legal effect;

1.2.8 references in this Agreement to any Clause or Schedule without further designation will be construed as a reference to the Clause or Schedule to this Agreement;

1.2.9 the Schedules to this Agreement are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;

1.2.10 in the event of a conflict the Clauses set out in the main body of this Agreement will take priority over the Schedules;

1.2.11 references to any statute or statutory provision in this Agreement will be deemed to refer to those provisions as replaced, amended, extended or re-enacted from time to time whether by instruments, orders, bye-laws or statute and all statutory instruments or orders made pursuant to it;

1.2.12 where consent or approval of any Party is required for any purpose under or in connection with this Agreement it will be given in writing and within a reasonable time following receipt of a written request for such consent or approval;

1.2.13 any decision, act or thing which either Party is required or authorised to take or do under the Agreement may be taken or done by any person authorised either generally or specifically by that Party to take or do that decision, act or thing, provided that both Parties will provide each other with the name of any person so authorised on receipt of a written request;

1.2.14 any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to



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the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement;

- 1.2.15 a document in the agreed form is to be the form of the relevant document agreed between the Parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the Parties);
- 1.2.16 a deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the Parties or which were otherwise provided for in this Agreement;
- 1.2.17 in any case where the consent or approval of DLUHC or Homes England (or any officer of the DLUHC or Homes England) is required or a notice is to be given to the DLUHC or Homes England, such consent or approval or notice shall only be validly given if it is in writing;
- 1.2.18 an obligation to do anything includes an obligation to procure its being done;
- 1.2.19 any restriction includes an obligation not to permit infringement of the restriction;
- 1.2.20 unless a contrary intention is shown, any reference to the DLUHC and/or Homes England acting reasonably shall be interpreted as requiring the DLUHC and/or Homes England to act in a commercially reasonable manner;
- 1.2.21 reference to any statute or legislation shall include any statutory extension or modification, amendment or re-enactment of such statutes and include all instruments, orders, bye-laws and regulations for the time being made, issued or given thereunder or deriving validity therefrom;
- 1.2.22 neither the giving of any approval, consent, examination, acknowledgement, knowledge of terms of any agreement or document nor the review of any document or course of action by or on behalf of DLUHC and/or Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by the DLUHC and/or Homes England, relieve the Applicant of any of its obligations under this Agreement or any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgment or knowledge or confer impose or imply any liability or responsibility on or on behalf of DLUHC and/or Homes England in respect of or in connection with the matter to or in relation to which approval, consent, examination or acknowledgment was given; and
- 1.2.23 any amount payable by Homes England to the Applicant may be discharged by Homes England making such payment to any managing agent of the Applicant in accordance with this Agreement, and the Applicant acknowledges that any such payment shall constitute good discharge by Homes England of its payment obligations under this Agreement.

2. PROVISION OF FUNDING

DLUHC will make the Funding available to Homes England and Homes England will provide the Funding to the Applicant on and subject to the terms of this Agreement.

3. THE APPLICANT'S REPRESENTATIONS AND WARRANTIES

- 3.1 As at the date of this Agreement and on the date of each Claim, and on each Funding Date (by reference to the facts and circumstances then pertaining) the Applicant makes the representations and warranties set out in **Clauses 3.2 to 3.7**.



3.2 Title

3.2.1 The Applicant warrants that:

- (a) it is entitled to receive the Funding which is the subject of this Agreement by virtue of (A) its ownership of either (i) a superior leasehold or (ii) a freehold interest in the Building or the Site (the "**Superior Interest**"), or (B) it being a person appointed to manage the Building pursuant to the terms of a management agreement or the Lease Documents (the "**Management Interest**");
- (b) it is legally entitled either as a matter of discretion (if the Applicant is providing services which are contractually approved in the Lease Documents) or legal compulsion/obligation (if the Works which are the subject of the Funding are required to be performed as a matter of legal obligation) contained within its Superior Interest documentation or Management Interest documentation to repair, maintain, renew, construct or replace the Building or any part of it; and
- (c) it is entitled to claim from Leaseholders sums of money by way of contribution towards the costs associated with the Works and that this is supported by an obligation on the Leaseholders in the Lease Documents or (where different) the Management Interest documentation to make payments towards costs incurred by the Applicant in either performing its obligations to repair, maintain, renew, construct or replace the Building or any part of it or in providing equivalent services.

3.3 Powers, vires and consents

- 3.3.1 The Applicant is duly incorporated or (where appropriate) otherwise validly exists under the [law of England and Wales] [**specify other legal jurisdiction**] and has the power to own its assets and to carry on the business and activities which it conducts or proposes to conduct (including but not limited to the business and activities envisaged under this Agreement).
- 3.3.2 The Applicant has the power to enter into and to exercise its rights and perform its obligations under the Project Documents and the execution on behalf of the Applicant of the Project Documents has been validly authorised (or, if the Works Contract is executed by it after the date hereof, such authority will be obtained before such execution) and the obligations expressed as being assumed by the Applicant under each Project Document constitute valid legal and binding obligations of the Applicant enforceable against the Applicant.
- 3.3.3 All Consents, required by the Applicant in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained and have not been withdrawn.
- 3.3.4 Neither the execution of any Project Document by the Applicant nor the performance or observation of any of its obligations thereunder will:-
 - (a) conflict with or result in any breach of any Statutory Requirement (either in force or enacted but yet to be in force) or any deed, agreement or other instrument, obligation or duty (including any order or decree of any court or arbitrator) to which the Applicant is bound; or
 - (b) cause any limitation on any of the powers whatsoever of the Applicant or on the right or ability of the officers of the Applicant to exercise such powers to be exceeded or otherwise contravene or conflict with its pertaining Constitutional Documents.



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- 3.3.5 The Applicant has not committed any Prohibited Act.
- 3.3.6 The Applicant is not subject to, and to the best of its knowledge, information and belief will not become subject to any other obligation (whether resulting from a breach by it of any other agreement or otherwise) compliance with which will or is likely to have a Material Adverse Effect and/or affect adversely its ability to perform its obligations under this Agreement.

3.4 **Project success**

- 3.4.1 The Applicant is not in default under any law or enactment or under any deed, agreement or other instrument or obligation to an extent that may affect adversely its ability to perform its obligations under this Agreement.
- 3.4.2 No litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Applicant) threatened against, or against any of the assets of, the Applicant which might have a Material Adverse Effect.
- 3.4.3 The Applicant has made diligent enquiries and to the best of its knowledge, information and belief no person having any charge, lien, encumbrance or other form of security over the Building or the Site has enforced or given notice of its intention to enforce such security and the Applicant has not done or omitted to do anything which would or might reasonably be expected to cause any person to enforce or exercise its rights to enforce such security to the extent that this would affect the Applicant's ability to perform its obligations under this Agreement or the Works Contracts respectively.
- 3.4.4 All Consents required for the Works to be commenced have been obtained and not withdrawn.
- 3.4.5 The Applicant is not aware, after due enquiry, of anything which materially threatens the success of the Project or the completion of this Agreement.
- 3.4.6 The Applicant has full legal control of the Building or has sufficient rights of access to the Building and/or Site arising from Lease Documentation to carry out the Works and to enable Practical Completion of all Works.
- 3.4.7 The Site or Building is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Works or achieve Practical Completion of all Works.
- 3.4.8 The Applicant shall (and shall require that each Contractor shall) in carrying out Works comply with the provisions of the Considerate Constructors Scheme save that where there is any conflict between the provisions of this Agreement and the provisions of such scheme the provisions of this Agreement shall prevail.
- 3.4.9 The Applicant shall ensure (and shall take all reasonable steps to satisfy Homes England that) its employees and all Contractors employed or engaged in connection with the Project are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Works and Practical Completion of the Project in accordance with the Project Documents.
- 3.4.10 Neither the Applicant nor any of its officers, employees, agents or subcontractors have:
- (a) committed an offence under the Modern Slavery Act 2015; or
 - (b) been notified that it is subject to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015; or



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- (c) become aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015.

- 3.4.11 The Applicant shall implement due diligence procedures for its subcontractors, agents, suppliers, and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

3.5 **Operational issues**

- 3.5.1 No Event of Default has occurred and is continuing or would result from the provision of any Funding.
- 3.5.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could reasonably be expected to constitute a default by the Applicant under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could reasonably be expected to have a Material Adverse Effect.
- 3.5.3 The Applicant shall ensure that each Contractor and all works, goods and/or services relating to the Works and/or the Project shall be procured in accordance with Good Procurement Practice using a fair and documented decision-making process which takes into account the need for public sector accountability and probity and specifically that no Contractor is appointed (without Homes England's consent) that is Connected with the Applicant.
- 3.5.4 The Applicant shall promptly provide to Homes England or any Regulatory Body any information which Homes England or that Regulatory Body may request to demonstrate compliance with this Clause 3.5.

3.6 **Subsidy Control**

- 3.6.1 In delivering the Project the Applicant warrants that it will not receive any economic advantage save where any of the Funding provided for its benefit falls within the De Minimis Provision and that the Applicant will operate the Project on a not for profit basis.
- 3.6.2 The Applicant warrants that it has complied with the requirements set out in the Applicant Guidance in so far as they apply to Applicants.

3.7 **Information**

- 3.7.1 All information, documents, self-certifications and accounts of the Applicant submitted to Homes England and/or DLUHC by the Applicant or by any Applicant's Representative for the appraisal of the Project for the purpose of this Agreement and the Application (either via the Portal or otherwise) are complete, are true and accurate and (other than those it has notified Homes England and/or DLUHC of in writing and Homes England and/or DLUHC has approved) no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Applicant since such information documents and accounts were provided.
- 3.7.2 The Applicant has disclosed (and will procure that each Applicant's Representative shall disclose) to DLUHC and Homes England all information which would or might reasonably be thought to influence DLUHC and Homes England in awarding the Funding to the Applicant or the amount of the Funding or otherwise contracting with the Applicant under the terms of this Agreement.



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- 3.7.3 The Applicant will (and will procure that each Applicant's Representative will) promptly provide to Homes England (and after the Date of Practical Completion, to DLUHC) any information which Homes England or DLUHC or any Regulatory Body may request (acting reasonably) in order to satisfy itself that the Applicant has complied with the provisions of this Agreement.
- 3.7.4 The Applicant confirms its compliance with all terms of the Guidance and will procure each Applicant's Representative's compliance with the Guidance.
- 3.7.5 The Applicant will pay due regard and attention to any recommendations made by the Client Side Adviser and observe the behaviour requirements set out in the Project Charter.

4. PAYMENT OF FUNDING

4.1 Pre-Conditions of Funding

- 4.1.1 The Applicant will not make any Claim and Homes England will not be liable to make available any Funding unless Homes England has received all of the documents and other evidence listed in Part A of Schedule 3 (Conditions Precedent) in form and substance satisfactory to Homes England. Homes England shall notify the Applicant promptly upon being so satisfied.
- 4.1.2 Homes England will not be required to make available any Funding unless the Funding has been made available to it by DLUHC.

4.2 Mechanics and Payment of Funding

- 4.2.1 Each Claim for Funding will not be regarded as having been validly made by the Applicant unless:-
- (a) it is submitted via the Portal;
 - (b) it relates to Qualifying Expenditure for which the Applicant has not received any other funding (including, for the avoidance of doubt, any PTS Funding provided pursuant to the PTS Agreement);
 - (c) the proposed Claim Date is a Working Day within the Availability Period;
 - (d) it is not for an amount which (if paid) would make the amount of Funding paid to the Applicant exceed the Maximum Sum;
 - (e) the Applicant or any entity the Applicant nominates to receive Funding on its behalf ('Funding Recipient') has provided to Homes England evidence of either:
 - (i) registration with the Client Money Protection Scheme; and/or
 - (ii) (where the Funding Recipient manages the service charge regime in relation to the Building) details of a separate legal trust fund established and maintained by the Funding Recipient for the benefit of Leaseholders which is compliant with s42 of the Landlord and Tenant Act 1987which is reasonably acceptable to Homes England to enable Homes England to make the relevant payment;
 - (f) the costs to be financed by the proposed Funding:



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- (i) are Qualifying Expenditure;
 - (ii) are or will be properly incurred in accordance with the Project Documents (including without limitation, the payment provisions in the Works Contract);
 - (iii) include such amount that is to be paid in respect of VAT; and
 - (iv) have not been the subject of a previous Claim under this Clause 4.2.1;
- (g) the timing, costs and completion of the Works are in all material respects in accordance with the Project Documents;
- (h) the Applicant will have sufficient funding available to it on or before the Required Completion Date (including the Funding) to enable it to complete the Works and shall provide such information or documentation to Homes England as it may reasonably require to satisfy itself (acting reasonably) that the Applicant is taking all necessary practical and commercial steps in this regard and to pay all Budgeted Costs (including any Excluded Expenditure);
- (i) in respect of a Claim made on the First Funding Date;
- (i) Homes England has received all of the documents and other evidence listed in Schedule 3 part B (Conditions Precedent to Funding) which, with the exception of the document listed at paragraph 2(a) of Schedule 3 part B, shall be in form and substance satisfactory to Homes England. Homes England shall notify the Applicant promptly upon being so satisfied; and
 - (ii) shall be no more than £[●] (or such other amount as may be agreed on the Portal as being the amount that may be made available on the First Funding Date).
- (j) in respect of a Claim made on the Second Funding Date
- (i) the Applicant has supplied Homes England with a copy of the a copy of the Full Plans Approval or a plans certificate for the Project;
 - (ii) shall be in the amount of £[●] (or such other amount as may be agreed on the Portal as being the amount that may be made available on the Second Funding Date).
- (k) in respect of a Claim made on the Third Funding Date
- (i) Homes England has received a duly signed and dated Funding Date Certificate which confirms that cumulative spend against total eligible costs to date is at least 50%; and
 - (ii) shall be in the amount of £[●] (or such other amount as may be agreed on the Portal as being the amount that may be made available on the Third Funding Date).



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- (l) in respect of a Claim made on the Fourth Funding Date:
 - (i) Homes England has received evidence satisfactory to it that the Date of Practical Completion has occurred;
 - (ii) Homes England has received a copy of the Final Account Document;
 - (iii) Homes England has received a copy of the payment certificate signed by the Applicant's contract administrator certifying the payment due to the Principal Contractor at Practical Completion;
 - (iv) Homes England has received a duly signed and dated Certificate of Compliance; and
 - (v) shall be in the amount of £[●] (or such other amount as may be agreed on the Portal as being the amount that may be made available on the Fourth Funding Date).
- (m) in respect of any other Claim made with the prior written consent of Homes England (such consent to be granted in Homes England's absolute discretion), such other documentation and information that Homes England may require.

4.2.2 **PROVIDED THAT NO EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING ON THE PROPOSED FUNDING DATE**, and subject to Clause 4.1, Homes England will pay Funding to the Applicant in respect of that part of the Qualifying Expenditure within 10 Working Days of Homes England being satisfied that the Claim is valid and meets the requirements of Clause 4.2.1. To the extent that Homes England does not consider that the Claim is valid or meets the requirements of Clause 4.2.1 Homes England shall give written notice of the same to the Applicant as soon as reasonably practicable.

4.2.3 The Applicant may not submit more than four Claims without the prior written consent of Homes England (such consent to be granted in Homes England's absolute discretion).

4.3 Use of Funding

4.3.1 The Applicant undertakes and warrants to DLUHC and Homes England that:

- (a) the Funding will be used by the Applicant for Qualifying Expenditure only;
- (b) in discharging its obligations under this Agreement the Applicant must act at all times in good faith, in commercially sensible terms and in co-operation with DLUHC and Homes England with the intent to deliver the Project and with proper regard to the need for propriety, value for money and efficiency in the use of public money;
- (c) any Funding paid to the Applicant is agreed to take effect as a payment in lieu of service charge payments which would otherwise ordinarily be required to be paid by Leaseholders in respect of the Works, by virtue of payment obligations towards service charge liabilities contained within Lease Documents held by Leaseholders;
- (d) the Applicant will record in its service charge accounts for each Leaseholder a credit in respect of the apportionment of Funding provided for the Works as applies to that same Leaseholder (and the Applicant shall notify each Leaseholder of the service charge contribution for the Works together with the amount Homes England has contributed).



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- (e) the Applicant shall only seek to raise a service charge payment from a Leaseholder in respect of any Works which are items of Qualifying Expenditure if and to the extent that the Leaseholder's service charge contribution exceeds Homes England's contribution (the apportionment of Funding provided for that Leaseholder) which contribution, for the avoidance of doubt, excludes any amount that is not paid by DLUHC or Homes England or which DLUHC or Homes England require to be repaid as a consequence of a breach of a provision of this Agreement;
- (f) (without prejudice to Clause 6.5) if any Leaseholder has paid a service charge contribution to the Applicant that is subsequently refinanced (in whole or in part) by the Funding, the Applicant shall promptly on receipt of the Funding notify each Leaseholder and reimburse each Leaseholder (by way of payment into an account specified by the relevant Leaseholder) the amount of its refinanced service charge contribution;
- (g) it confirms that the Leaseholders and any of the residents at the Building (where different) have been informed and notified as to the proposed financial treatment of the Project, the scope of the Works and the timeframe for completion of the Works.

4.4 Overpayments

4.4.1 If Homes England determines at any time or becomes aware that any amount of Funding has been used for Non Qualifying Expenditure the Applicant will immediately on Homes England's written demand pay to Homes England (or at the direction of Homes England, DLUHC) an amount equal to the Non-Qualifying Expenditure plus Interest thereon.

4.4.2 In the event that the Applicant breaches the warranty at Clause 3.6.2 of this Agreement:

- (a) Homes England and DLUHC may vary or withhold any or all of the payments of Funding under this Agreement and/or require payment of an amount equal to any or all Funding already paid to the extent that:-
 - (i) payment is not permitted or repayment or recovery is required under or by virtue of any Subsidy Control Law or any Statutory Requirement; and/or
 - (ii) Homes England or DLUHC is otherwise required to repay or recover such Funding in whole or in part by or to any Regulatory Body or any domestic UK court or any other central government body.

Any amount required to be paid in accordance with this Clause 4.4.2 shall be paid with interest thereon at such rate as required under or by virtue of Subsidy Control Law or the relevant Statutory Requirement as applicable (or, in default of any such requirement, at the Default Interest Rate) from the date of Homes England's notice requiring payment to the date of payment (both before and after judgement) or for such other period as may be required under or by virtue of Subsidy Control Law or relevant Statutory Requirement.

- (b) and if a payment is required as a consequence of a breach of the De Minimis Provision in respect of a Leaseholder, upon becoming aware of the same the Applicant shall (at DLUHC's expense where the breach of the De Minimis Provision is not a result of the Applicant's breach of the warranty at Clause 3.6.2 of this Agreement) use reasonable endeavours to recover the amount to be paid from the relevant Leaseholder.



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4.5 **Maximum Sum**

4.5.1 Homes England may reduce the Maximum Sum by such amount as it determines appropriate:-

- (a) In the event that the Applicant receives and/or accepts an offer of any other funding and/or finance which relates to any part of the Qualifying Expenditure which the Funding is financing, which shall include without limitation:
 - (i) any other public sector finance; or
 - (ii) any amount recovered pursuant to any litigation and/or claim relating to the installation and/or manufacture of the Unsafe Non-ACM Cladding installed on the Building or any litigation and/or claim relating to the specification and installation of the Unsafe Non-ACM Cladding on the Building.
- (b) if the Qualifying Expenditure incurred by the Applicant is lower than the Maximum Sum; or
- (c) to ensure that the amount of finance to be provided under this Agreement and the PTS Agreement (if any) complies with Subsidy Control Law and any applicable Statutory Requirements unless the Applicant has complied with Clause 3.6.2.

4.5.2 In the event that the Applicant receives and/or accepts an offer of any other funding and/or finance which relates to the Project (which shall include without limitation the types of funding/finance referred to in clause 4.5.1 (a) (i) and/or (ii)), the Applicant shall advise Homes England as soon as reasonably practicable.

4.5.3 In the event that the:

- (i) Consents require a change in the Works or the Works on Site reveal that Unsafe Non-ACM Cladding on any Building is more extensive than that set out in the Works Contracts; and
- (ii) value of Qualifying Expenditure exceeds the Maximum Sum,

the Applicant must apply to Homes England for an increase in the Maximum Sum. Homes England shall determine the application in accordance with this Clause. The Parties acknowledge and accept that if the proposed increase exceeds 20% of the Maximum Sum, Homes England is required to obtain DLUHC's approval in respect of and prior to any such determination. In all cases Homes England and, where relevant, DLUHC will approve any increase of the Maximum Sum purely at its sole discretion. Any additional Funding to be provided will be subject to the terms of this Agreement and confirmed in writing by a notice from Homes England.

4.5.4 In the event that the Final Account Document reveals that the total value of Qualifying Expenditure incurred by the Applicant in completing the Works is less than the amount of Funding actually paid to the Applicant in accordance with Clause 4.2.1 (the difference between such amounts being the **Unutilised Sum**) the Applicant will immediately pay to Homes England the Unutilised Sum together with any interest accrued thereon in the account in which the Unutilised Sum is held.



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5. THE APPLICANT'S DELIVERY OBLIGATIONS

5.1 Project

5.1.1 Subject to Clause 5.1.2 below, the Applicant must not agree to any amendment or waiver of, or variation to any Project Document without the prior written consent of Homes England (not to be unreasonably withheld or delayed).

5.1.2 The Applicant is permitted to (provided that in each case, this is in accordance with the Guidance):

(a) make variations to the Project Documents where required as a matter of Environmental Law, building or fire safety regulations; and

(b) make amendments to the Project Documents provided that:

(i) such amendment will not result in a material adverse impact on the Works;

(ii) such amendment shall not (i) delay progress of the Project such that the Start on Site does not occur by the Start on Site Date; or (ii) delay Practical Completion beyond the Required Completion Date;

(iii) no Event of Default will be or is likely to be outstanding as a result of the amendment; and

(iv) the amendment shall not breach any term of any Lease Document,

and the Applicant is required (and in consultation in advance with Homes England) to update the Economic Actor Schedule on the Portal previously uploaded within 5 Working Days of it receiving any Declarations from Leaseholders or becoming aware of any error contained within it or factual change to be made to it.

5.1.3 Homes England will only be liable to pay any Funding approved on the basis of the Budgeted Costs and shall not meet any Qualifying Expenditure incurred in excess of the Maximum Sum (save in the discretionary circumstances expressly set out in Clause 4.5.3).

5.1.4 The Applicant shall be responsible for arranging payment of any amounts of the Budgeted Costs that are not Qualifying Expenditure, or which are Qualifying Expenditure in excess of the Maximum Sum, and shall procure that such sums are paid to the Development Parties or to the relevant sub-contractors promptly.

5.1.5 The Applicant will promptly notify Homes England upon becoming aware that the Qualifying Expenditure to be incurred by the Applicant shall be lower than the Maximum Sum.

5.2 Project Delivery

5.2.1 The Applicant will procure that the Project is carried out and completed in a good, safe and workmanlike manner and in accordance with the Project Documents and all statutory requirements, industry guidance and Good Industry Practice.

5.2.2 The Applicant will procure that the Start on Site will occur by the Start on Site Date and that Practical Completion will occur by the Required Completion Date.

5.2.3 The Applicant shall procure that the replacement Cladding is of Class A1 or Class A2-s1, d0 standard in accordance with DLUHC's Fund Requirements.



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- 5.2.4 [The Applicant shall appoint a Fire Engineer or select a suitably qualified and competent Development Party (the "**Fire Consultant**") who shall perform regular Site inspections to ensure that the new cladding installation is consistent with the design specification and requirements set out in the Works Contracts and that the Project is being completed in accordance with the Project Documents. The Fire Consultant shall prepare and provide to Homes England upon each of the following milestones having been reached (following a Site inspection) a report confirming compliance with each relevant stage of the Project (a "**Compliance Report**"):
- (a) following the removal of the existing cladding system;
 - (b) immediately prior to the installation of cavity barriers and fire stopping;
 - (c) following completion of the cavity barriers and fire stopping;
 - (d) during the installation of the new cladding system; and
 - (e) on or before the date certified in any certificate confirming Practical Completion of the Works.
- 5.2.5 At each milestone listed in Clause 5.2.4 the Fire Consultant shall supply a Compliance Report of its inspection to Homes England.
- 5.2.6 On completion of the Works the Fire Consultant shall provide a final Compliance Report to Homes England confirming whether the Works are compliant with DLUHC Fund Requirements.
- 5.2.7 The Fire Consultant will supply a statement with each Compliance Report based on the following form of wording:
- (a) "In the period [prior to this Compliance Report] [between this Compliance Report and our previous Compliance Report],
 - (i) we [certify that] [cannot certify that] we have not seen anything on the Site that deviates from the design specification and requirements set out in the Works Contracts, and
 - (ii) we [certify that] [cannot certify that] we have not been asked to approve any new design details that do not accord with DLUHC's Fund Requirements."
- 5.2.8 In the event that the Fire Consultant is not able to certify Clause 5.2.7(a)(i) and Clause 5.2.7(a)(ii) above, they shall notify the Applicant in writing of the issues they have identified as soon as possible and the Applicant will immediately forward such notice to DLUHC and Homes England.
- 5.2.9 Following any notice under Clause 5.2.8, the Applicant shall rectify the issues identified by the Fire Consultant in the relevant Compliance Report within 14.days of such notice on which date the Fire Consultant shall conduct a further inspection and until such time as positive certification has been provided the Condition Precedent set out at paragraph 4(c) of Schedule 3 of this Agreement shall not be deemed to have been satisfied.]³

³ Include only when instructed by the relevant Delivery Partner where adequate PII insurance cover can't be proven by the Applicant.



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5.3 Applicant's Contractors, sub-contractors and employees

- 5.3.1 The Applicant will procure that each Contractor complies with the relevant Works Contract(s) and the Applicant will enforce the terms of the Works Contracts at all times.
- 5.3.2 The Applicant will procure that each Works Contract complies with the Guidance.
- 5.3.3 The Applicant must:
- (a) exercise its rights and comply with its obligations under each Works Contract to which it is a party; and
 - (b) ensure (so far as this is within its control) that others exercise their rights and comply with their obligations under each Works Contract,
- in a manner consistent with its obligations under this Agreement and the Guidance and in a proper and timely manner.
- 5.3.4 The Applicant must not:
- (a) appoint a Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project who was involved in any way with the installation of the Unsafe Non-ACM Cladding on the Building;
 - (b) terminate the appointment of a Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project, or change the terms of its appointment,
- without first notifying Homes England of the same in writing.
- 5.3.5 The Applicant will procure that any Development Party appointed after the First Funding Date delivers a Collateral Warranty to Homes England in a form substantially the same as the form provided to the Applicant immediately prior to signing this Agreement within 30 days of its appointment.
- 5.3.6 The Applicant must not waive any rights that it may have against any Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project in the course of its entry into any contracts in respect of the Project.
- 5.3.7 The Applicant must pass on to the Principal Contractor and the appropriate Development Parties, and ensure they have regard to, any recommendations of Homes England and/or DLUHC as to the progress and implementation of the Project.
- 5.3.8 If a Development Party is in default of its obligations under the Project Document to which it is a party and the Applicant is entitled to terminate, or procure the termination of, that contract as a result, then, if Homes England so requires, the Applicant must promptly use all reasonable endeavours to:
- (a) terminate or procure the termination of that contract; and
 - (b) appoint or procure the appointment of a replacement Development Party in accordance with this Clause 5.3.

5.4 Litigation and Insurance Claims

- 5.4.1 Save where there has been an assignment under Clause 5.4.4, the Applicant shall use all reasonable endeavours to pursue reasonable remedies available to it in respect of the



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Unsafe Non-ACM Cladding on any Building (including, without limitation, any claims against insurers, any relevant contractors and/or manufacturers and/or warranty providers responsible for the manufacture and/ or installation of the Unsafe Non-ACM Cladding and/or with any liability in relation to the Building) ("**Non-ACM Remedies**").

- 5.4.2 The Applicant will provide any information or evidence reasonably requested:
- (a) requested by either DLUHC and/or Homes England prior to the Date of Practical Completion; or
 - (b) requested by DLUHC after the Date of Practical Completion,
- (i) detailing any Non-ACM Remedies identified and the pursuit of any Non-ACM Remedies by the Applicant, or (ii) to allow DLUHC to form a view on whether it may wish to exercise its right to take an assignment of any such claims and/or litigation pursuant to Clause 5.4.4.
- 5.4.3 If the Applicant recovers any amount from the pursuit of Non-ACM Remedies within 12 years of the date of this Agreement, it shall within 10 Working Days of receiving the same, notify the DLUHC (or at the direction of the DLUHC, Homes England) and provide DLUHC with all documentary evidence and/or information reasonably requested by DLUHC relating to the payment. The Applicant shall also promptly pay to DLUHC (or at the direction of the DLUHC or any successor body, Homes England) the lower of (i) the aggregate amount it has received in respect of the Non-ACM Remedies and (ii) the amount which is referable to the elements of the Project funded by the Funding and capped at the amount of Funding paid and not otherwise repaid or required to be repaid net of an appropriate share of irrecoverable costs referable to the Project. Any balance shall be for the account of the Applicant.
- 5.4.4 The Applicant shall, at the discretion of the DLUHC, on request and on terms acceptable to DLUHC, assign all of its rights title and interest to any Non-ACM Remedies to DLUHC, in so far as necessary to enable DLUHC to claim in respect of matters for which it has either already provided or may be required or agree to provide Funding under the terms of this Agreement. In respect of any Non-ACM Remedies assigned to DLUHC, the Applicant shall provide all necessary assistance to DLUHC on an ongoing basis in order to allow DLUHC to pursue such Non-ACM Remedies.

5.5 Time extensions

- 5.5.1 Subject always to the provisions of Clause 5.5.2, where (a) a Milestone Failure occurs or (b) a Milestone Failure is in the opinion of Homes England reasonably likely to occur (having regard to any information provided pursuant to any of Clause 7 and Schedule 2 (*Applicant notification obligations*)) and:
- (i) where such failure is caused by an Extension Event Homes England shall extend the Start on Site Date and associated Required Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Extension Event; or
 - (ii) where the effective cause of such failure is the Applicant having to arrange additional funding due to the commissioning of additional Works which, in opinion of Homes England (acting reasonably), were not foreseeable at the date of this Agreement and are reasonably necessary in the context of the Works for which Funding was authorised at the outset of this Agreement, Homes England shall extend the Start on Site Date and associated Required Completion Date by such period as it (acting reasonably) considers appropriate to take account of the



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delay caused or likely to be caused by the requirement of the Applicant to raise such additional funding; or

(iii) where the effective cause of such failure is an exclusive event outside of the reasonable control of the Applicant (acting in a commercially prudent way), the Applicant may:

- (1) request within 5 Working Days of receipt of notification of such failure that Homes England consider the amendment of the Start on Site Date and/or Required Completion Date; and
- (2) supply all relevant evidence to Homes England to demonstrate why such failure is beyond the Applicant's control

Homes England shall with 15 Working Days of its receipt of the information set out in Clauses 5.5.1(iii)(1) and 5.5.1(iii)(2) above decide in its sole discretion (acting reasonably) whether or not to agree a revised Start on Site Date and/or Required Completion Date.

(iv) where the effective cause of such failure is not an Extension Event or a matter referred to in Clauses 5.5.1(ii) and 5.5.1(iii), Homes England shall notify the Applicant of the Milestone Failure and Homes England and Applicant shall within fifteen (15) Working Days of such notification seek to agree a revised Start on Site Date and/or Required Completion Date and:

- (1) where revised Start on Site Date and/or Required Completion Date are agreed within such period the Applicant shall promptly amend the Start on Site Date and/or the Required Completion Date accordingly on the Portal and Homes England shall electronically confirm the amendments through the Portal; or
- (2) where revised Start on Site Date and/or Required Completion Date are not agreed within such period the Milestone Failure shall be treated as an Event of Default under paragraph 1.13 and/or paragraph 1.14 of Schedule 1.

5.5.2 Homes England shall not be obliged to extend the Start on Site Date and/or the Required Completion Date unless an Extension Event exists but in any event these shall not be extended beyond:

- (i) **[date to be confirmed]** in relation to the Start on Site Date⁴; or
- (ii) **[date to be confirmed]** in relation to the Required Completion Date⁵

PROVIDED THAT where Homes England are satisfied (in their sole discretion) that there are legitimate Project or commercial grounds for doing so and have first obtained DLUHC's approval they shall be entitled to waive performance with the dates at (i) and (ii) above and agree with the Applicant suitable replacement dates to be confirmed in writing by a notice from Homes England.

[5.6 Conditions subsequent

⁴ This will vary from project to project but should not exceed 9 months from any projected or agreed Start on Site Date

⁵ This will vary from project to project but should not exceed 24 months from any Required Completion Date



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The obligations of DLUHC and Homes England to the Applicant under this Agreement are conditional on the following:

- 5.6.1 The Applicant supplying to Homes England a completed agreement relating to the provision of services of public economic interest between Homes England (1) and [Name of RP] (2) in a form required by Homes England and duly executed by each party thereto by [] 2021.]

6. APPLICANT'S REGULATORY OBLIGATIONS

6.1 Consents

The Applicant will procure that no Works are commenced and/or continued without all necessary Consents being provided to Homes England via the Portal and the Applicant will provide such other documents or information as Homes England requires to demonstrate compliance with this Clause.

6.2 Legislation

The Applicant shall (and shall procure that all Development Parties will) comply in all material respects with all relevant Statutory Requirements applicable to the Project.

6.3 Insurance

6.3.1 The Applicant shall:-

- (a) procure that the Applicant or each and every Principal Contractor shall at all times during the carrying out of the Works maintain an "all risks" insurance policy covering the usual risks covered by this type of policy in respect of all buildings relating to the Project and all works undertaken on the Project and all unfixed goods and materials in connection with such works for (in each case) full reinstatement or replacement costs (including professional fees);
- (b) [procure that each and every Design Party (other than the Principal Contractor) shall at all times during the carrying out of the Works maintain full and proper professional indemnity insurance covering the usual risks covered by this type of policy]⁶
- (c) procure that each Contractor maintains a public liability insurance policy in an amount satisfactory to Homes England (acting reasonably);
- (d) supply evidence (satisfactory to Homes England acting reasonably) of each such insurance policy referred to above within ten (10) Working Days of it being taken out;
- (e) subject to Clause 6.3.2, if at any time before the Date of Practical Completion, any Building upon the Site or any works forming part of the Works or the Project or any materials or goods required to undertake such works are stolen, destroyed or damaged (other than as necessary as part of the carrying out of the Works), the Applicant shall subject to receipt of sufficient funding from any relevant insurers and/or the Contractor or such other third party as may be responsible for the relevant loss or damage and all necessary consents and subject to the terms of the Lease Documents, and the provisions of Clause 2 of this Agreement procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable (for the avoidance of doubt if insurance proceeds shall

⁶ To be included where Design Parties can obtain PI cover.



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be insufficient to cover the costs of such reinstatement, rebuilding or replacement the Applicant shall be responsible for arranging funding to meet the shortfall); and

- (f) not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

6.3.2 If at any time before the Date of Practical Completion, where the Applicant reasonably believes that it would not be appropriate to rebuild or reinstate any Building on the Site or any works forming part of the Works or Project, following any damage or destruction it shall serve notice on Homes England and DLUHC to explain its proposal and apply for a waiver of Clause 6.3.1(e) above. Homes England shall act reasonably in considering such request and if such waiver is granted, the Applicant shall pay to Homes England an amount that is equal to the amount that would have otherwise been used to procure the rebuilding, reinstatement or replacement of such building, work, goods or materials.

6.4 Further Provision relating to Subsidy Control

6.4.1 The Applicant agrees that it shall ring-fence the Project's income and costs on a separate not-for-profit coding on its accounts from its other commercial activities in order to prevent cross-subsidy to any of its economic activities.

6.4.2 In the event that:

- (a) the Applicant obtains an increase to the Maximum Sum in accordance with Clause 4.5.3; and
- (b) between the date of this Agreement and the notification by Homes England to the Applicant of approval to that increase ("**Notification**") a Leaseholder has transferred its interest in a Lease Document to a transferee that is an Economic Actor (a "**New Economic Actor**") and the Applicant is notified of the same before Practical Completion or becomes aware or should have known,

then the Applicant shall:

- (i) prior to or promptly following receipt of the Notification obtain a Declaration from the New Economic Actor; and
- (ii) promptly following receipt of the Notification issue a Letter to each such New Economic Actor,

and in both cases upload copies to the Portal and update the Economic Actor Schedule (including the date of the transfer) prior to the drawdown of any such increase.

6.4.3 The Applicant agrees to retain all Declarations received from and copies of all Letters sent to Leaseholders for a period of 6 years from the date of this Agreement in order to establish that there has been no infringement of the De Minimis Provision. In this respect the Applicant shall act on behalf of DLUHC and Homes England and shall prior to the First Claim obtain Declarations from and send Letters to all Leaseholders that are Economic Actors in accordance with the Applicant Guidance and shall ensure the discharge of DLUHC's and Homes England's compliance with the De Minimis Provision in relation to each such Leaseholder.

6.5 The Applicant shall not claim the cost of any Qualifying Expenditure funded by the Funding (which, for the avoidance of doubt, in this clause does not include any part of the Funding that is not paid or that is repaid or required to be repaid) from any Leaseholder, and shall recompense Leaseholders for any expense they have incurred for paying for Works reimbursed by the Funding (including repaying any deductions from a sinking fund) with such recompense paid directly to the bank account of the relevant Leaseholder or such other appropriate payment method of the Leaseholder's choosing



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promptly following the first payment of Funding to the Applicant under this Agreement and by no later than the date of second payment of Funding under this Agreement. The Leaseholders may enforce the terms of this Clause 6.5 against the Applicant in the event that the Applicant breaches the terms of this Clause 6.5.

7. **APPLICANT NOTIFICATION OBLIGATIONS**

The Applicant will comply with its obligations set out in Schedule 2.

8. **PROJECT MONITORING**

8.1 **Provision of information by the Applicant**

8.1.1 From the date of this Agreement until the Date of Practical Completion the Applicant will promptly, following a request made by Homes England provide to Homes England via the Portal:-

- (a) such evidence to satisfy Homes England (acting reasonably) that a Claim relates to Qualifying Expenditure and that Qualifying Expenditure has been incurred;
- (b) all such information to Homes England as Homes England (acting reasonably) has requested in respect of the progress and content of the Works, the Budgeted Costs, Cost Overruns and the Project Documents, and any other evidence satisfactory to Homes England demonstrating that the Applicant will have (with confirmation of the Funding) sufficient funding available to it (including the Funding) to enable it to complete the Works and to pay all Budgeted Costs (including any Excluded Expenditure);
- (c) notice of the detail and costs of any Variations together with finalised estimates of additional costs and time extensions resulting from such Variations;
- (d) a copy of all contractual agreements in respect of any Variation together with all relevant finalised costs and time extensions; and
- (e) such other information as Homes England may reasonably require in writing in connection with the Works or the Economic Actor Schedule.

8.1.2 The Applicant must review and update the information supplied to Homes England via the Portal on the last Working Day of each month, the first of which starts on the date of this Agreement. The review and update must include where applicable (where not already provided or confirmed):

- (a) the actual Start on Site Date;
- (b) the actual date for the planning application;
- (c) the actual date for the planning determination;
- (d) confirmation as to when the removal of all eligible Unsafe Non-ACM Cladding has commenced;
- (e) confirmation as to when all eligible Unsafe Non-ACM Cladding has been completely removed;
- (f) confirmation that the estimates or actual costings for any known Variations have been upload to the Portal;



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- (g) cumulative spend against eligible costs to date;
 - (h) a forecast outturn of Qualifying Expenditure (including any Variations); and
 - (i) confirmation of the estimated Date of Practical Completion; and
 - (j) confirmation of the actual Date of Practical Completion;
- 8.1.3 The Applicant must promptly inform Homes England upon becoming aware of:
- (a) any breach or alleged breach by any party under any Works Contract; and
 - (b) any claim or demand made against the Applicant by any person in connection with a Works Contract.
- 8.1.4 The Applicant must on request supply to Homes England via the Portal copies of all management accounts and cashflows in connection with the Project prepared by or for the Applicant.

8.2 Inspection and audit facilities

- 8.2.1 The Applicant will allow or procure access to its premises, the Building(s) and the Site for Homes England, DLUHC, their internal auditors or other duly authorised staff, agents or representatives, the Client Side Adviser or any Regulatory Body and will allow such persons to audit, inspect and take copies of any documents relating to the Project. Homes England, DLUHC and their internal auditors or other duly authorised staff, agents or representatives will be entitled to interview employees of the Applicant to obtain oral and/or written explanations of documents, and Applicant shall ensure that such employees are made available for interview at reasonable times and on reasonable notice.
- 8.2.2 The Applicant will provide Homes England and DLUHC, in writing, with any such information about the Funding and/or the Project as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.
- 8.2.3 The Applicant and/or any Applicant's Representative will provide the Client Side Adviser in writing, with any such information about the Funding and/or the Project as it requires for the conduct of its appointment and will ensure that the Client Side Adviser has access to the Principal Contractor to obtain oral and/or written explanations as to the progress of the Project.
- 8.2.4 The Applicant will allow Homes England, DLUHC, their agents, representatives or any other persons authorised by either of them to inspect the Building and to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Project provided that any of those persons-
- (a) do not impede or obstruct the progress of the Project;
 - (b) do not issue any instruction to a Contractor or any workman employed on the Site; and
 - (c) comply with any reasonable safety induction procedures of a Contractor on the Site.
- 8.2.5 The Applicant will retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project in accordance with all applicable law and Accounting Standards and (to the extent that no Accounting Standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force.



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9. EVENTS OF DEFAULT

9.1 Where an Event of Default has occurred:-

- (a) prior to the Date of Practical Completion, Homes England; or
- (b) on or after the Date of Practical Completion, DLUHC or Homes England

may by notice in writing to the Applicant setting out the details of the relevant Event of Default:

- 9.1.1 require the Applicant to provide Homes England or DLUHC with a plan to remediate and/or mitigate the effects of the Event of Default in which case the Applicant will submit the plan to Homes England or DLUHC (as applicable) for approval within 10 Working Days of the request. The Applicant shall satisfactorily respond to any requests to amend the plan by Homes England or DLUHC (as applicable) within 10 Working Days of any such request and such response must be in a form approved by the requesting organisation.
- 9.1.2 suspend or alter the timing of the payment of Funding for such period as Homes England or DLUHC (as applicable) will determine; and/or
- 9.1.3 vary the Maximum Sum; and/or
- 9.1.4 (to the extent that none of the circumstances in clause 9.1.6 apply) require the Applicant to pay to DLUHC an amount equal to all or part of the Funding which does not constitute Utilised Funding previously paid to the Applicant in which case the Applicant will immediately pay the sums required together with Interest thereon. The Applicant shall not be required to repay to DLUHC any Utilised Funding; and/or
- 9.1.5 (where any Utilised Funding does not meet the requirements of Clause 9.1.4 and in the event that any Works completed by the Applicant in relation to the Project for which Funding has been provided does not meet DLUHC's Fund Requirements for the replacement cladding systems) require the Applicant to repay any relevant Funding;
- 9.1.6 require the Applicant to immediately pay to DLUHC (together with any Interest thereon) any or all amounts of any Funding delivered to the Applicant in circumstances where (in the reasonable opinion of DLUHC and Homes England)
 - (i) any part of the Utilised Funding has not been spent on Qualifying Expenditure;
 - (ii) any part of the Utilised Funding has been misappropriated;
 - (iii) the Applicant has carried out any form of illegal activity in relation to the Project; or
 - (iv) the Applicant has committed a Prohibited Act
- 9.1.7 (where the Event of Default is one falling under paragraphs 1.10 to 1.13 (inclusive) of Schedule 1), exercise its step-in rights under the Collateral Warranties in respect of an Applicant insolvency related event only; and/or
- 9.1.8 (where the nature, type and extent of the Event of Default merits it or if Homes England or DLUHC (as applicable) is not satisfied with any plan provided under **Clause 9.1** above) cancel the Funding made or to be made available under this Agreement in which case Homes England or DLUHC (as applicable) will have no obligation to provide any further Funding and will be entitled to require the Applicant to pay to DLUHC an amount equal to



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the Funding previously paid to the Applicant (excluding Utilised Funding) and the Applicant will immediately pay the sums required to be paid together with Interest thereon.

- 9.2 Where an Event of Default has occurred that is not capable of remedy and any requirement to repay Funding previously provided to the Applicant under the terms of this Agreement arises the Applicant shall (to the extent that Homes England require) use all prompt, reasonable and commercially prudent endeavours to recover any Funding previously provided to the Applicant pursuant to the terms of this Agreement from any Contractor or Design Party and shall (to the extent that circumstances permit) take such legal steps (at the sole cost of the Applicant) to pursue any form of legal action deemed necessary or appropriate by DLUHC or Homes England to achieve this objective.
- 9.3 In relation to the exercise by either Homes England or DLUHC of its rights in this **Clause 9**:-
- 9.3.1 the exercise of those rights under **Clause 9** will be without prejudice to any other right of action or remedy of such body (including any claim for damage) in respect of the Event of Default;
- 9.3.2 if Homes England suspends the payment of Funding which is, in the sole opinion of Homes England, due to an Event of Default capable of remedy and the Applicant has, after notice in writing from Homes England remedied the Event of Default to Homes England's satisfaction within such period as Homes England has determined Homes England will not continue such suspension; and
- 9.3.3 Homes England may only exercise its rights under **Clause 9** in respect of any Event of Default that arises prior to the Date of Practical Completion.
- 9.4 If the Applicant does not pay any sum it is obliged to pay under this Agreement when it is due, the Applicant shall pay interest at the Default Interest Rate on such outstanding amount from the due date until the date of actual payment (both before and after judgment).
- 9.5 Notwithstanding any other provision of this Agreement any Event of Default constituting a Clean-Up Event of Default will be deemed not to be an Event of Default if it is capable of remedy (ignoring for the purposes of this Clause 9.5 only any time limits originally specified in such Clean-Up Events of Default) and reasonable steps are being taken to remedy it following notice of such Clean-Up Event of Default being given to the Applicant. If the relevant circumstances are continuing on or after the end of the Clean-Up Period, there shall be an Event of Default notwithstanding the above (and without prejudice to the rights and remedies of Homes England and DLUHC).

10. PUBLICITY

THE APPLICANT MUST INFORM Homes England and DLUHC before communicating with members of the media about the Project or Agreement. This does not prevent the Applicant from making any public comment or communication regarding Government policy. This clause does not apply to Leaseholders, who remain free to communicate with the press in a personal capacity about the Project, Agreement, or Government policy.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 Subject to **Clause 11.3**, the Applicant hereby grants to Homes England or DLUHC (as applicable) a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) (the "**Licence**") to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information which relate to the Project or which are derived from the Project (including the methods by which the Works were conducted) ("**Project Know-how**"), for any purpose either relating to this Agreement or to the dissemination by Homes England or DLUHC (as applicable) of Best Practice and to enable Homes England or DLUHC (as applicable) to amend the Project Know-how or to combine with any other know-how as it thinks fit when compiling and publishing what it regards



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as Best Practice provided always that the Applicant will not be liable for any use of the Project Know-how for any other purpose other than those for which the same are or were prepared..

- 11.2 Subject to **Clause 11.3**, to the extent that any Project Know-how is generated by or maintained on a computer or in any other machine readable format, the Applicant shall, if requested by Homes England or DLUHC (as applicable), use reasonable endeavours to procure for the benefit of Homes England and/or DLUHC at the cost of the Applicant (the cost of any such licence shall be treated as Qualifying Expenditure) the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to ensure Homes England or DLUHC (as applicable) has the full benefit of the Licence.
- 11.3 If the Intellectual Property Rights in any Project Know-how are owned by a third party, the Applicant will use all reasonable endeavours to obtain a licence for Homes England or DLUHC (as applicable) to use such Project Know-how in accordance with the Licence. The Applicant will notify Homes England or DLUHC (as applicable) where it is unable to obtain such licence and will identify which parts of the Project Know-how Homes England or DLUHC (as applicable) are not licensed to use ("**Excluded Know-how**").
- 11.4 Homes England's decision as to what constitutes Best Practice shall be final (and each of Homes England and DLUHC acknowledges that it does not intend to use the Licence to make commercially sensitive information publicly available).
- 11.5 Subject to **Clause 11.3**, the Applicant will provide Homes England or DLUHC (as applicable) upon request with complete copies of and access to all Project Know-how. The Applicant will provide all assistance and explanation requested by Homes England or DLUHC acting reasonably (as applicable) to enable it to disseminate Best Practice.
- 11.6 The Applicant warrants that its use of the Project Know-how shall not infringe the Intellectual Property Rights of any third party. The Applicant warrants that use of the Project Know-how (excluding the Excluded Know-how) by Homes England or DLUHC (as applicable) in accordance with the terms of the Licence shall not infringe the Intellectual Property Rights of any third party.
- 11.7 The Applicant agrees to indemnify Homes England or DLUHC (as applicable) and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Homes England or DLUHC (as applicable), or for which Homes England or DLUHC (as applicable) may become liable, in relation to:-
- 11.7.1 any intellectual property infringement claim or alleged infringement claim or other claim relating to Homes England's or DLUHC's use of the Project Know-how licensed (or purported to be licensed) under the Licence (including but not limited to all costs and damages of any kind which Homes England and/or DLUHC may incur in connection with any actual or threatened proceedings before any court or adjudication body);
 - 11.7.2 any breach by the Applicant of this **Clause 11**; and

Homes England may at its option satisfy such indemnity (in whole or in part) by reducing the Maximum Sum. Homes England and DLUHC confirm that all or any costs, claims, damages or expenses incurred by Homes England or DLUHC (as applicable), or for which Homes England or DLUHC (as applicable) may become liable pursuant to this Clause 11.7 may only be recovered pursuant to this Clause 11.7 to the extent that they could not have been avoided or reduced by Homes England and/or DLUHC taking reasonable steps to reduce or avoid them and for the purposes of any relevant limitation period time shall start running from the date of that the relevant costs, claims, damages or expenses were actually incurred.

12. REPUTATION OF THE PARTIES

The Applicant will not, and will use all reasonable endeavours to procure that its suppliers and contractors will not, knowingly do, or omit to do, anything in relation to this Agreement or Project that



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may harm the reputation of DLUHC or Homes England. This clause does not prevent Leaseholders from communicating with the media in a personal capacity about the Project, Agreement, or Government policy; nor does it prevent the Applicant from commenting on Government policy.

13. CONFIDENTIALITY AND FREEDOM OF INFORMATION

13.1 Confidentiality

13.1.1 Each Party recognises that under this Agreement it may receive Confidential Information belonging to another Party.

13.1.2 Each Party agrees to treat all Confidential Information belonging to the other Party as confidential and not to disclose such Confidential Information to any third party without the prior written consent of the other relevant Party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

DLUHC and Homes England consent to disclosure of this Agreement to any party with whom the Applicant has entered into or intends to enter into a Works Contract and any managing agent appointed by the Applicant.

13.1.3 The obligations of confidence referred to in **Clause 13.1.2** will not apply to any Confidential Information which:

- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
- (c) is lawfully in the possession of another Party before the date of this Agreement and in respect of which that Party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to Confidential Information of the other Party; or
- (e) where to do so is deemed necessary by the Applicant (acting reasonably) in order to keep Leaseholders in the Building informed as to the progress of any Works is commercially sensible and is in accordance with the usual principles of good estate management.

13.1.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:

- (a) to enable the disclosing party to perform its obligations under this Agreement; or
- (b) by any applicable Statutory Requirement or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIRs or the Freedom of Information Code of Practice and the Applicant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England or DLUHC may nevertheless be obliged to disclose such information; or
- (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or



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- (d) in order to give proper instructions to any professional adviser of that Party who also has an obligation to keep any such Confidential Information confidential.

13.1.5 Subject to Clause 13.1.4, the Applicant will ensure that all Confidential Information obtained from Homes England and/or DLUHC under or in connection with this Agreement:-

- (a) is given only to such of its employees, professional advisors, sub-contractors or consultants engaged in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
- (b) is treated as confidential and not disclosed (without either Homes England's or DLUHC's prior written approval, (as applicable)) or used by any such staff or professional advisors, sub-contractors or consultants otherwise than for the purposes of this Agreement,

and where it is considered necessary in the opinion of Homes England and/or the DLUHC, the Applicant will ensure that such staff, professional advisors, sub-contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

13.1.6 Nothing in this **Clause 13.1** shall prevent Homes England and/or DLUHC:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of Homes England's and/or DLUHC's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England and/or DLUHC has used respect its resources; or
- (b) disclosing any Confidential Information:-
 - (i) to Parliament or any Parliamentary Committee or any other department, office or agency of the Crown; or
 - (ii) to any person engaged in providing any services to Homes England and/or the DLUHC for any purpose relating to or ancillary to this Agreement or Crown Commercial Services.

provided that in disclosing information under **Clause 13.1.6(a) or 13.1.6(b)** Homes England and/or the DLUHC discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given by the recipient where appropriate.

13.1.7 Nothing in this **Clause 13.1** shall prevent any Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

13.1.8 The obligations in this **Clause 13.1** will survive the expiry or termination of this Agreement for a period of **6** years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.



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13.2 Freedom of Information

- 13.2.1 Homes England and DLUHC are "**FOIA Authorities**" and:
- (a) are subject to legal duties which may require the release of information under FOIA and/or EIR; and
 - (b) FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.
- 13.2.2 The FOIA Authority in receipt of or to receive the RFI (**Relevant FOIA Authority**) shall 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 Request for Information;
- and in no event shall any Party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.
- 13.2.3 Subject to the provisions of this Clause 13, each Party acknowledges that the Relevant FOIA Authority may disclose Information following consultation with the other Parties and having taken (or not taken, as the case may be) its views into account.
- 13.2.4 In the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Parties.
- 13.2.5 Each Party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall use reasonable endeavours to procure that its agents contractors and sub-contractors will), at their own cost:
- (a) transfer any RFI received to the Relevant FOIA Authority 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 the Relevant FOIA Authority and supply such data, documents or information as may be requested by the Relevant FOIA Authority;
 - (c) provide the Relevant FOIA Authority with any data, documents or information in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Working Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information;
 - (d) permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 13.2.6 Nothing in this Agreement will prevent the Relevant FOIA Authority 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.



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14. DATA PROCESSING

14.1 The Parties acknowledge and agree that:

14.2.1 DLUHC and the Applicant are each an independent Controller in relation to the Personal Data they each Process under or in connection with this Agreement and nothing in this Agreement is intended to construe either such party as Joint Controllers with one another or a Processor of the other; and

14.2.2 Homes England act as the Processor of DLUHC in relation to Homes England's Processing of DLUHC Data and nothing in this Agreement is intended to construe either such party as Joint Controllers. The terms which shall govern the Processing by Homes England of DLUHC Data under this Agreement will be set out in a separate agreement between DLUHC and Homes England.

14.2 The Applicant shall comply with its obligations under Data Protection Legislation, including without limitation, ensuring that it is permitted to share the Personal Data of Leaseholders to DLUHC and Homes England for the purposes of this Agreement.

15. FURTHER ASSURANCE

15.1 On the written request of Homes England or DLUHC, the Applicant will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for Homes England or DLUHC the full benefit of this Agreement.

15.2 The Applicant warrants that the copies of the Constitutional Documents of the Applicant filed on the register at Companies House are in full force and effect at the date of this Agreement and have not been revoked, suspended or amended.

16. GOOD FAITH

The Applicant will at all times act with good faith when dealing with Homes England, DLUHC, the Contractors and any other person or entity involved on the Project.

17. INDEMNITY

The Applicant will be liable for and will indemnify Homes England and DLUHC in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to Homes England or DLUHC, or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Applicant of any of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England or DLUHC (other than any act or omission permitted to either such body under this Agreement), provided that:

17.1 Losses may only be recovered pursuant to this Clause 17 to the extent that they could not have been avoided or reduced by Homes England and/or DLUHC taking reasonable steps to reduce or avoid them: and

17.2 For the purposes of any relevant limitation period time shall start running from the date of the negligence or default relied upon.



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18. AUTHORITY OF PARTIES' REPRESENTATIVES

18.1 Authority of Homes England Representative and DLUHC's Representative

Each of Homes England Representative and the DLUHC Representative has full authority to act on behalf of Homes England or DLUHC (as applicable) for the purposes of this Agreement. The Applicant is entitled to treat any act of Homes England Representative or the DLUHC Representative in connection with this Agreement as being expressly authorised by Homes England or DLUHC (as applicable) (save where Homes England or DLUHC has notified the Applicant in writing that such authority has been revoked) and the Applicant will not be required to determine whether any express authority has in fact been given.

18.2 Authority of the Applicant's Representative

18.2.1 Each Applicant's Representative is authorised to act on behalf of the Applicant for all purposes connected with this Agreement.

18.2.2 The Applicant will procure that each Applicant's Representative appointed after the First Funding Date delivers an Applicant's Representative's Declaration to Homes England in form and substance satisfactory to Homes England within 5 days of its appointment.

19. STATUS OF APPLICANT

The Applicant will not say or do anything which may pledge the credit of or otherwise bind Homes England or DLUHC or that may lead any other person to believe that the Applicant is acting as or on behalf of Homes England or DLUHC.

20. ASSIGNMENT AND SUB-CONTRACTING

20.1 Homes England and DLUHC may assign or novate its respective rights and/or obligations under this Agreement to a statutory successor body or where a Statutory Requirement dictates this and in such circumstances the affected Party will give the other Parties notice of the anticipated statutory assignment or novation (as applicable) as soon as possible after the affected Party has become aware of it and will also notify the other Party within 5 Working Days of the completion of the statutory assignment/novation.

20.2 The Applicant shall not, unless required by law, sell or transfer its interest in the Building without first procuring that the proposed transferee accedes to this Agreement and undertakes to perform the obligations of the Applicant under this Agreement, and shall enter into such documentation to give effect to such accession in form and substance satisfactory to Homes England and DLUHC.

20.3 Except as expressly permitted in this Agreement, no Party will, without the prior written consent of the other Parties, novate, assign, sub-license, sub-contract, transfer or charge this Agreement or any part of it.

21. VALUE ADDED TAX

21.1 The Parties understand and agree that the Funding by DLUHC or Homes England under this Agreement is not consideration for any supply for Value Added Tax ("VAT") purposes whether by the Applicant or otherwise.

21.2 If, notwithstanding the agreement and understanding of the Parties as set out in **Clause 21.1** above, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

21.3 All sums or other consideration payable to or provided by the Applicant to Homes England or DLUHC at any time will be deemed to be exclusive of all VAT payable and where any such sums become



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payable or due or other consideration is provided the Applicant will pay to Homes England or DLUHC (as applicable) all the VAT payable upon the receipt of a valid VAT invoice.

22. CONSTRUCTION INDUSTRY SCHEME

22.1 The Parties understand and agree that the Funding by DLUHC or Homes England under this Agreement is not subject to the provisions of the CIS because it is not a contract payment under a construction contract (as those terms are defined for the purposes of the CIS).

22.2 If, notwithstanding the agreement and understanding of the Parties as set out in **Clause 22.1** above, it is determined that the Funding (or any part of it) is subject to the provisions of the CIS, then all Parties shall take all such steps as required by law to ensure that the CIS is, if necessary, applied to the Funding.

22.3 Homes England shall be entitled to make such Statutory Deductions from any payment of Funding as it is required to make in accordance with the CIS, at such rate as may be in force from time to time.

23. NO FETTERING OF DISCRETION/STATUTORY POWERS

Nothing contained in or carried out pursuant to this Agreement and no consents given by Homes England, DLUHC or the Applicant will unlawfully prejudice Homes England's, DLUHC's or the Applicant's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

24. NOTICES

24.1 Any notice required to be served under this Agreement will be served on the relevant Party specified by the Agreement in writing and, unless otherwise stated, may be made by letter or by electronic mail and in the case of :-

24.1.1 DLUHC by letter, by personal delivery or by sending it by recorded postal delivery and marked for the attention of the Director of Building Remediation & Grenfell or to such other address as notified in writing by DLUHC to the other Parties;

24.1.2 Homes England by letter, by personal delivery or by sending it by recorded postal delivery to the address specified in this Agreement and marked for the attention of the Assistant Director, Building Remediation or such other addresses as notified in writing by Homes England to the other Parties;

24.1.3 the Applicant by letter, by personal delivery or by sending it by recorded postal delivery to the address specified in this Agreement and marked for the attention of a board level Director or Member of the Applicant or such other addresses as notified in writing by the Applicant to the other Parties;

24.1.4 any notice to be made between the Parties by electronic mail shall be made to each of the addresses in respect of such Party as specified in the signature blocks for the relevant Party or such alternative email address as may be supplied by them to that Party by not less than five Working Days' notice.

24.2 Any written notice sent by post will be deemed served and received on the second Working Day following the day of posting and where delivered personally will be deemed to have been served when delivered.

24.3 Any such electronic notice as specified in Clause 24.1.4 above made between the Parties will be effective only when actually received in readable form.



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24.4 **ANY ELECTRONIC NOTICE WHICH BECOMES EFFECTIVE, IN ACCORDANCE WITH CLAUSE 24.1.4 ABOVE, AFTER 5:00 P.M. IN THE PLACE IN WHICH THE PARTY TO WHOM THE RELEVANT COMMUNICATION IS SENT OR MADE AVAILABLE HAS ITS ADDRESS FOR THE PURPOSE OF THIS AGREEMENT SHALL BE DEEMED ONLY TO BECOME EFFECTIVE ON THE FOLLOWING WORKING DAY.**

25. **DISPUTE RESOLUTION**

25.1 **Use of Senior Officers**

Subject to Clause 24.3, if any dispute arises between any of the Parties relating to or arising out of this Agreement, the Parties involved shall notify each of the other Parties that the dispute is to be referred to senior officers of the relevant Parties (**Senior Officers**) in order to seek a resolution to the dispute. The Senior Officer of Homes England will be the Assistant Director, Building Remediation (or such other person notified to the Applicant by Homes England), of DLUHC will be the Director of Building Remediation & Grenfell and of the Applicant will be a board level Director or Member or equivalent senior officer of the Applicant nominated to perform that role by the Applicant from time to time. The Parties may change the details of such Senior Officers by written notice to the others. The Senior Officers shall consult with each other in good faith for at least 30 days following such referral to the Senior Officers before any alternative dispute resolution process is commenced.

25.2 **Mediation**

Subject to Clause 24.3, if there has been no resolution of the dispute within 30 days of the referral to Senior Officers any affected Party may give to the other written notice referring the dispute to mediation for resolution in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. The mediator will be an appropriately qualified barrister or solicitor of 10 years or more standing recommended by CEDR and appointed by CEDR in the event that the Parties cannot agree on a suitable person within 14 days of the notice of the dispute.

25.3 Clauses 25.1 and 25.2 shall not apply to the extent that either party seeks injunctive or other urgent relief.

26. **RIGHTS OF THIRD PARTIES**

Save as specified in **Clause 4.3.1(d) and Clause 6.5**, nothing in this Agreement will confer any rights or obligations on any person who has not executed this Agreement nor will the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation or release of its terms. The Parties agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that, save as specified in **Clause 4.3.1(d) and Clause 6.5**, they do not intend any person other than a Party to be able to enforce any term of this Agreement.

27. **ENTIRE AGREEMENT**

27.1 This Agreement, the documents referred to in it and the PTS Agreement (if any) constitute the entire agreement between the Parties and supersede and replace any previous agreement, understanding, representation or arrangement of any nature between the Parties relating to the subject matter of this Agreement including, for the avoidance of doubt, the Prospectus. If there is any conflict between the provisions of this Agreement and the provisions of the PTS Agreement (if any), the provisions of this Agreement shall prevail.

27.2 The Applicant hereby acknowledges that save as set out or referred to in this Agreement there are and have been no representations made by or on behalf of Homes England or DLUHC of whatsoever nature on the faith of which the Applicant is entering into this Agreement.



28. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

29. **SEVERANCE**

If at any time any of the provisions of this Agreement become illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement will be in any way affected or impaired as a result.

30. **NO WAIVER**

No failure or delay on the part of Homes England and/or DLUHC in exercising any right or power (or part of any right or power) and no course of dealing between the Parties will operate as a waiver of any right or power of Homes England and/or DLUHC. The rights and remedies of Homes England and/or DLUHC are cumulative and not exclusive of any rights or remedies which Homes England and/or DLUHC would otherwise have.

31. **DISCLAIMER**

Homes England and DLUHC will not be liable to the Applicant for any advice given by a representative of Homes England and DLUHC. In addition, Homes England and DLUHC give no assurance as to the suitability or viability of the Project and no endorsement of the same.

32. **GOVERNING LAW**

32.1 This Agreement will be governed by and construed in accordance with the laws of England and Wales.

32.2 Subject to Clause 25 (*Dispute Resolution*) the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (**Dispute**).

32.3 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

33. **MISCELLANEOUS**

33.1 Any approval by Homes England and/or DLUHC or any person on behalf of Homes England or DLUHC pursuant to this Agreement of any matter submitted by the Applicant for approval will not be deemed to be an acceptance by Homes England and/or DLUHC of the correctness or suitability of the contents of the subject of the approval or consent.

33.2 Any approval by Homes England and/or DLUHC in respect of the provision of the Funding in principle shall not be construed as giving consent and/or approval to any other matter or document to be submitted by the Applicant in accordance with this Agreement.

33.3 Homes England and DLUHC will act reasonably in deciding whether to give any consent, agreement determination or approval or express their satisfaction and whether to give any such consent agreement determination or approval or express their satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter their statutory powers, rights or obligations.

33.4 The Parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.



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- 33.5 A certificate by Homes England and/or DLUHC as to any sum payable hereunder by the Applicant will be conclusive save in the case of manifest error.
- 33.6 Except expressly stated otherwise the terms of this Agreement may only be amended by a deed duly executed by the Parties.
- 33.7 The obligations of the Parties under this Agreement shall continue until the Termination Date.

IN WITNESS of which this Agreement has been duly executed as a deed on the date written at the beginning of this Agreement.



SCHEDULE 1

EVENTS OF DEFAULT

1. An Event of Default occurs where:-
 - 1.1 Any pre-conditions listed in **Clause 4.1** are not met (or waived by Homes England).
 - 1.2 With the exception of **Clause 3.6.2**, the Applicant does not comply with any provision of this Agreement, which if capable of remedy, is not remedied within 30 days after the earlier of:
 - 1.2.1 Homes England and/or DLUHC (as applicable) giving notice to the Applicant; and
 - 1.2.2 the Applicant becoming aware of the failure to comply.

For the avoidance of doubt, any breach by the Applicant of the warranty in **Clause 3.6.2** will not constitute an Event of Default for the purposes of this Agreement but such breach will entitle DLUHC to bring a contractual claim for breach of warranty against the Applicant.
 - 1.3 The Works and/or the Project have not been carried out:-
 - 1.3.1 in accordance with the Consents;
 - 1.3.2 in compliance with all relevant Statutory Requirements; and/or
 - 1.3.3 in accordance with Good Industry Practice.
 - 1.4 The Applicant will not have sufficient funding available to it (including the Funding and on the basis that the Maximum Sum is paid to the Applicant under this Agreement and is not reduced or repaid in whole or part) to complete the Project or the Works in accordance with this Agreement and/or the relevant Works Contract PROVIDED THAT it is agreed and acknowledged that an Event of Default under this paragraph 1.4 of Schedule 1 shall not apply during the period of any time extension granted by Homes England in accordance with Clause 5.5.1 (ii)..
 - 1.5 Any enforcement action is taken or other right is enforced by any Regulatory Body in relation to the Applicant, any Contractor, any Works and/or the Project except where full written details of such actions have been provided to Homes England prior to the date of this Agreement together with all plans, specifications, technical reports and other ancillary documentation that Homes England may require and Homes England have provided written notification to the Applicant that such issue will not constitute an Event of Default under the terms of this Agreement.
 - 1.6 With the exception of **Clause 3.6.2**, there is a material breach of any Project Document which, if capable of remedy, has not been remedied within 30 days of Homes England or DLUHC notifying the Applicant of the breach and requesting remedy and/or such further negotiable period as Homes England, or DLUHC (in its sole discretion) agrees.
 - 1.7 The Applicant has committed any default (however described) or any other event entitling Homes England or DLUHC to terminate or demand payment of an amount equal to all or any amounts advanced to the Applicant under any other agreement in respect of the Building.
 - 1.8 With the exception of **Clause 3.6.2**, any undertaking, declaration, representation, self-certification or statement made or deemed to be made by the Applicant in this Agreement, or the Application or any other document delivered by or on behalf of the Applicant under or in connection with this Agreement is or proves to have been incorrect or misleading in any material respect when made or deemed to be made. No Event of Default under paragraph 1.8 will occur if the event or circumstance causing the representation or statement to be incorrect or misleading is capable of remedy and is remedied within 30 day after the earlier of:



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- 1.8.1 the Applicant becoming aware of such incorrect or misleading undertaking, declaration, representation, self-certification or statement; and
 - 1.8.2 receipt by the Applicant of written notice from Homes England and/or DLUHC to the Applicant requiring the event or circumstance to be remedied.
- 1.9 The Applicant or the Principal Contractor:
- 1.9.1 is unable or admits inability to pay its debts as they fall due;
 - 1.9.2 is deemed to, or is declared to, be unable to pay its debts under applicable law;
 - 1.9.3 suspends or threatens to suspend making payments on any of its debts;
 - 1.9.4 by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; and
 - 1.9.5 fails to pay any of its direct appointees, comprising a Development Party by the expiry of the period when the applicable invoices are due and payable.
- in respect of a Principal Contractor only no Event of Default will be deemed to have occurred provided the Applicant begins the process of appointing a new Contractor within 3 months of the occurrence of any Event of Default specified in paragraphs 1.9, 1.10 or 1.11 of this Schedule 1 and the Applicant appoints a new Principal Contractor within the Clean-Up Period.
- 1.10 A moratorium is declared in respect of any indebtedness of the Applicant or the Principal Contractor. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.
- 1.11 Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- 1.11.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Applicant or the Principal Contractor;
 - 1.11.2 a composition, compromise, assignment or arrangement with any creditor of the Applicant or the Principal Contractor;
 - 1.11.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Applicant or the Principal Contractor or any of its assets; or
 - 1.11.4 enforcement of any Security over any assets of the Applicant or the Principal Contractor, or any analogous procedure or step is taken in any jurisdiction.
- 1.12 Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of the Applicant, or any materials for the Works and is not discharged within 21 days.
- 1.13 Subject to Clause 5.5, Start on Site does not occur before the date falling one month after the Start on Site Date.
- 1.14 Subject to Clause 5.5, Practical Completion does not occur before the date falling one month after the Required Completion Date, or Homes England (acting reasonably) forms the opinion that Practical Completion will not occur before the date falling one month after the Required Completion Date.



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- 1.15 The Funding is used by the Applicant for any purpose other than the funding of Qualifying Expenditure or the Applicant charges or attempts to charge Leaseholders a service charge in respect of the Works financed by the Funding or fails to reimburse Leaseholders in respect of costs of Works previously charged to Leaseholders as service charge.
- 1.16 Any of the events listed in paragraphs 1.10 to 1.12 inclusive occurs in relation to any Cost Consultant but no Event of Default will be deemed to have occurred provided the Applicant begins the process of appointing a new Cost Consultant within 3 months of the occurrence of any Event of Default specified in paragraphs 1.10 to 1.12 of this Schedule 1 and the Applicant appoints a new Cost Consultant within the Clean-Up Period.
- 1.17 There is a material breach of the Duty of Care Deed which, if capable of remedy, has not been remedied within 30 days of Homes England or DLUHC notifying the Cost Consultant and the Applicant.
- 1.18 Any amount due to be paid by the Applicant to DLUHC or Homes England as a result of breach of Subsidy Control Law is not paid within 28 days of written demand.
- 1.19 The Regulator of Social Housing directs or recommends that grant is not to be paid to the Applicant or a RP Leaseholder or Homes England understands that such a direction or recommendation is likely to be made.



SCHEDULE 2

NOTIFIABLE EVENTS

1. PROJECT COSTS

1.1 The Applicant will promptly notify Homes England in writing:-

- 1.1.1 on receipt by it or any Contractor of any public sector finance or guarantee (or the offer of same) for the Works;
- 1.1.2 on an increase in the anticipated or actual costs of the elements of the Works and/or Project for which this Agreement provided Funding. The Applicant will be required to provide an explanation for the increase and Homes England and/or DLUHC will decide whether to increase the Maximum Sum;
- 1.1.3 on becoming aware of any event or circumstance which might have any Material Adverse Effect;
- 1.1.4 on becoming aware of any proposed changes to the dates specified in Clause 5.2.2;
- 1.1.5 on becoming aware of any event or circumstance which may attract adverse publicity to the Project and/or Homes England or DLUHC;
- 1.1.6 on becoming aware of any claim brought against the Applicant and/or any Contractor relating to the Works and/or the Funding;
- 1.1.7 of any intention to sell its interest in the Building and/or Site before completion of the Project. In the event of any such sale the Applicant must ensure the purchaser of its interest in the Site enters into a deed of accession in respect of this Agreement in a form and content approved by Homes England and/or DLUHC and separately covenants with Homes England and DLUHC that any Funding that has previously been provided to the Applicant is on the basis set out in Clause 4.3.1 of the Agreement and may not be used by the purchaser for any other purpose.;
- 1.1.8 on becoming aware or has reason to believe that it or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the provisions of Clauses 3.4.10 and 3.4.11.

2. EVENTS OF DEFAULT AND STATUTORY REQUIREMENTS

2.1 The Applicant will notify Homes England immediately in writing:-

- 2.1.1 on becoming aware of any breach of any health and safety law or regulation including, but not limited to:-
 - (a) a fatal accident to any worker or a member of the public;
 - (b) any injury to a member of the public requiring reporting under RIDDOR;
 - (c) any dangerous occurrence, as defined by RIDDOR;
 - (d) the service of any improvement or prohibition notice under the HS Act;
 - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;



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- (f) the commencement of any criminal prosecution under the HS Act;
- (g) or any other breach of the HS Act and/or CDM Regulations

by the Applicant and/or any Contractor directly or indirectly related to the Works;

- 2.1.2 on becoming aware of any investigations undertaken or sanctions imposed by the Environment Agency or any local authority relating to environmental incidents and/or any environmental incident occurring directly or indirectly relating to the Works (or any part of them) which may be a breach of any Environmental Law or regulation in force at the time of the incident whether the Applicant and/or any contractor and/or any other third party is responsible for the incident or is the subject of such investigations and/or sanctions (as appropriate) the notification to be in such form as Homes England may provide from time to time;
- 2.1.3 on becoming aware of investigations into or findings of any breach of any equality or anti-discrimination legislation or regulations directly or indirectly related to the Works (or any part of them) whether the Applicant and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate);
- 2.1.4 on becoming aware of any challenge to any procurement or claims under UK Procurement Requirements in relation to the Works or any part of them (whether relating to the Applicant or a third party) or any audit in relation to the foregoing and the outcome of any such audit; and
- 2.1.5 on the occurrence of an Event of Default.

3. RESOLUTION

In the event of notification by the Applicant under this **Schedule**, if applicable and if requested by Homes England, the Applicant will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of Homes England and/or DLUHC on such proposals.



SCHEDULE 3

CONDITIONS PRECEDENT

PART A CONDITIONS PRECEDENT TO SIGNING OF THIS AGREEMENT

1. The Applicant

- (a) A copy of a valid resolution of the board of directors or the members of the Applicant in such form as may be acceptable to Homes England:
- (i) approving the terms of, and the transactions contemplated by, the Agreement and resolving that it execute, deliver and perform its obligations under the Agreement;
 - (ii) authorising a specified person or persons to execute the Agreement; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Claim) to be signed and/or despatched by it under or in connection with this Agreement.
- (b) The Officer's Certificate of the Applicant (signed by a director or member):
- (i) confirming that its entry into this Agreement and the receipt of funds pursuant to this Agreement would not cause any funding or similar limit binding on it to be exceeded;
 - (ii) certifying that each copy document relating to it specified in this Schedule 3 is correct, complete and in full force and effect as at the date of the Officer's Certificate;
 - (iii) appending and certifying the resolutions referred to in paragraph 1(a) of the Schedule 3; and
 - (iv) appending specimen signatures of each person authorised on behalf of the Applicant to execute this Agreement or to sign or send any document or notice under or in connection with this Agreement.⁷
- (c) A duly signed and dated Certificate of Compliance.

PART B CONDITIONS PRECEDENT TO FUNDING

1. Building

A completed cost recovery questionnaire detailing (among other things) all litigation and insurance claims currently being progressed by the Applicant in respect of the Unsafe Non-ACM Cladding on each Building.

2. Development Documents

- (a) A copy of the completed Works Contract between the Applicant and the Principal Contractor duly executed by each party thereto.

⁷ Not required for Local Authorities



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- (b) A Collateral Warranty from each Development Party.
- (c) Confirmation from Homes England that the Applicant has provided (or procured the provision of) each certification required pursuant to the terms of the Application and this Agreement via the Portal.

3. Subsidy Control

- (a) The fully completed Economic Actors Schedule has been uploaded to the Portal together with any Declarations received by the Applicant.
- (b) [A completed agreement relating to the provision of services of public economic interest between Homes England (1) and [Name of RP] (2) in a form required by Homes England and duly executed by each party thereto.]

4. Other documents and evidence

- (a) The Duty of Care Deed.
- (b) Each Applicant's Representative Declaration in respect of any Applicant's Representative appointed by the Applicant.
- (c) A copy of any other document, opinion, authorisation, consent or assurance which Homes England considers to be necessary or desirable (if it has notified the Applicant accordingly) in connection with the entry into and performance by the Applicant of the transactions contemplated by this Agreement or for the validity and enforceability of this Agreement.



SCHEDULE 4⁸

OFFICER'S CERTIFICATE

[COMPANY NAME] (COMPANY NO. [●]) (APPLICANT)

Date:

To: **The Secretary of State for Levelling Up, Housing and Communities** (the "DLUHC") and the **Homes and Communities Agency (trading as Homes England)** ("Homes England")

'Agreement' the final form grant funding agreement (Agreement) as agreed with Homes England that is intended to be dated on or around the date of this certificate and made between (1) DLUHC (2) Homes England and (3) the Applicant.

In this Officer's Certificate (**Certificate**), words and expressions shall have the same meanings as in the Agreement except where otherwise defined.

I [], the undersigned, being a director or member of the Applicant, hereby certify on behalf of the Applicant that:

1. INCORPORATION AND CAPACITY

The Applicant is a company limited by shares or by guarantee or a limited liability partnership or registered society and is validly existing under the laws of England and Wales and has full corporate capacity and power to enter into the Agreement and to exercise its rights and perform its obligations thereunder.

2. CONSTITUTIONAL DOCUMENTS

The copies of the Constitutional Documents of the Applicant filed on the register at Companies House are in full force and effect at the date of this Certificate and have not been revoked, suspended or amended.

3. AUTHORISATION

All corporate and other action required by the Applicant's Constitutional Documents or by law to authorise the execution of the Agreement by the Applicant and the performance of its obligations thereunder has been duly taken.

The resolutions annexed at Schedule 1:

- 3.1 were passed at a properly convened, constituted and conducted meeting of the board of directors or the members of the Applicant at which all constitutional, statutory and other formalities were observed and such resolutions have not been amended or rescinded and are in full force and effect;
- 3.2 approve the terms of, and the transactions contemplated by, the Agreement and resolve that the Applicant execute, deliver and perform its obligations under the Agreement;
- 3.3 authorise a specified person or persons to execute the Agreement; and

⁸ Not required for Local Authorities



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3.4 authorise a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Claim) to be signed and/or despatched by it under or in connection with the Agreement.

4. NO CONFLICT

To the best of the Applicant's knowledge, information and belief, the execution, delivery and performance of the Agreement on behalf of the Applicant will not:

4.1 breach, or constitute an event of default under, any agreement, deed or instrument binding on the Applicant; or

4.2 breach any borrowing or other limit binding on or applicable to the Applicant pursuant to any statute, regulation, trust deed, contract or other agreement of whatsoever nature.

5. AUTHORISED SIGNATORIES

5.1 The signatures (annexed at Schedule 2 to this Certificate) are the specimen signatures of each person authorised on behalf of the Applicant to execute Agreement or to sign or send any document or notice under or in connection with the Agreement.

5.2 The email addresses and mobile telephone numbers appearing next to the names on the list below are the true and up-to-date email addresses and mobile telephone numbers of the persons who have been authorised on behalf of the Applicant to execute the Grant Funding Agreement to be signed and/or despatched by the Applicant.

Name	Email address	Mobile telephone number	Position

6. CERTIFIED COPIES

All copies annexed to this Certificate are correct, complete and up to date copies of the document to which they relate and the originals are in full force and effect as at the date of this Certificate.

7. CERTIFICATION

As an authorised signatory of the Applicant, I hereby certify that as the date hereof (save as disclosed in Schedule 3 to this Certificate):

- (a) all data, self-certifications and/or other information submitted on the Portal or each Claim and in each is accurate and the Applicant is not aware (having made



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reasonable enquiries) of any circumstances which would give rise to that data, self-certifications and/or information becoming inaccurate;

- (b) all data, self-certifications or other information supplied to Homes England and DLUHC in connection with or related to the Project is accurate; and
- (c) each copy document relating to the Applicant specified in Schedule 3 of the Agreement is correct, complete, in full force and effect as at the date of this Certificate.

Signed:

Name:



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SCHEDULE 1 – Board Resolution



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SCHEDULE 2 – Specimen Signatures





SCHEDULE 5

FORM OF SUBSIDY CONTROL DECLARATION

SUBSIDY FUNDING DECLARATION - BUILDING SAFETY FUND

[NAME AND ADDRESS OF BUILDING (THE "BUILDING")]

This declaration is only required from leaseholders who are:

- a. leaseholders of commercial units (e.g. retail, restaurants, cafes, offices etc)
- b. leaseholders of residential units who are 'economic actors' AND have received prior subsidy or state aid from government within the last 3 years

An economic actor is a leaseholder who uses their property in the Building solely for business or investment purposes (for example letting out a flat or using commercial property as business premises).

Leaseholders of residential units who are not economic actors, or have not previously received subsidy, do not need to complete the form. Owner occupiers of single flats do not need to complete the form.

"Subsidy" for the purposes of this declaration means:

- any form of financial assistance received (directly or indirectly) from any public body including grants, soft loans, loan guarantees, provision of goods or services at under value and the foregoing of revenue by the public body concerned;
- State aid provided under the de minimis exemption prior to 1 January 2021 or de minimis Subsidy provided under the subsidy control regime after that date.

including any funding provided under the Private Sector ACM Cladding Remediation Fund, or the Building Safety Fund.

If you are a co-owner, all co-owners can sign using the additional signature page at the end of this form, or we will accept a form signed by one of you. If you own multiple properties in this Building, add all the properties to this form – you do not need to complete a form per property.

You should read the Subsidy Control Guidance before completing this declaration – guidance can be found here: <https://www.gov.uk/guidance/remediation-of-non-acm-buildings>. Please be aware that providing information in this form that is not accurate may result in you being placed at risk of having to repay any sums provided for your benefit under these Funds.

PART 1 - Your Details (the "Leaseholder"):

Full Name(s):	
Address(es) or registered office(es) and Company Number(s):	

Address(es) of flat or flats you own or the commercial premises you occupy in the Building (the "Property"):

Address(es)	
-------------	--



Your Status

I confirm that the Leaseholder is an 'Economic Actor'	YES / NO
I confirm that the Leaseholder (or any person linked to the Leaseholder) has received Subsidy during the current and previous two fiscal years. If so, please provide further details at Part 2	YES / NO

PART 2 – Details of previous financial assistance

Who provided the Subsidy	Date Subsidy granted	Total amount of Subsidy received (in GBP as you were notified at the time)	Give the name of the person or business which benefitted from the Subsidy
		£	
		£	

PART 3 - Declaration

I confirm all answers given in this declaration are complete and correct.

I confirm that I understand that the Leaseholder (and any person linked to the Leaseholder) can only receive Subsidy up to the total value of 325,000 Special Drawing Rights⁹ over this and the previous two fiscal years from any source.

I therefore agree that if the Leaseholder (and/or any of the linked persons identified above) receives any Subsidy which is unlawful including funding for an amount which would cause it to exceed the 325,000 Special Drawing Rights threshold over the last 3 years the Leaseholder must to repay the amount of the unlawful Subsidy together with interest from the date the Leaseholder receives it until the date it is repaid.

I confirm I will keep a copy of this declaration and any other documentation relating to the assistance that has been received under the terms of the Building Safety Fund for at least 3 years following the date of grant. I understand I am obliged to produce it on request by the UK public authorities.

⁹ Subsidy control uses Special Drawings Rights – see here for further information: https://www.imf.org/external/np/fin/data/rms_five.aspx



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Full name	
Signature ¹⁰	
For and on behalf of ¹¹	
Position	
Date	
Address	

Additional Leaseholder - Signature Page

Leaseholder 2

Full name	
Signature	
For and on behalf of	
Position	
Date	
Address	

Leaseholder 3

Full name	
Signature	
For and on behalf of	
Position	
Date	
Address	

Leaseholder 4

Full name	
Signature	
For and on behalf of	
Position	
Date	
Address	

¹⁰ MHCLG will accept an electronic form of signature, either by scanning and sending a PDF of a signed hard copy or by applying your preferred form of electronic signature (for example a manuscript version of your name, initials or other unique mark of your choosing).

¹¹ If signing on behalf of a business you are confirming that you are authorised to sign this declaration on behalf of that business. [If signing on behalf of more than one leaseholder you are confirming you are authorised to sign this declaration on behalf of all leaseholders.](#)



SCHEDULE 6

FORM OF SUBSIDY CONTROL FOLLOW-UP LETTER

[To be on headed DLUHC notepaper]

Dear [LEASEHOLDER],

Building Safety Fund – Subsidy Offer

In May 2020, the Government announced that it would pay for the replacement of unsafe non-Aluminium Composite Material (non-ACM) cladding on private sector high-rise residential buildings via the creation of the Building Safety Fund (BSF). Your landlord has successfully applied to the BSF on behalf of the leaseholders for funding to pay for the replacement of the unsafe non-ACM cladding on [X building].

The grant funding to be provided by the Government to your landlord on your behalf is a form of subsidy award and amounts to £[XXXX]. The amount of grant funding may change if the cost of the work necessary to remediate the cladding changes. If that happens we will need to recalculate the amount of grant we can pay on your behalf and we will write to you again to confirm any revised amount.

In order for the Government to provide funding for replacing the cladding on your building we need to send you this letter because, based on the information provided by your landlord, you are an Economic Actor (EA) for the purposes of subsidy control rules.

In the context of the BSF, an EA includes any leaseholder (including an individual, corporation, a partnership, a family trust, etc.) that owns and lets out properties to others (for the purposes of the subsidy rules, this counts as operating a business) or uses the property in this building principally for the purposes of operating a business.

You should note that the funding awarded to you under this offer letter may be relevant if you wish to apply, or have applied, for any other form of state financial support and you must declare the amount stated above to any other aid awarding body who asks in the future for information from you on how much state financial support you have received. This includes any other buildings in which you are a leaseholder for which an application is being made to the Building Safety Fund (or the Government's Private Sector ACM Cladding Remediation Fund). In that case you should include the information in this letter in any subsidy declaration you are asked to sign.

For the purposes of the subsidy control regime, you should keep this letter for 6 years and produce it on any request by the UK public authorities.

Your landlord will contact you to let you know when the works to replace cladding on the building are due to start and complete. Your landlord will be able to answer any questions about the works to replace the cladding or your landlord's application to the Building Safety Fund.

Yours sincerely,

Building Safety Fund
The Department for Levelling Up, Housing and Communities



SCHEDULE 7

FORM OF APPLICANT'S REPRESENTATIVE DECLARATION

[To be on headed notepaper of the entity giving the declaration and addressed to Homes England and DLUHC]

We refer to the grant funding agreement dated [] between (1) The Secretary of State for Levelling Up, Housing and Communities (2) the Homes and Communities Agency (trading as Homes England) and (3) [the Applicant] (the **Grant Funding Agreement**)

Terms defined in the Grant Funding Agreement shall have the same meaning in this declaration.

We confirm that we have been appointed as an Applicant's Representative for the purposes of the Grant Funding Agreement.

By submitting the application for Funding, we confirm that the application for Funding is complete and accurate, and in line with all requirements of the Guidance and Prospectus.

EXECUTED as a **DEED** by [])
)
acting by a director in the presence)
of:)

.....
Signature

.....
Print Name

.....
Occupation



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SCHEDULE 8

NOT USED



SCHEDULE 9

CERTIFICATE OF COMPLIANCE WITH BUILDING SAFETY FUND REQUIREMENTS

[To be on headed notepaper of the Applicant giving the declaration and addressed to Homes England and DLUHC]

To Homes England and DLUHC

I/We confirm that the all information provided to Homes England and DLUHC in the Building Safety Fund registration and application submissions, including the Stage 1 – Eligibility & Pre Tender Support and Stage 2 – Full Works and Costs submission related to the above stated building name and registration number are complete and accurate.

I/We confirm that a competent professional or competent professionals has or have certified all cladding panels, insulation material and sheathing boards (where applicable) used and those planned or specified to be used (where planned works have not yet been completed) in the replacement cladding system(s) eligible for BSF funding achieve an A1 or A2-s1,d0 classification and that the remediation works comply with the building safety fund rules and requirements, as set out in the:

- **Building Safety Fund Application Guidance** (Note in particular: Competent professional page 4; PII cover pages 20-21; Fund requirements – Annex A; Works contract requirements -Annex B; Key Information for Responsible Entity – Annex C.)
- **Building Safety Fund Prospectus:**
(Note in particular: Non-ACM Cladding Systems page 9; Annex A – Technical Information)

Both documents and Annexes can be found here:
<https://www.gov.uk/guidance/remediation-of-non-acm-buildings>

I/We accept that any incorrect information supplied may entitle DLUHC to recover the whole or part of any funding amount provided.

Signed

Name

Title

Organisation

Date



SCHEDULE 10

FUNDING DATE CERTIFICATE

1	Building Details	
	Property name	
	Address	
	Postcode	

2	What is the total value of all eligible expenditure on the project? (including consultant fees, client expenditure, contractor payments and VAT)
	£

3	Cumulative spend against Total Eligible Costs to date	<i>(cost consultant to certify)</i>
	Figures	Percentage

4	Has your expected completion date changed since funding was awarded?
	(Yes/No)
	If yes, what is your new expected completion date?
	If yes, please provide a short explanation for the change in date below. We may ask for further information.

5	Have forecast project costs changed since funding was awarded?
	(Yes/No)
	If so, what is the revised total expected project costs?
	<i>(If this is an increase on your total funding award, you will need to separately request an increase in funding)</i>

6	Have you submitted a Certificate of Compliance?
	Yes / No
	<i>(If no, please provide details)</i>



Department for Levelling Up,
Housing & Communities

Signed

Name

Title

Organisation

Date



**EXECUTED AS A DEED by the SECRETARY OF STATE
FOR LEVELLING UP, HOUSING AND COMMUNITIES**

**The Corporate Seal of the Secretary of State for Levelling
Up, Housing and Communities is hereunto affixed and
authenticated in the presence of:**

e-mail: BSF@levellingup.gov.uk

.....

Authorised Signatory

Print Name:

.....

**The common seal of the
HOMES AND COMMUNITIES AGENCY
was hereunto affixed in the presence of:**)
)
)

Authorised Signatory

e-mail bsfenquiries@homesengland.gov.uk



Department for Levelling Up,
Housing & Communities

THE APPLICANT

EXECUTED as a **DEED** by [INSERT APPLICANT
NAME] acting by a Director in the presence of a
witness:)
)
)

.....
[INSERT DIRECTOR NAME]

Witness Signature

Print Name

Witness Address
.....
.....
.....

Occupation

e-mail []

OR

EXECUTED as a **DEED** by [INSERT APPLICANT
NAME] acting either by two Directors or a Director
and the Company Secretary)
)
)

.....
[INSERT DIRECTOR NAME]
e-mail []

.....
[INSERT DIRECTOR NAME]
e-mail []