



DATED _____ 2024

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

(2) [INSERT RE NAME]

February 2024 Version. We will send you a version, do not complete

GRANT FUNDING AGREEMENT



THIS AGREEMENT is made on the [] day of [] 2024

BETWEEN:-

- (1) **HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND)** whose registered address is at One Friargate, Coventry, CV1 2GN ("**Homes England**"); and
- (2) **[INSERT RE COMPANY NAME]** (Company Number: [INSERT CO. NO]) whose registered address is at **[INSERT RE REGISTERED ADDRESS in lower case ensuring a capital letter for the start of each word]** (the "**Applicant**").

together the "**Parties**".

BACKGROUND:-

- (A) Homes England has been commissioned by the Department for Levelling Up, Housing and Communities to form and deliver the Cladding Safety Scheme, which is designed to provide funding to address and remedy life safety fire risks associated with defective and/or unsafe Cladding (which may include render based external wall systems) on residential buildings which are 11 metres or higher.
- (B) In order to qualify for entry into the Programme the Applicant has supplied a Fire Risk Appraisal of External Wall construction (FRAEW) report adopting the methodology set out in PAS 9980:2022 containing recommendations as to any necessary remediation or alternative mitigation work.
- (C) Homes England is exclusively responsible for the administration of the Programme and dispersal of funding made available under the Programme within England.
- (D) Homes England has agreed to make the Funding available to the Applicant on the terms set out in this Agreement.
- (E) Homes England will provide Funding to the Applicant irrespective of any restrictions or protections introduced or imposed by the Building Safety Act in relation to any Leaseholder that is a Protected Leaseholder.

IT IS AGREED as follows:-

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

"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

"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 the period from and including the date of the GFA Effective Date 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 or leasehold land and buildings known as INSERT BUILDING NAME AND ADDRESS being the land comprised within title number INSERT TITLE NUMBER and "Buildings" shall mean all of them taken together
"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.
"Building Safety Act"	means the Building Safety Act 2022
"CDM Regulations"	means the Construction (Design and Management Regulations) 2015 S.I No 2015/51
"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
"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.
"Client Money Protection Scheme (CMPS)"	means a client money protection scheme that has been approved by the Secretary of State under sections 133 – 135 of the Housing and Planning Act 2016 (HPA 2016) that is designed to protect monies paid into a bank account maintained by a Property Agent (as defined in the HPA 2016) that holds a certificate of membership of the relevant CMPS scheme
"Client Side Adviser"	means such client side adviser appointed by Homes England to assist the Applicant in the delivery of the Project.
"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 Applicant's articles of association, memorandum of association, rules, members' agreement, certificate of incorporation and any certificate of change of name or such other documents as may be required to evidence the basis on which the Applicant has been legally constituted
"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 date of this Agreement 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 the Cost Consultant specified in the Memorandum that has been appointed by the Applicant or the Principal Contractor 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 date of this Agreement.



"Data Protection Legislation"

means all applicable Law relating to the Processing of Personal Data and privacy including without limitation:

- (a) 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**);
- (b) the Data Protection Act 2018; and
- (c) 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 in its absolute discretion 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.

"Default Interest Rate"

means interest at a rate per annum equal to two percentage points (2%) above the Base Interest Rate

"Defects Liability Period"

the period of 12 months following the issue of the Date of Practical Completion

"Design Party"

means any professional consultant with material design responsibility for all or any material part of the Project

"Determining Authority"

means the local planning authority that is empowered by law to exercise the planning and building control function for the local authority in which the Building is located or any statutory successor

"Development Party"

means the Contractor and any Design Party, in each case appointed by the Applicant

"DLUHC"

The Department for Levelling Up, Housing and Communities



"Duty of Care Agreement"	means a duty of care agreement for the benefit of Homes England from the Cost Consultant
"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: <ul style="list-style-type: none">(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: <ul style="list-style-type: none">(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
"Excluded Expenditure"	means costs for which the Applicant cannot make a Claim which shall include: <ul style="list-style-type: none">(a) any internal works;(b) the replacement of any windows, window spandrel panels and infill panels;(c) the replacement of any balconies;(d) any interim or ongoing fire safety measures (irrespective of whether these are recommended by a FRAEW); and(e) any structural works except (in relation to (a), (b), (c) and (e) only) where such works are recommended by a FRAEW



"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;
- (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 dispute

generally 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:
- (i) are generally known within the Contractor's trade and the construction industry to be in short supply; and
 - (ii) 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:

- (i) any of the events arise as a result of any wilful or negligent default or wilful or negligent act of the Applicant; or
- (ii) 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
"Fire Risk Assessor"	means a professional who is suitably experienced, qualified, independent and competent to undertake an FRAEW
"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
"FRAEW"	means a fire risk appraisal of external walls carried out by a suitably experienced, qualified, independent and competent professional in accordance with and to the standards required by the guidance note published by the British Standards Institute under reference PAS9980:2022 (which provides recommendations and guidance to competent Fire Risk Assessors and other competent building safety professionals when carrying out a fire risk appraisal of external walls of existing multi storey residential buildings) that recommends that actions be taken to address life safety critical issues connected with the external wall system for the Building as supplemented by the Guidance
"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 the Guidance
"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



"GFA Effective Date"	means the date on which Homes England notifies the Applicant in writing that it has received, or waived its requirement to receive, all of the documents and other evidence listed in PART B SCHEDULE 3 (Conditions Precedent) in form and substance satisfactory to it. Homes England shall give this notification as soon as reasonably practicable following such receipt (or waiver).
"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
"Guidance"	means the guidance note marked 'Cladding Safety Scheme (England only)' in force at the date of this Agreement a copy of which has been provided to the Applicant in advance of their signing this Agreement as may be updated periodically and any associated technical guidance or annexes.
"HMRC"	means His 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
"Joint Controller"	means where two or more Controllers jointly determine the purposes and means of processing
"Law"	means any applicable law, statute, byelaw, 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"	means a lease of a Residential Unit nominated by the Applicant for assessment of its Legal Eligibility Criteria and any superior lease documentation that relates to the Applicant's interest in the Building
"Leaseholder"	<p>(a) a person (other than the Applicant) that is a party to a Lease Document;</p> <p>(b) any person that controls any person (other than the Applicant) that is a party to a Lease Document;</p> <p>(c) any sub-lessees in respect of any Lease Document,</p> <p>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</p>
"Leaseholder's Contribution"	means the service charge contribution required towards the cost of the Works arising from the relevant Leaseholder's Lease Document except that where the Leaseholder is a Protected Leaseholder and is protected from making some or all of any payment requirement arising from the Lease Document any payment obligation allocated to that Leaseholder in service charge accounts shall be limited to the amount required by law (as may be adjusted by but not limited to the provisions of Schedule 8 of the Building Safety Act).



Legal Eligibility Criteria

means:

- (a) that the Applicant holds either a superior leasehold or freehold interest in the Building (a **Superior Interest**) or that it is a person appointed to manage the Building pursuant to the terms of Lease Documents (a **Management Interest**); and
- (b) that the Applicant is either permitted or required to undertake any Works to the Building by virtue of its Superior Interest or Management Interest in the Building; and
- (c) that there is a Qualifying Lease present in the records for the Building maintained by HM Land Registry.

"Litigation Remedies"

has the meaning given to such term in clause 5.4.1

"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 the sum specified in the Memorandum which sum includes any prior PTS Funding awarded to the Applicant and the amount of any Retention Amount)

"Memorandum"

means the executed memorandum specifying the amount of the Maximum Sum in the form set out in SCHEDULE 5.

"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

"Non-Qualifying Expenditure"

means expenditure which is not Qualifying Expenditure

"Party"

means a party to this Agreement.



"PAS9980:2022"

means the guidance note published by the British Standards Institute under reference PAS9980:2022 (which provides recommendations and guidance to competent Fire Risk Assessors and other competent building safety professionals when carrying out a fire risk appraisal of external walls of existing multi storey residential buildings)

"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 dedicated on-line grant application and management system for the Programme as may be amended and further developed from time to time

"Post-Remediation FRAEW"

means a FRAEW undertaken following Practical Completion to assess whether the recommendations contained within the Pre-Remediation FRAEW and any other subsequent FRAEW previously submitted to Homes England have been implemented and whether any life safety fire risks identified by the Pre-Remediation FRAEW and any other previously submitted FRAEW have been eliminated

"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

"Pre-Remediation FRAEW"

means an FRAEW undertaken prior to the granting of Funding and submitted to Homes England by the Applicant as part of their Application

"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

"Programme"

means the Cladding Safety Scheme which is a grant funded programme designed to provide funding to address and remedy life safety fire risks associated with defective and/or unsafe Cladding (which may include render based external wall systems) on residential buildings which are 11 metres or higher

"Prohibited Act"

means any one or more of the following:-

- (a) offering, giving, agreeing to give or attempting to give to Homes England, or any employee, agent, or other representative of Homes England any gift or consideration of any kind as an inducement or reward:
 - (i) for himself 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 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 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 Homes England
- "Project"** means the assessment of any works required to address life safety fire risks concerning the Building (as recommended by a Fire Risk Assessor in any FRAEW commissioned in relation to the Building) and the subsequent implementation of any recommendations where these relate to life safety fire risks
- "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
- "Protected Leaseholder"** means a leaseholder that holds a qualifying lease as defined at paragraph 119 of the Building Safety Act ss. 2 (a) – 2 (d) and is protected from the costs of cladding remediation pursuant to the provisions set out at Schedule 8 of that Act
- "PTS Agreement"** means the pre-tender financial support agreement made between the Applicant and Homes England as set out in SCHEDULE 4.
- "PTS Effective Date"** means the date on which Homes England notifies the Applicant in writing that it has received, or waived its requirement to receive, all



of the documents and other evidence listed in PART A of SCHEDULE 3 (Conditions Precedent) in form and substance satisfactory to it. Homes England shall give this notification as soon as reasonably practicable following such receipt (or waiver).

"PTS Funding"	means £[INSERT AMOUNT] being the amount of the pre-tender financial support provided to the Applicant by Homes England pursuant to the terms of the PTS Agreement
"PTS Provisions"	means the terms of this Agreement set out in clause 1, clause 2, SCHEDULE 3, SCHEDULE 4 and the execution page of this Agreement only.
"Qualifying Expenditure"	means the reasonable cost of implementing remedial works at the Building which are reasonably necessary to address life safety fire risks being those measures recommended by a Fire Risk Assessor under a FRAEW and that are capable of being capitalised (including any VAT) including but not limited to those items detailed in the section marked 'What we will fund' in the Guidance 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
"Qualifying Lease"	means a lease of a Residential Unit in the Building which is registered against the Building's records held by Land Registry that: (a) requires the property to be used exclusively for residential occupation; and (b) was granted on a date prior to 11 March 2020 for a term of not less than 21 years.
"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 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 the date specified in the Memorandum, 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



"Retention Amount"	means either: <ul style="list-style-type: none">(a) the amount produced by applying the relevant Retention Percentage to the Contract Sum; and / or(b) (in the event of any authorised increase in the amount of Funding under this Agreement in excess of the Maximum Sum) the amount produced by applying the Retention Percentage to any additional amount claimed under the Works Contract above the Contract Sum.
"Retention Percentage"	means the relevant retention percentage specified in the Works Contract which deals with the physical delivery of the Project with each Contractor (where more than one) as to the relevant phase of Works or reference period specified in the relevant Works Contract in a form that is compliant with the requirements of clause 5.2.7 of this Agreement
"RIDDOR"	means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as may be amended from time to time)
"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: <ul style="list-style-type: none">(a) the Applicant and Contractor have entered into the Works Contract; and(b) the Contractor has taken possession of the relevant part of the Site; and(c) the Works under the Works Contract have commenced.
"Start on Site Date"	means the date specified in the Memorandum, 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
"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
"Termination Date"	means the 12 th anniversary of the Date of Practical Completion
"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
"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 the Guidance 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
"Works"	means the building works to be undertaken pursuant to the Works Contracts
"Works Contract"	means the contract or contracts for the design and delivery of the Project, between each Contractor and the Applicant, and/or each Design Party and the Applicant 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 "**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 of 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 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 Homes England (or any officer of Homes England) is required or a notice is to be given to 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 Homes England acting reasonably shall be interpreted as requiring 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 Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by 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 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

- 2.1 Homes England will provide the Funding to the Applicant on and subject to the terms of this Agreement.
- 2.2 Homes England will provide PTS Funding to the Applicant following the occurrence of the PTS Effective Date and on and subject to the terms of the PTS Agreement.
- 2.3 Unless and until the occurrence of the GFA Effective Date the Applicant will only be subject to the terms of the PTS Provisions and the remaining terms of this Agreement shall not apply.
- 2.4 After the occurrence of the GFA Effective Date the Applicant will be subject to all of the terms of this Agreement save for SCHEDULE 5.



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 3.6.

3.2 Title

The Applicant warrants that it is entitled to receive the Funding by virtue of having satisfied the Legal Eligibility Criteria.

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] **[or 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

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 warrants that the Works, the Building and the use of the Building all satisfy the qualification criteria for Funding set out in the Guidance.
- 3.4.6 The Applicant shall promptly following Practical Completion provide to Homes England a Post-Remediation FRAEW which confirms that any recommendations contained within the Pre-Remediation FRAEW and any other FRAEW previously submitted to Homes England have been implemented and that any life safety fire risks identified by the Pre-Remediation FRAEW (and any other FRAEW previously submitted) have been eliminated.
- 3.4.7 The Applicant is not aware, after due enquiry, of anything which materially threatens the success of the Project or the completion of this Agreement.
- 3.4.8 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.
- 3.4.9 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.
- 3.4.10 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.
- 3.4.11 The Applicant shall ensure that (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.
- 3.4.12 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
- (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.

3.4.13 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 and/or the Cost Consultant.

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 Information

3.6.1 All information, documents, self-certifications and accounts of the Applicant submitted to Homes England by the Applicant or any party authorised to do so on their behalf 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 of in writing and Homes England 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 PROVIDED THAT where any information, documentation or self-certification supplied relates to the Applicant's ability to recover monies from a Leaseholder that is a Protected Leaseholder and is proven to be untrue or misleading by virtue of the coming into force of the Building Safety Act Homes England shall not be entitled to treat this as an Event of Default.

3.6.2 The Applicant has disclosed (and will procure that any party authorised to do so on their behalf shall disclose) to Homes England all information which would or might reasonably be thought to influence 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.



- 3.6.3 The Applicant will (and will procure that any party authorised to do so on their behalf will) promptly provide to Homes England any information which Homes England or any Regulatory Body may request (acting reasonably) in order to satisfy itself that the Applicant has complied with the provisions of this Agreement.
- 3.6.4 The Applicant confirms its compliance with all terms of the Guidance and will procure that any party authorised to provide information or documentation on behalf of the Applicant shall separately confirm its compliance with the Guidance.
- 3.6.5 The Applicant will pay due regard and attention to any recommendations made by the Client Side Adviser.

4. PAYMENT OF FUNDING

4.1 Pre-Conditions of Funding

The Applicant will not make any Claim and Homes England will not be liable to make available any Funding (with the exception of any PTS Funding) until the occurrence of the GFA Effective Date.

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) is supported by a cost report relating to the Qualifying Expenditure claimed, prepared by the Cost Consultant;
 - (c) 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);
 - (d) the proposed Claim Date is a Working Day within the Availability Period;
 - (e) where a Claim includes any part of the Retention Amount:
 - (i) the value of the Retention Amount shall be limited to that amount which will become payable in accordance with the terms of the Works Contract;
 - (ii) the Claim has been submitted within the period that is three (3) months after the date of Practical Completion.
 - (f) it is not for an amount which (if paid) would make the amount of Funding paid to the Applicant exceed the Maximum Sum;
 - (g) 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) a certificate confirming the registration with and membership of a Client Money Protection Scheme; and/or
 - (ii) details of a separate legal trust established and maintained by the Funding Recipient for the benefit of Leaseholders



which is reasonably acceptable to Homes England to enable Homes England to make the relevant payment;

- (h) the costs to be financed by the Claim for Funding:
 - (i) are Qualifying Expenditure;
 - (ii) have been 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;
- (i) the timing, costs and completion of the Works are in all material respects in accordance with the Project Documents;
- (j) 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);

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 Claims more frequently than monthly.

4.3 Use of Funding

4.3.1 The Applicant undertakes and warrants to Homes England that:

- (a) the Funding will be used by the Applicant for Qualifying Expenditure only;
- (b) in delivering the Project the Applicant shall operate the Project on a not for profit basis;
- (c) 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;
- (d) it 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 in paying for Works reimbursed by the Funding (including repaying any deductions from a sinking fund) irrespective of whether that Leaseholder is a Protected Leaseholder with such recompense paid directly to the bank account of the relevant Leaseholder or such other appropriate payment method of the Leaseholder's choosing 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 4.3.1(d) against the Applicant in the event that the Applicant breaches the terms of this clause 4.3.1(d);

- (e) 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 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;
- (f) the Applicant will record in its service charge accounts for each Leaseholder that Leaseholder's Contribution (irrespective of the Funding amount provided to the Applicant on its behalf and noting that where the Leaseholder is a Protected Leaseholder the figure may be zero) and notify the Leaseholder concerned separately as to any additional amounts of Funding Homes England have provided to the Applicant on its behalf;
- (g) the Applicant shall only seek to raise a service charge payment from a Leaseholder in respect of any Works which are:
 - (i) not Qualifying Expenditure; and
 - (ii) only to the extent that such costs are validly attributable to that Leaseholder and are not prohibited under the terms of the Building Safety Act by virtue of the Leaseholder being a Protected Leaseholder.
- (h) 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) an amount equal to the Non-Qualifying Expenditure plus Interest thereon.
- 4.4.2 Homes England 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 of all Funding already paid where:
 - (a) the requirements of clause 3.4.5 have not been satisfied; and/or
 - (b) any Funding provided is used for a purpose other than the purpose for which it was given.

and 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 the relevant Statutory Requirement (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 the relevant Statutory Requirement.

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 design and construction of the Building and/or manufacture of any part or parts of the Building or any components used and installed at the Building which impose a life safety fire risk or any litigation and/or claim relating to the specification and installation of the same on the Building.
- (b) if the Qualifying Expenditure incurred by the Applicant is lower than the Maximum Sum; or
- (c) where the warranty at clause 3.4.5 has been breached.

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 the required Works on any Building are 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 4.5.3. Homes England 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.

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,
- 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 any remediation requirements recommended by the Pre-Remediation FRAEW (or any subsequent FRAEW commissioned by the Applicant) are implemented in accordance with the Guidance.
- 5.2.4 The Applicant shall ensure that the specifications and contents of each Works Contract shall conform with the contents and requirements of any FRAEW.
- 5.2.5 The Applicant warrants that the Pre-Remediation FRAEW and any subsequent FRAEW (including the Post-Remediation FRAEW) it has commissioned meets the requirements for the production of a FRAEW (as expressed in the Guidance) in all respects and that it will in accepting any Funding delivered under this Agreement use such monies to effectively implement the recommendations of any Fire Risk Assessor commissioned to produce the Pre-Remediation FRAEW and not further.



5.2.6 The Applicant warrants that it shall commission a Fire Risk Assessor to undertake a Post-Remediation FRAEW promptly following Practical Completion.

5.2.7 The Applicant shall procure that each Works Contract contains a retention provision which allows the Applicant to retain at least 5% of the contract price until the Date of Practical Completion and at least 2.5% of the contract price until the end of the Defects Liability Period to ensure that the Works have been completed in a good manner and that the Cladding meets the requisite standards.

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 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 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.

5.3.6 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 as to the progress and implementation of the Project.

5.3.7 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 any litigation and/or claim relating to the design and construction of the Building and/or manufacture of any part or parts of the Building or any materials or components used and installed at the Building where the remediation of any defective Building design or as to any construction, materials or components relates to Works in respect of which Funding is provided pursuant to the terms of this Agreement or any litigation and/or claim relating to the specification and installation of the same on the Building (including, without limitation, any claims against insurers, any relevant contractors and/or manufacturers and/or warranty providers with any liability in relation to the Building) ("**Litigation Remedies**").
- 5.4.2 The Applicant will provide any information or evidence reasonably requested by Homes England (i) detailing any Litigation Remedies identified and the pursuit of any Litigation Remedies by the Applicant, or (ii) to allow Homes England 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 Litigation Remedies within 12 years of the date of this Agreement, it shall within 10 Working Days of receiving the same, notify Homes England and provide Homes England with all documentary evidence and/or information reasonably requested by Homes England relating to the payment. The Applicant shall also promptly pay to Homes England the lower of (i) the aggregate amount it has received in respect of the Litigation 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 Homes England, on request and on terms acceptable to Homes England, assign all of its rights title and interest to any Litigation Remedies to Homes England, in so far as necessary to enable Homes England 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 Litigation Remedies assigned to Homes England, the Applicant shall provide all necessary assistance to Homes England on an ongoing basis in order to allow Homes England to pursue such Litigation 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:
 - (a) 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



- (b) 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 delay caused or likely to be caused by the requirement of the Applicant to raise such additional funding; or
- (c) 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:
- (i) 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
 - (ii) 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(c)(i) and 5.5.1(c)(ii) above decide in its sole discretion (acting reasonably) whether or not to agree a revised Start on Site Date and/or Required Completion Date.

- (d) where the effective cause of such failure is not an Extension Event or a matter referred to in clause 5.5.1(b) or 5.5.1(c), 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:
- (i) 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
 - (ii) 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:

- (a) the date that is nine (9) months from the Start on Site Date; or
- (b) the date that is twenty four (24) months from the Required Completion Date

PROVIDED THAT where Homes England are satisfied (in their sole discretion) that there are legitimate Project or commercial grounds for doing so, it shall be entitled to waive performance with the dates at (a) and (b) above and agree with the Applicant suitable replacement dates to be confirmed in writing by a notice from Homes England.



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 the 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 unfixured 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 Contractor with a material design responsibility in relation to the Project shall at all times during the carrying out of the Works maintain a full and proper professional indemnity insurance policy with reputable insurers lawfully carrying on such insurance business in the United Kingdom at commercially reasonable rates and terms covering the usual risks covered by this type of policy with a limit of indemnity and basis of cover not less than that set out in the Works Contract to cover any claims made under this Agreement against the Contractor in relation to the Works PROVIDED THAT:
 - (i) where cover is not available at commercially reasonable rates or terms the Contractor shall obtain such reduced level of cover as is available provided that it would be fair and reasonable to do so in the circumstances; and

For the purposes of this clause 6.3.1(b) "**commercially reasonable rates and terms**" shall mean such level of premium rates and such market terms at which other contractors of a similar size and financial standing as the affected Contractor generally continue to take out such insurance at each renewal date.

- (c) procure that each and every Design Party shall at all times during the carrying out of the Works maintain a full and proper professional indemnity insurance policy with reputable insurers lawfully carrying on such insurance business in the United Kingdom at commercially reasonable rates and terms covering the usual risks covered by this type of policy with a limit of indemnity and basis of cover not less than that set out in their appointment to cover any claims made under this Agreement against the Design Party in relation to the Works PROVIDED THAT:
 - (i) where cover is not available at commercially reasonable rates or terms the relevant Design Party shall obtain such reduced level of cover as is available provided that it would be fair and reasonable to do so in the circumstances; and



For the purposes of this clause 6.3.1(c) "**commercially reasonable rates and terms**" shall mean such level of premium rates and such market terms at which other professional consultants of a similar size and financial standing as the affected Design Party generally continue to take out such insurance at each renewal date.

- (d) procure that each Contractor maintains a public liability insurance policy in an amount satisfactory to Homes England (acting reasonably);
- (e) 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;
- (f) 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 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
- (g) 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 to explain its proposal and apply for a waiver of clause 6.3.1(f) 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.

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.
- 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 Cladding has commenced;
 - (e) confirmation as to when all eligible Cladding has been completely removed;
 - (f) confirmation that the estimates or actual costings for any known Variations have been upload to the Portal;
 - (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.



- 8.1.5 The Applicant must on request by Homes England promptly supply to Homes England such information and documentation as Homes England may require to evidence that the Applicant has informed, notified and updated the Leaseholders and any of the residents of the Building (where different) as to the proposed financial treatment of the Project, the scope of the Works and the timeframe for completion of the Works.

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, its 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 and its 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, 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 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 shall procure that any party authorised to provide information or documentation on behalf of the Applicant will do likewise 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, its 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.

9. EVENTS OF DEFAULT

- 9.1 Where an Event of Default has occurred 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 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 for approval within 10 Working Days of the request. The Applicant shall



satisfactorily respond to any requests to amend the plan by Homes England 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 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 Homes England 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 Homes England any Utilised Funding; and/or
- 9.1.5 (where any Utilised Funding has been provided but any Works completed by the Applicant in relation to that Utilised Funding does not meet the requirements of the Guidance) require the Applicant to repay any relevant Funding;
- 9.1.6 require the Applicant to immediately pay to Homes England (together with any Interest thereon) any or all amounts of any Funding delivered to the Applicant in circumstances where (in the reasonable opinion of 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 nature, type and extent of the Event of Default merits it or if Homes England 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 will have no obligation to provide any further Funding and will be entitled to require the Applicant to pay to Homes England an amount equal to 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 Homes England to achieve this objective.
- 9.3 In relation to the exercise by Homes England 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).

10. PUBLICITY

The Applicant must inform Homes England 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 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 of Best Practice and to enable Homes England 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 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, use reasonable endeavours to procure for the benefit of Homes England 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 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 to use such Project Know-how in accordance with the Licence. The Applicant will notify Homes England where it is unable to obtain such licence and will identify which parts of the Project Know-how Homes England are not licensed to use ("**Excluded Know-how**").



- 11.4 Homes England's decision as to what constitutes Best Practice shall be final (and Homes England 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 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 acting reasonably 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 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 and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Homes England, or for which Homes England 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 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 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 confirms that all or any costs, claims, damages or expenses incurred by Homes England, or for which Homes England 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 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 may harm the reputation of 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.



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 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
- (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 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 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 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:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of Homes England'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 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 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 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.

13.2 Freedom of Information

13.2.1 Homes England is a "**FOIA Authority**" and:

- (a) are subject to legal duties which may require the release of information under FOIA and/or EIR; and
- (b) a FOIA Authority may be under an obligation to provide Information subject to a Request for Information.



- 13.2.2 A 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.

14. DATA PROCESSING

- 14.1 The Parties acknowledge and agree that Homes England 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.



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 Homes England for the purposes of this Agreement.

15. **FURTHER ASSURANCE**

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

18. **AUTHORITY OF PARTIES' REPRESENTATIVES**

18.1 **Authority of Homes England Representative**

Each Homes England Representative has full authority to act on behalf of Homes England for the purposes of this Agreement. The Applicant is entitled to treat any act of Homes England Representative in connection with this Agreement as being expressly authorised by Homes England (save where Homes England 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.

19. **STATUS OF APPLICANT**

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



20. **ASSIGNMENT AND SUB-CONTRACTING**

- 20.1 Homes England 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.
- 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 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 at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided the Applicant will pay to Homes England 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 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 or the Applicant will unlawfully prejudice Homes England'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 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;
 - 24.1.2 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;
 - 24.1.3 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 above made between the Parties will be effective only when actually received in readable form.
- 24.4 Any electronic notice which becomes effective, in accordance with clause 24.1 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 25.3, 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 Director of the Cladding Safety Scheme (or such other person notified to the Applicant by Homes England) 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 25.3, 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(f), 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(f), 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. 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 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 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. The rights and remedies of Homes England are cumulative and not exclusive of any rights or remedies which Homes England would otherwise have.

31. **DISCLAIMER**

Homes England will not be liable to the Applicant for any advice given by a representative of Homes England. In addition, Homes England 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 or any person on behalf of Homes England pursuant to this Agreement of any matter submitted by the Applicant for approval will not be deemed to be an acceptance by Homes England of the correctness or suitability of the contents of the subject of the approval or consent.
- 33.2 Any approval by Homes England 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 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.
- 33.5 A certificate by Homes England 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 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 giving notice to the Applicant; and
 - 1.2.2 the Applicant becoming aware of the failure to comply.
 - 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(b).
 - 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 There is a material breach of any Project Document which, if capable of remedy, has not been remedied within 30 days of Homes England notifying the Applicant of the breach and requesting remedy and/or such further negotiable period as Homes England (in its sole discretion) agrees.
 - 1.7 The Applicant has committed any default (however described) or any other event entitling Homes England 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 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:
 - 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 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.



Homes England

- 1.15 The Funding is used by the Applicant for any purpose other than the funding of Qualifying Expenditure or implementing the Project.
- 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 Agreement which, if capable of remedy, has not been remedied within 30 days of Homes England notifying the Cost Consultant and the Applicant.
- 1.18 Any amount due to be paid by the Applicant to Homes England under this Agreement is not paid within 28 days of written demand.



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 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;
- 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 separately covenants with Homes England 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 3.4.12 and 3.4.13.

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;
- (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 on such proposals.



SCHEDULE 3

CONDITIONS PRECEDENT

PART A – PTS AGREEMENT

1. A copy of this Agreement duly executed by all parties.

PART B – GRANT FUNDING AGREEMENT

1. Building

- (a) A completed Application confirming (among other things) whether there are any litigation and insurance claims currently being progressed by the Applicant relating to the design and construction of the Building and/or manufacture of any part or parts of the Building or any components used and installed at the Building which impose a life safety fire risk or any active litigation and/or claim relating to the specification and installation of the same on the Building.
- (b) The Applicant has provided to Homes England a Pre-Remediation FRAEW in a form that is reasonably acceptable to Homes England.

2. Development Documents

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

- (a) This Agreement duly executed by each party to it.
- (b) The Duty of Care Agreement.
- (c) The Memorandum duly executed by each party to it.
- (d) 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 4

PTS AGREEMENT

[Building Name], [Building address] (Building)

1. The Applicant and the Building are eligible under the Cladding Safety Scheme to receive an award of pre-tender support for a project that is intended to address life safety fire risks whether arising from an **Unsafe Cladding System** (being the materials and components that are attached to the primary structure of the Building to form a non-structural surface including the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashing, fixings, gaskets, sealants and (where applicable) sheathing boards) or otherwise in relation to the Building (the **Project**).
2. This is on the basis of the information the Applicant has submitted to support the Applicant's application for funding under the Cladding Safety Scheme, in particular the breakdown of the cost of pre-tender support required (**Application**).
3. To enable the Applicant to progress the technical and contractual requirements for remedial work required at the Building to address either an Unsafe Cladding System or life safety fire risks as identified by a Fire Risk Assessment of External Walls (**FRAEW**), either commissioned or to be commissioned by the Applicant, the Applicant has made an application for pre-tender support under the Cladding Safety Scheme. The application for pre-tender support under the programme has been initially approved by Homes England in the sum of **£[x] including VAT** of pre-tender support funding (**Pre-Tender Support**), subject to due diligence for the Application for Full Funding (as defined below).
4. The Pre-Tender Support will be made pursuant to Section 19 Housing and Regeneration Act 2008.
5. The Pre-Tender Support will be provided and is to be used only for the specific purposes as more particularly detailed below:
 - 5.1 the costs and expenses which will enable the Applicant to tender for a works contract for the Project - this may include, but is not limited to costs associated with project managers, surveyors, architects, fire engineering or legal services; and
 - 5.2 costs and expenses the Applicant's Representative has incurred or will incur as a result of the Applicant's instructions to procure any necessary consultancy support in order to tender the works contract; and
 - 5.3 preparation, negotiation and agreement of the consultancy and building contracts for the Project; and
 - 5.4 (where applicable) further investigations, fire testing or any other necessary physical investigation works connected with recommendations contained within any FRAEW commissioned by the Applicant in a form that adopts the methodology contained within the British Standards Institute Guidance Note titled PAS9980:2022 to address life safety fire risks concerning the Building; and
 - 5.5 any other costs reasonably and properly incurred by the Applicant in connection with the Project

but noting that any costs associated with installing new or replacement materials shall be specifically excluded



(together the **Activities**).

6. The Applicant or any entity the Applicant nominates to receive Pre-Tender Support on its behalf (**Funding Recipient**) has provided to Homes England evidence;
- (i) that the organisation is registered with a Client Money Protection Scheme (**CMPS**)¹ and holds a certificate of membership of the relevant CMPS scheme; and/or
 - (ii) of a separate legal trust fund established and maintained for the benefit of Leaseholders
- which is reasonably acceptable to Homes England to enable Homes England to make the relevant payment.
7. By accepting the Pre-Tender Support, the Applicant acknowledges, undertakes and represents that:
- 7.1 the Pre-Tender Support shall be applied solely to fund (in whole or in part) the cost of progressing the Activities, and not for any other purpose;
 - 7.2 the Applicant remains responsible for making any further payments necessary to cover any cost overruns or shortfalls incurred in relation to the Activities or any other eligible pre-tender activities for the Project. Eligible and reasonable additional costs can be claimed in the Applicant's subsequent Application for Full Funding (as defined below);
 - 7.3 where the Applicant proposes to meet any cost overrun or shortfall through service charge provisions, the Applicant should notify Homes England as soon as possible but for the avoidance of doubt no charge should be submitted to leaseholders in the Building where they hold a Qualifying Lease² and such charges are prohibited by the Building Safety Act 2022. In instances where the Applicant is the building owner, the terms of this PTS Agreement do not alter, substitute or reduce the Applicant's existing legal obligations imposed by statute as a building owner;
 - 7.4 the Applicant will procure that the Leaseholders and any of the residents at the Building (where different) are regularly informed and notified as to the Pre-Tender Support, the Project and progress in relation to it, the scope of the Pre-Tender Support, the timeframe for completion of the Activities and the Project and any Application for Full Funding;
 - 7.5 the Applicant shall not at any time:
 - 7.5.1 offer, give, agree to give or attempt to give to Homes England or any employee, agent, or other representative of Homes England any gift or consideration of any kind as an inducement or reward:
 - 7.5.1.1 for the Applicant or Homes England (as applicable) doing or not doing (or for having done or not having done) any act in relation to the Project; and/or

¹ A Client Protection Money Scheme (or CMPS) is a scheme that that has been approved by the Secretary of State under sections 133– 135 of the Housing and Planning Act 2016 (HPA 2016) that is designed to protect monies paid into a bank account maintained by a Property Agent (as defined in the HPA 2016).

² As defined by s.119 of the Building Safety Act 2022.



- 7.5.1.2 for the Applicant or Homes England (as applicable) showing or not showing favour or disfavour to any person in relation to the Project; and/or
- 7.5.1.3 for entering into any document relating to the Project in connection with which commission (or equivalent) has been paid or has been agreed to be paid by the Applicant or on the Applicant's behalf, or to the Applicant's knowledge, unless before the relevant document 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 Homes England, and Homes England has approved the same in writing; and/or
- 7.5.2 commit any offence:
- 7.5.2.1 under statutory requirements creating offences in respect of fraudulent acts including but not limited to the Bribery Act 2010
- 7.5.2.2 at common law in respect of acts in relation to the Project or this Application and/or
- 7.5.2.3 defrauding or attempting to defraud or conspiring to defraud Homes England;
- 7.6 the Applicant shall comply with all laws for the time being in force in England and Wales, and without prejudice to the generality of the foregoing:
- 7.6.1 comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 7.6.2 acknowledge that Homes England is under a duty under section 149 of the Equality Act 2010 to demonstrate it has paid due regard to the need to:
- 7.6.2.1 eliminate unlawful discrimination and harassment;
- 7.6.2.2 advance equality of opportunity between groups who share protected characteristics (including include: age, race, gender, disability, religion or belief, sexual orientation, gender reassignment) and those that do not, in particular, minimise disadvantage suffered by such groups; taking steps to meet the needs of such groups that are different from the needs of others; encouraging such groups to participate in activity in which their participation is disproportionately low;
- 7.6.2.3 foster good relations between people who share a protected characteristic and those that do not; and
- 7.6.3 in undertaking any activity concerning the Project, assist and cooperate with Homes England where possible in satisfying its duty referred to in paragraph 7.6.2.
- 7.7 the confirmation of the Pre-Tender Support does not in any way confirm that the Applicant's application to the Cladding Safety Scheme for full funding for the Project (**Application for Full Funding**) would be successful, nor does it bind Homes England to accept, consider, determine or further consult in relation to the Applicant's Application for Full Funding;



- 7.8 the Applicant will cooperate fully with Homes England in relation to the Applicant's Application for Full Funding and pay due regard and attention to any recommendations made by any consultants that Homes England appoint to assist the Applicant in connection with the Applicant's Application for Full Funding or in relation to the delivery of the Project (a Client Side Adviser (**CSA**)). This includes providing any information that Homes England or the CSA, acting reasonably, may request; and
- 7.9 the Applicant shall submit the Applicant's application for Full Funding promptly and in any event within 5 months of completion of this PTS Agreement. If the Applicant's Application is likely to take longer than this, the Applicant can agree a revised timetable with Homes England based on a realistic but ambitious project delivery programme plan. Agreement from Homes England to a revised timetable will not be unreasonably withheld. The Applicant must also continue to keep Homes England fully informed about any changes to the timetable within the agreed programme plan. Failure to do so may result in the withdrawal of Pre-Tender Support.
8. Any undrawn Pre-Tender Support may be reduced, suspended or withdrawn by notice from Homes England to the Applicant, and/or any Pre-Tender Support advanced to the Applicant will, subject to paragraph 8, be required to be repaid by the Applicant within 10 working days of demand by Homes England (a working day being any day (other than a Saturday or Sunday) on which banks are open for normal banking business and excluding public holidays), if :
- 8.1 the Applicant does not comply with any undertaking given by the Applicant under this PTS Agreement; or
- 8.2 any undertaking, declaration, representation or statement made or deemed to be made by the Applicant in this PTS Agreement, or the Application or any other document delivered by the Applicant or on the Applicant's behalf under or in connection with this PTS Agreement is or proves to have been incomplete, untrue or misleading in any material respect when made or deemed to be made PROVIDED THAT where any information, documentation or certification supplied prior to the coming into force of the Building Safety Act 2022 is rendered incomplete, untrue or misleading due to the coming into force of the Building Safety Act 2022 Homes England shall not be entitled to use this in order to require any monies advanced to be repaid; or
- 8.3 the Applicant:
- 8.3.1 is or becomes unable or admits inability to pay the Applicant's debts as they fall due;
- 8.3.2 is deemed to, or is declared to, be unable to pay the Applicant's debts under applicable law;
- 8.3.3 suspends or threatens to suspend making payments on any of the Applicant's debts; and
- 8.3.4 by reason of actual or anticipated financial difficulties, commences negotiations with one or more of the Applicant's creditors with a view to rescheduling any of the Applicant's indebtedness; or
- 8.4 a moratorium is declared in respect of any the Applicant's indebtedness; or
- 8.5 any corporate action, legal proceedings or other procedure or step is taken in relation to:
- 8.5.1 the suspension of the Applicant's payments, a moratorium of any of the Applicant's indebtedness, or the Applicant's winding-up, dissolution, administration or
- 8.5.2 reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); or



- 8.5.3 a composition, compromise, assignment or arrangement with any of the Applicant's creditors; or
- 8.6 a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of the Applicant or any of the Applicant's assets; or
- 8.7 any security over any of the Applicant's assets is enforced, or any analogous procedure or step is taken in any jurisdiction; or
- 8.8 any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any one or more of the Applicant's assets and is not discharged within 21 days; or
- 8.9 the Applicant breaches the terms and conditions of the grant funding agreement that the Applicant enters into with Homes England in the event that the Applicant's Application for Full Funding is successful (the **Agreement**), and Homes England consequently recovers all or part of the grant funding made available pursuant to the Agreement, and/or terminates the Agreement, in either case in accordance with the terms of the Agreement.
9. Notwithstanding the provisions of paragraph 7.9 and paragraph 8, the Applicant shall not be required to repay any amount of the Pre-Tender Support advanced to the Applicant:
- 9.1 which has been validly utilised by the Applicant for the purpose of paying for any Activities (whether specified in the Application or otherwise) as assessed and confirmed by Homes England or any appropriate representative duly authorised on its behalf in their absolute discretion; or
- 9.2 to which the Applicant is otherwise validly committed under a contract in relation to such Activities completed upon the happening of a relevant circumstance referred to in paragraph 8 but remaining unpaid by the Applicant as assessed and confirmed by Homes England or any appropriate representative duly authorised on its behalf in their absolute discretion to the extent that none of the circumstances in paragraph 8 apply and such parts of the Pre-Tender Support being together the (**Utilised Pre-Tender Support**).
10. Notwithstanding the provisions of paragraph 7, the Applicant may be required to repay any Pre-Tender Support advanced to the Applicant in circumstances where (in the reasonable opinion of Homes England):
- 10.1 any part of the Utilised Pre-Tender Support has not been spent on Activities;
- 10.2 any part of the Utilised Pre-Tender Support has been misappropriated;
- 10.3 the Applicant has carried out any form of illegal activity in relation to the Project; or
- 10.4 the Applicant has committed a Prohibited Act.
11. Where any requirement to repay Pre-Tender Support previously provided to the Applicant under the terms of this PTS Agreement arises, the Applicant shall (to the extent that Homes England require) use all prompt, reasonable and commercially prudent endeavours to recover any Pre-Tender Support previously provided to the Applicant pursuant to the terms of this PTS Agreement from any contractual counter-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 Homes England to achieve this objective.
12. In paragraphs 7, 8, 9, 10 and 11:



- 12.1 "Prohibited Act" means a breach by the Applicant of its obligations under paragraph 7.5 of this PTS Agreement; and
- 12.2 references to the "Applicant" include, where relevant and the context admits or requires, reference to the Funding Recipient.
13. In paragraph 14, "**Agreement Information**" means (i) this PTS Agreement in its entirety and (ii) data extracted from the claims made under this PTS Agreement which shall consist of the Applicant's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the claim amount.
14. Homes England may publish the Agreement Information to the general public and in its absolute discretion redact all or part of the Agreement Information prior to its publication. In so doing and in its absolute discretion Homes England may take account of the exemptions/exceptions that would be available in relation to information requested under the Freedom of Information Act 2000. Homes England may in its absolute discretion consult with the Applicant regarding any redactions to the Agreement Information to be published pursuant to this paragraph 14. Homes England shall make the final decision regarding publication and/or redaction of the Agreement Information.
15. If Homes England becomes entitled to exercise its rights under this PTS Agreement in respect of any breach hereof it may nevertheless decide not to exercise those rights, or not to exercise them to the fullest extent possible, or to delay in exercising those rights. Any decision not to exercise Homes England's rights under this PTS Agreement, or to exercise them only partially or to delay in exercising them, may be made on conditions which will be notified to the Applicant provided always that any such decision by Homes England shall not prevent the subsequent enforcement of any subsequent breach of that provision, and shall not be deemed to be a waiver of any subsequent breach of that or any other provisions.
16. The Applicant will be liable for and indemnify and keep indemnified Homes England against any loss or damage incurred and any injury (including death) suffered and all actions, costs, demands, proceedings, damages, charges and expenses whatsoever arising in connection with the management (including financial management) and carrying out of the Project to the extent that such actions, costs, demands, proceedings, damages, charges and expenses are due to the Applicant's negligence or default in carrying out the obligations as set out in this PTS Agreement and schedule to it provided that:
- 16.1 actions, costs, demands, proceedings, damages, charges and expenses may only be recovered pursuant to this paragraph 16 to the extent that they could not have been avoided or reduced by Homes England taking reasonable steps to reduce or avoid them; and
- 16.2 for the purposes of any relevant limitation period time shall start running from the date of the negligence or default relied upon.
17. Homes England 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.
18. In this PTS Agreement "in writing" means by letter or by electronic mail provided that electronic mail shall be made to the email address for the Applicant or Homes England, as relevant, as specified in the signature blocks below or such alternative email address as may be supplied to the other party by not less than five working days' notice.



19. This PTS Agreement and any dispute or claim arising out of or in connection with it (including any non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and each of the parties submits to the exclusive jurisdiction of the English Courts.

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Homes
England

SCHEDULE 5

MEMORANDUM

[To be set out on Homes England headed notepaper]

Dear Applicant,

BUILDING: [INSERT BUILDING NAME]

HOMES ENGLAND UNIQUE REFERENCE ID: [INSERT APPLICATION NUMBER]

This notice is given pursuant to a grant funding agreement dated [●] made between The Homes and Communities Agency (trading as Homes England) (1) and [●] **[INSERT RE NAME]** (2) (the **GFA**).

Terms defined in the GFA shall have the same meanings when used in this letter unless otherwise defined in this letter.

Homes England hereby gives the Applicant notice in accordance with clause 1 of the GFA of the following:

- (1) that the value of the Maximum Sum is £[●] (exclusive of any VAT) subject to the terms of the GFA;
- (2) that the Start on Site Date is [●]; and
- (3) that the Required Completion Date is [●].

In order to give full legal effect to the provisions of this notice Homes England requires the Maximum Sum to be agreed by way of formal memorandum executed by both parties as a deed in form attached to this letter.

Yours faithfully

Homes & Communities Agency



Homes
England

MEMORANDUM

GFA Date:	[●]
Funder:	The Homes and Communities Agency (t/a Homes England)
Applicant:	[●]
Building:	[●]
Homes England Unique Reference:	[●]
Cost Consultant:	[●]
Maximum Sum:	[●]
Start on Site Date	[●]
Required Completion Date:	[●]

By executing this memorandum we each agree and declare that:

- (1) the Maximum Sum for the purposes of the GFA shall be £[●] (or such higher amount where Homes England has confirmed in writing that it is prepared to vary the Maximum Sum under the powers afforded to it in this Agreement); and
- (2) the Start on Site Date for the purposes of the GFA shall be [●]; and
- (3) the Required Completion Date for the purposes of the GFA shall be [●].

Signed by an authorised signatory of Homes England

Dated

Signed by an authorised Director Signatory of the Applicant

Dated



EXECUTION PAGE

(1) Funder

The common seal of the **HOMES**)

AND COMMUNITIES AGENCY was)

hereunto affixed in the presence of)

[INSERT NAME])

.....

Authorised Signatory

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EXECUTION PAGE

(2) Applicant

EXECUTED AS A DEED by **[INSERT]**)

[RE NAME] acting either by two Directors) **[INSERT NAME]** Director

or a Director and the Company Secretary)

[INSERT NAME] Director/ Secretary

OR

EXECUTED AS A DEED by **[INSERT]**)

[RE NAME] acting by a Director in the) **[INSERT NAME]** Director

presence of a witness:)

Witness Signature:

Print Name:

Witness Address:

.....

.....

.....

.....

Occupation:

E-mail Address: