



DATED 23 February 2020

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

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

**(3) 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED**

---

**GRANT FUNDING AGREEMENT  
in respect of 20:20 Block B Flats**

**Unsafe Cladding Remediation**

---



THIS AGREEMENT is made on the [ 23 ] day of [ February ] 2020.

BETWEEN:-

- (1) THE SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT(the "MHCLG");
- (2) HOMES AND COMMUNITIES AGENCY (TRADING AS HOMES ENGLAND) ("Homes England"); and
- (3) 20:20 HOUSE (RESIDENTIAL MANAGEMENT) LIMITED (company number 06770847) whose registered office is at Management Office Twenty Twenty, Skinner Lane, Leeds, LS7 1BB (the "Applicant").

together the "Parties".

BACKGROUND:-

- (A) MHCLG issued the Prospectus in 2019 to invite applications for funding to assist the private sector to fund the removal and replacement of the Unsafe Cladding on residential buildings which are 18 metres or over, and which failed the large scale government commissioned tests in 2017 (the "Programme").
- (B) Homes England is responsible for the administration of the Programme and dispersal of funding made available under the Programme within England (other than Greater London) until the end of the Defects Liability Period at which point responsibility for the same will revert to MHCLG.
- (C) MHCLG has agreed to make the Funding available to the Applicant via Homes England on the terms of this Agreement.
- (D) MHCLG and Homes England have agreed to provide such Funding to the Applicant on the terms contained in this Agreement.

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 Standards Board

"ACM" means aluminium composite material



	means Aluminium Composite Material (ACM) cladding which shall include the components that are attached to the primary structure of a building to form a non-structural external surface. The cladding includes the weather-exposed outer layer or screen, fillers, insulation, membranes, brackets, cavity barriers, flashings, fixings, gaskets and sealants
"ACM Remedies"	has the meaning given to such term in <b>Clause 5.4.1</b>
"Applicant's Auditor"	means the Applicant's external independent auditor
"Applicant's Representative"	means the Applicant's Development Director or such other person agreed by Homes England to act as the Applicant's representative from time to time for the purposes of this Agreement
"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 First Funding Date Availability Period and the Second Funding Date Availability Period
"Application"	means the application(s) for the Project submitted by the Applicant through the Portal
"Base Interest Rate"	means the base rate of Barclays Bank plc or such other rate as Homes England determines (acting reasonably)
"Best Practice"	means such information as Homes England may determine in accordance with <b>Clause 11.4</b>
"Budgeted Costs"	means the 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, as anticipated in the Project Appraisal
"Building"	means all that leasehold land and buildings known as land and buildings on north side of Skinner Lane, Leeds being the land comprised within title number WYK829359 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
"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



**"Cladding System  
Guidance"**

means 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 and sealants

means the guidance note issued by MHCLG in February 2020 entitled 'Private Sector ACM Cladding Remediation Fund: Replacing your Building's Cladding System'

**"Claim"**

means a request for payment of the relevant Qualifying Expenditure in accordance with the terms of this Agreement

**"Claim Date"**

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

**"Class A1"**

means European Classification Class A1, classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30<sup>th</sup> March 2007 and amended in November 2009

**"Class A2-s1,d0"**

means European Classification A2-s1, d0 classified in accordance with BS EN 13501-1:2007+A1:2009 entitled "Fire classification of construction products and building elements. Classification using test data from reaction to fire tests" (ISBN 978 0 580 59861 6) published by the British Standards Institution on 30<sup>th</sup> March 2007 and amended in November 2009

**"Client"**

means the individual defined as such under the CDM Regulations

**"Collateral Warranty"**

means a collateral warranty given by a Development Party in favour of MHCLG (and for the avoidance of doubt, including step-in rights in favour of MHCLG) in relation to the Project in form and substance satisfactory to Homes England

**"Commercial Unit"**

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

**"Confidential Information"**

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:-

- (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;

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

**"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

**"Contingency"**

means any sum described in the Project Appraisal submitted to Homes England prior to the first Funding Date as a contingency (all such sums being the "**Contingencies**")

**"Contractor"**

means a contractor (including a consultancy contractor) appointed by the Applicant for the delivery of Works

**"Controller"**

has the meaning given to that expression under the Data Protection Legislation

**"Cost Consultant"**

means Cardoe Martin, appointed by the Applicant or the Principal Contractor, being the person who is responsible for preparing the Final Account Document and being suitably qualified in accordance with Good Industry Practice

**"Cost Overrun"**

means the amount by which Homes England determines that the Projected Costs (excluding any amount of finance costs) exceed the Budgeted Costs (excluding any amount of finance costs) as set out in the Project Appraisal supplied to Homes England as a condition precedent under this Agreement on or before the first Funding Date

**"Data Protection Legislation"**

means all applicable Law relating to the Processing of Personal Data and privacy including without limitation (i) the General Data Protection Regulation (EU) 2016/679 (the GDPR); (ii) the Law Enforcement Directive (Directive (EU) 2016/680) (the LED) and any national implementing Laws; (iii) the Data Protection Act 2018; and (iv) 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 date on which the last required certificate is issued; and (if applicable)



	(b) in the case of any Works on which no Certificate of Practical Completion would be issued under the Works Contract, the date on which Homes England is satisfied that the last of those Works have been completed in accordance with this Agreement and the relevant Works Contract; and (in all cases
	(c) the date on which Building Control Sign-Off for all Works has been obtained , and if more than one Building Control Sign-Off is required the date on which the last required Building Control Sign-Off is obtained.
<b>"Declaration"</b>	means a declaration from a Leaseholder substantially in the form set out in part 1 of Schedule 5 and signed by a person authorised to bind that Leaseholder
<b>"Default Interest Rate"</b>	means interest at a rate per annum equal to two percentage points (2%) above the Base Interest Rate
<b>"Defects Liability Period"</b>	the period of 12 months following the issue of the Date of Practical Completion.
<b>"Defects Liability Period Expiry Date"</b>	means the date on which the Defects Liability Period expires
<b>"De Minimis Regulation"</b>	means Regulation (EU) No. 1407/2013
<b>"Design Party"</b>	means any professional consultant with material design responsibility for all or any material part of the Project
<b>"Determining Authority"</b>	means Leeds City Council or any statutory successor or Unitary Authority
<b>"Development Party"</b>	means the Contractor and any Design Party, in each case appointed by the Applicant
<b>"Disposal"</b>	means a disposal of the whole or any part of the Building, any Commercial Unit(s) or Residential Unit(s) whether by way of transfer of a freehold or leasehold interest or the grant of any legal or equitable estate or interest in such property (other than by way of grant of a legal charge or the grant of a licence not creating exclusive possession terminable on 3 months' notice or less).
<b>"Domestic Successor"</b>	means:
	(a) a body that takes over the functions of the EU Commission in the UK on the date of EU Exit
	(b) the relevant courts in England and Wales which take over the functions of the Court of Justice of the European Union in England and Wales of EU Exit
<b>"Duty of Care Deed"</b>	a duty of care deed for the benefit of MHCLG from the Cost Consultant



Ministry of Housing,  
Communities &  
Local Government

**"EIR Exception"**

Issued

means any applicable exemption to disclosure of information under the EIRs

**"EIRs"**

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

**"Environment"**

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

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

**"Environmental Law"**

means any applicable law or regulation which relates to:

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

**"EU Exit"**

the UK ceasing to be a member state of the European Union on 31 January 2020 and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time)

**"Event of Default"**

means each event set out in Schedule 1



**"Excluded Expenditure"**

Issued

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

- (a) any internal works;
- (b) the replacement of any windows;
- (c) any interim fire safety measures;
- (d) any other non-Cladding related costs;
- (e) ongoing revenue costs, such as the costs of interim fire safety measures; and
- (f) any structural works which are not directly related to the remediation of Unsafe Cladding

**"Exempted Information"**

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

**"Extension Event"**

means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Applicant has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government 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, bursting or overflowing of water tanks, apparatus



Issued

or pipes, ionising radiation,  
earthquakes, riot and civil  
commotion;

- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (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 dispute

generally affecting the house building industry or a significant sector of it;

- (k) the appointment of the Principal Contractor under any Works Contract to which it is a party has been terminated or any such Works Contract has been terminated;
- (l) any material failure by the Principal Contractor under the terms of any Works Contract which has the direct result of delaying 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; or
- (m) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any



unless:

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

<b>"FA"</b>	means the Finance Act 2004
<b>"FA Legislation"</b>	means Chapter 3 of Part 3 of the FA and the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) each as amended from time to time
<b>"Final Account Document"</b>	means a final account document certified by the Cost Consultant confirming the actual costs of the completed Works, including the costs of any agreed variations to the Works
<b>"First Claim"</b>	means the Claim to be made on the First Funding Date
<b>"First Funding Date"</b>	means the date on which the First Claim is, or is to be made
<b>"First Funding Availability Period"</b>	<b>Date</b> means in respect of the First Claim, the period from and including the date of this Agreement to and including the date which falls six months after the date of this Agreement..
<b>"FOIA Exemption"</b>	means any applicable exemption to disclosure of information under the FOIA
<b>"FOIA"</b>	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



		means approval by the Determining Authority or an Approved Inspector of all plans relating to the Works for which approval is necessary under the Building Regulations 2010 as supplemented by detailed technical guidance contained in supplementary guidance published by MHCLG titled 'Approved Documents' Parts A – P.
"Funding"		means the amounts of funding paid or to be paid to the Applicant pursuant to the terms of this Agreement
"Funding Date"		means a date on which Funding is to be paid to the Applicant
"General Data Protection Regulation and GDPR"		means Regulation (EU) 2016/679
"Good Industry Practice"		means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced person (engaged in the same type of undertaking as that of the Applicant and/or any Contractors (as applicable)) under the same or similar circumstances
"HMRC"		means Her Majesty's Revenue & Customs
"Homes Representative"	England	means such person or persons as Homes England may nominate to act as its representative from time to time for the purposes of this Agreement
"HS Act"		means the Health and Safety at Work etc. Act 1974
"Information"		means:-  (a) in relation to FOIA the meaning given under section 84 of FOIA and  (b) in relation to EIRs the meaning given under the definition of "environmental information" in section 2 of the EIRs
"Insolvent"		means unable to pay its debts as they fall due or being otherwise insolvent (within the meaning of s.123(1) of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual) or entering into any arrangement with creditors, or having a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar appointed, or having a possession or enforcement or any other similar process taken against it or any of its assets and Insolvency shall be interpreted accordingly



shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) whether registered or unregistered and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person

**"Interest"**

means interest accruing on the relevant amount at the Base Interest Rate from the date of receipt of that amount by the Applicant up to and excluding the date of payment by the Applicant to Homes England or after the Defects Liability Period Expiry Date, to MHCLG

**"Joint Controller"**

means where two or more Controllers jointly determine the purposes and means of processing

**"Law"**

mean any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation

**"Lease Documents"**

each lease of a Residential Unit or a Commercial Unit (a reference to a Lease Document is a reference to any of the lease documents)

**"Leaseholder"**

- (a) a person (other than the Applicant) that is a party to a Lease Document;
- (b) any person that controls any person (other than the Applicant) that is a party to a Lease Document;
- (c) any sub-lessees in respect of any Lease Document,

and "control" means the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise

**"Letter"**

means a letter drafted by and in the name of the MHCLG to be sent by the Applicant on behalf of the MHCLG to a Leaseholder in substantially the form set out in part 1 or part 2 (whichever is appropriate) of Schedule 6.

**"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;



- (a) Start on Site does not occur before the Start on Site Date; or
- (b) Practical Completion does not occur before the Required Completion Date, or Homes England (acting reasonably) forms the opinion that Practical Completion will not occur before the Required Completion Date

- (a) offering, giving, agreeing to give or attempting to give to the MHCLG or Homes England, or any employee, agent, or other representative of MHCLG or Homes England any



gift or consideration of any kind as an inducement or reward:

(i) for himself or MHCLG 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 MHCLG 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 MHCLG and Homes England and Homes England has approved the same in writing ; and/or

(c) committing any offence:

(i) under Statutory Requirements creating offences in respect of fraudulent acts including but not limited to the Bribery Act 2010;

(ii) at common law in respect of fraudulent acts in relation to any Project Document; and/or

(iii) defrauding or attempting to defraud or conspiring to defraud MHCLG or Homes England

**"Project"**

means the removal of the Unsafe Cladding on each of the Buildings and replacement with Cladding that is of Class A1 or Class A2-s1, d0 standard

**"Project Appraisal"**

means the project appraisal comprising the completion of the required templates and the provision of the required documentation and information relating to the Project including that referred to in Clause 5.1 (*Project Appraisal*) and to be supplied to Homes England in accordance with Schedule 3 (Conditions Precedent) (as the same may be updated or varied from time to time in accordance with Clause 5.1 (*Project Appraisal*) and Schedule 2 paragraph 1 (*Project Costs*))

**"Project Document"**

means this Agreement and the Works Contracts

**"Project Know-how"**

shall have the meaning set out in **Clause 11.1**

**"Project Monitor"**

means any chartered surveyor or project monitor appointed by Homes England in respect of the Project



means, at any time, the latest estimate by the Project Monitor of each of the items of costs and expenses and funding specified in the Budgeted Costs incurred and to be incurred

means the prospectus published by MHCLG on 18 July 2019.

means the reasonable costs which are capable of being capitalised and which relate to the removal and replacement of the Unsafe Cladding at each Building (including insulation) such as access (e.g. scaffolding or mast climber), removal and disposal of the Unsafe Cladding, replacement materials, labour and reasonable on-costs together with any VAT and as set out in the Project Appraisal which Homes England is satisfied have been or are likely to be reasonably and properly incurred by the Applicant for delivery of the Project and which do not include Excluded Expenditure

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

means any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local, the Ministry of Housing, Communities and Local Government, the National Audit Office, UK central Government, the Regulator of Social Housing (as constituted by s80A Housing and Regeneration Act 2008) any local authority the European Commission or any successor 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 MHCLG or Homes England

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

means 1 June 2021, subject to any amendment agreed by Homes England in accordance with Clause 5.5 from time to time

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

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

means the Claim to be made on the Second Funding Date

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



Ministry of Housing,  
Communities &  
Local Government

**"Second Funding Date  
Availability Period"**

Issued

means the period from and including the Date of Practical Completion to and including the date falling six months after the Date of Practical Completion.

**"Senior Officers"**

has the meaning given to that term in Clause 25.1

**"SGEI Agreement"**

means an agreement between Homes England and a Leaseholder that is a Registered Provider and signed by a person authorised to bind that Leaseholder

**"Site"**

means 20:20 Block B Flats registered at the Land Registry under title number WYK829359

**"Specifications"**

means the drawings, plans and specifications for the Project which have been supplied to Homes England via the Portal as a condition precedent under this Agreement before the First Funding Date, as they may be amended in accordance with this Agreement

**"Start on Site"**

means the date identified in the Portal on which:

(a) the Applicant and Contractor have entered into the Works Contract in respect of a Building for the installation of the replacement Cladding that is of Class A1 or Class A2-s1, d0 standard;

(b) the Contractor has taken possession of the relevant part of the Site; and

(c) the Works under the Works Contract for the installation of the replacement Cladding that is of Class A1 or Class A2-s1, d0 standard has commenced

**"Start on Site Date"**

means 16 November 2020, subject to any amendment agreed by Homes England in accordance with Clause 5.5 from time to time



	means
(a)	European Union State Aid laws (including without limitation under Article 107 and Article 108(3) of the Treaty on the Functioning of the European Union and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding);
(b)	any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972 including those that are saved or incorporated into law as a result of the European Union (Withdrawal) Act 2018; and/or
(c)	any legislation which is in force and/or applies (in England) on or after EU Exit which regulates (i) any aid funding assets or services or (ii) advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries.
"Statutory Deduction"	means the deduction 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
(b)	European directives or regulations and rules having the force of law in the United Kingdom and
(c)	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 <sup>th</sup> anniversary of the date of Practical Completion.
"Undertaking"	means a person that is engaged in economic activity (as defined in accordance with Article 107(1) of the Treaty on the Functioning of the European Union) in relation to all or part of the Building.
"Unutilised Sum"	has the meaning given to such term in Clause 4.5.4



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

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

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

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

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

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

- 1.2.1 any reference to this "**Agreement**" includes any subsequent variations and any supplemental agreement made from time to time by agreement between the Parties;
- 1.2.2 any reference to the "**MHCLG**", "**Homes England**", and/or the "**Applicant**" includes reference to any statutory successors;
- 1.2.3 words importing any gender include any other gender;
- 1.2.4 words in the singular include the plural and words in the plural include the singular;
- 1.2.5 the term "**person**" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.6 the words "include", "including" and "in particular" will be construed so as not to limit the generality of any words or expressions in connection with which they are used;
- 1.2.7 headings and the contents table are inserted for convenience only and will have no legal effect;
- 1.2.8 references in this Agreement to any Clause or Schedule without further designation will be construed as a reference to the Clause or Schedule to this Agreement;
- 1.2.9 the Schedules to this Agreement are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.2.10 in the event of a conflict the Clauses set out in the main body of this Agreement will take priority over the Schedules;



- 1.2.11 references to any statute or statutory provision in this Agreement will be deemed to refer to those provisions as replaced, amended, extended or re-enacted from time to time whether by instruments, orders, bye-laws, statute or by directive or regulation (which is, in the case of a directive or regulation, intended to have direct application within the United Kingdom and has been adopted by the Council of the European Communities) and all statutory instruments or orders made pursuant to it;
- 1.2.12 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted on or after EU Exit;
- 1.2.13 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;
- 1.2.14 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;
- 1.2.15 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;
- 1.2.16 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);
- 1.2.17 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;
- 1.2.18 in any case where the consent or approval of MHCLG or Homes England (or any officer of the MHCLG or Homes England) is required or a notice is to be given to the MHCLG or Homes England, such consent or approval or notice shall only be validly given if it is in writing;
- 1.2.19 an obligation to do anything includes an obligation to procure its being done;
- 1.2.20 any restriction includes an obligation not to permit infringement of the restriction;
- 1.2.21 unless a contrary intention is shown, any reference to the MHCLG and/or Homes England acting reasonably shall be interpreted as requiring the MHCLG and/or Homes England to act in a commercially reasonable manner;
- 1.2.22 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, and all other legislation of the European Union that is directly applicable to the United Kingdom;
- 1.2.23 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 MHCLG and/or Homes England shall, unless otherwise expressly stated



in this Agreement or agreed in writing by the MHCLG and/or Homes England, relieve the Applicant of any of its obligations under this Agreement or any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgment or knowledge or confer impose or imply any liability or responsibility on or on behalf of MHCLG and/or Homes England in respect of or in connection with the matter to or in relation to which approval, consent, examination or acknowledgment was given; and

- 1.2.24 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

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

## 3. THE APPLICANT'S REPRESENTATIONS AND WARRANTIES

- 3.1 As at the date of this Agreement and on the date of each Claim, and on each Funding Date (by reference to the facts and circumstances then pertaining) the Applicant makes the representations and warranties set out in **Clauses 3.2 to 3.6**.

### 3.2 Title

- 3.2.1 The Applicant warrants that:

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

### 3.3 Powers, vires and consents

- 3.3.1 The Applicant is duly incorporated or (where appropriate) otherwise validly exists under the law of England and Wales 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 constitutes 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 and will not become subject to any other obligation (whether resulting from a breach by it of any other agreement or otherwise) compliance with which will or is likely to have a Material Adverse Effect and/or affect adversely its ability to perform its obligations under this Agreement.

#### 3.4 Project success

- 3.4.1 The Applicant is not in default under any law or enactment or under any deed, agreement or other instrument or obligation to an extent that may affect adversely its ability to perform its obligations under this Agreement.
- 3.4.2 No litigation or administrative or arbitration proceeding before any court, tribunal, Government authority or arbitrator is presently taking place, pending or (to the knowledge, information and belief of the Applicant) threatened against, or against any of the assets of, the Applicant which might have a Material Adverse Effect.
- 3.4.3 The Applicant has made diligent enquiries and to the best of its knowledge, information and belief no person having any charge, lien, encumbrance or other form of security over the Building or the Site has enforced or given notice of its intention to enforce such security and the Applicant has not done or omitted to do anything which would or might reasonably be expected to cause any person to enforce or exercise its rights to enforce such security to the extent that this would affect the Applicant's ability to perform its obligations under this Agreement or the Works Contracts respectively.
- 3.4.4 All Consents required for the Works to be commenced have been obtained and not withdrawn.
- 3.4.5 The Applicant is not aware, after due enquiry, of anything which materially threatens the success of the Project or the completion of this Agreement.



- 3.4.6 The Applicant has full legal control of the Building and has sufficient rights of access to the Site (if different) to carry out the Works and to enable Practical Completion of all Works.
- 3.4.7 The Site or Building is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Works or achieve Practical Completion of all Works.
- 3.4.8 The Applicant shall (and shall procure that each Contractor shall) in carrying out Works comply with the provisions of the Considerate Constructors Scheme save that where there is any conflict between the provisions of this Agreement and the provisions of such scheme the provisions of this Agreement shall prevail.
- 3.4.9 The Applicant shall ensure (and shall take all reasonable steps to satisfy Homes England that) its employees and all Contractors employed or engaged in connection with the Project are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Works and Practical Completion of the Project in accordance with the Project Documents.

### 3.5 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.

### 3.6 Information

- 3.6.1 All information, documents and accounts of the Applicant submitted to Homes England for its appraisal of the Project for the purpose of this Agreement are true and accurate and (other than those it has notified Homes England of in writing and Homes England has approved) and no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any respect and that there has been no material adverse change in the business, assets, operations or prospects of the Applicant since such information documents and accounts were provided.
- 3.6.2 The Applicant has disclosed to MHCLG and Homes England all information which would or might reasonably be thought to influence MHCLG and Homes England in awarding the Funding to the Applicant or the amount of the Funding or otherwise contracting with the Applicant under the terms of this Agreement.
- 3.6.3 The Applicant will promptly provide to Homes England (and after the Defects Liability Period Expiry Date, to MHCLG) any information which Homes England or MHCLG or any Regulatory Body may request in order to satisfy itself that it has complied with the provisions of this **Clause 3**.
- 3.6.4 The Applicant must at the request of Homes England or MHCLG co-operate with all reasonable requests for information to assist in the monitoring of compliance with the terms of this Agreement.



#### 4. PAYMENT OF FUNDING

##### 4.1 Pre-Conditions of Funding

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

##### 4.2 Mechanics and Payment of Funding

- 4.2.1 Each Claim for Funding will not be regarded as having been validly made by the Applicant unless:-
  - (a) it is submitted via the Portal;
  - (b) it relates to Qualifying Expenditure for which the Applicant has not submitted any other Claim or received any other funding;
  - (c) the proposed Claim Date is a Working Day within the relevant Availability Period;
  - (d) it is not for an amount which (if paid) would make the amount of Funding paid to the Applicant exceed the Maximum Sum; and
  - (e) where the Applicant is or has a managing agent and such Applicant or managing agent is responsible for delivering services under the relevant Lease Documents, it makes available to Homes England detail of such agent's accounts, together with confirmation that such accounts are registered with the Client Money Protection Scheme to enable Homes England to make the payment;
  - (f) the costs to be financed by the proposed Funding:
    - (i) are Qualifying Expenditure;
    - (ii) are included in the Project Appraisal;
    - (iii) are or will be properly incurred in accordance with the Project Documents (including without limitation, the payment schedule in the Works Contract);
    - (iv) include such amount that is to be paid in respect of VAT; and
    - (v) have not been the subject of a previous Claim under this Clause 4.2.1;
  - (g) there are no outstanding unfunded Cost Overruns;
  - (h) the timing, costs and completion of the Works are in all material respects in accordance with the Project Documents and the Project Appraisal;



- (i) the Applicant has sufficient funding available to it to enable it to complete the Works and to pay all Budgeted Costs envisaged in the Project Appraisal (including any Excluded Expenditure);
- (j) in respect of the first Claim for Funding only, the Applicant confirms that it has informed the Leaseholders of the proposed Start on Site Date at least two weeks prior to such date;
- (k) any Claim made on the First Funding Date shall be no more than £353,257.86 (or such other amount as may be agreed in writing by Homes England as being the amount that may be made available on the First Funding Date);
- (l) in respect of a Claim made on the Second Funding Date:
- (i) Home England has received evidence satisfactory to it that the Date of Practical Completion has occurred;
  - (ii) Homes England has received a copy of the Final Account Document;
  - (iii) Home England has received a copy of the payment certificate signed by the Applicant's contract administrator certifying the payment due to the Principal Contractor at Practical Completion; and
  - (iv) shall be in the amount of £88,314.47 (or such other amount as may be agreed in writing by Homes England as being the amount that may be made available on the Second Funding Date);
- (m) in respect of any other Claim made with the prior written consent of Homes England (such consent to be granted in Homes England's absolute discretion), such other documentation and information that Homes England may require.

- 4.2.2 Provided that no Event of Default has occurred and is continuing on the proposed Funding Date, and subject to Clause 4.1, Homes England will pay Funding to the Applicant in respect of that part of the Qualifying Expenditure within 10 Working Days of Homes England being satisfied that the Claim is valid and meets the requirements of Clause 4.2.1.
- 4.2.3 The Applicant may not submit more than two Claims without the prior written consent of Homes England (such consent to be granted in Homes England' absolute discretion).

#### 4.3 Use of Funding

- 4.3.1 The Applicant undertakes and warrants to MHCLG and Homes England that:
- (a) the Funding will be used by the Applicant for Qualifying Expenditure only;
  - (b) in discharging its obligations under this Agreement the Applicant must act at all times with the utmost of good faith and co-operation with MHCLG and Homes England with the intent to deliver the Project and with proper regard to the need for propriety, value for money and efficiency in the use of public money;
  - (c) any Funding paid to the Applicant is agreed to take effect as a payment in lieu of service charge payments which would otherwise ordinarily be required to be paid by Leaseholders in respect of the Works, by virtue of payment obligations towards



service charge liabilities contained within Lease Documents held by Leaseholders;

- (d) the Applicant will record in its service charge accounts for each Leaseholder a credit in respect of the apportionment of Funding provided for the Works as applies to that same Leaseholder (and the Applicant shall notify each Leaseholder of the service charge contribution for the Works together with the amount Homes England has contributed). The Applicant shall only seek to raise a service charge payment from a Leaseholder in respect of the Works if and to the extent that the Leaseholder's service charge contribution exceeds Homes England's contribution (the apportionment of Funding provided for that Leaseholder). Without prejudice to Clause 6.5, if any Leaseholder has paid a service charge contribution to the Applicant that is subsequently refinanced (in whole or in part) by the Funding, the Applicant shall promptly on receipt of the Funding notify each Leaseholder and reimburse each Leaseholder (by way of payment into an account specified by the relevant Leaseholder) the amount of its refinanced service charge contribution. Each Leaseholder 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) 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 was not expended by the Applicant on Qualifying Expenditure ("Non-Qualifying Expenditure" the Applicant will immediately on Homes England's written demand pay to Homes England (or at the direction of Homes England, MHCLG) an amount equal to the Non-Qualifying Expenditure plus Interest thereon.
- 4.4.2 Homes England and MHCLG may vary or withhold any or all of the payments of Funding under this Agreement and/or require payment of an amount equal to any or all Funding already paid to the extent that:-
  - (a) repayment or recovery is required under or by virtue of any State Aid Law or any Statutory Requirement; and/or
  - (b) Homes England or MHCLG is otherwise required to repay or recover such Funding in whole or in part by or to the European Commission (or a Domestic Successor) or the Court of Justice of the European Union (or a Domestic Successor) or any domestic UK Court or any other central government body.

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

- 4.4.3 If a payment is required from the Applicant as a consequence of a breach of the requirements of the De Minimis Regulation in respect of a Leaseholder, the Applicant shall take all necessary action to recover the amount to be paid from the relevant Leaseholder.



4.5      **Maximum Sum**

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

- (a)      if the Applicant accepts an offer of any other funding and/or finance which relate to the Project which shall include without limitation:
  - (i)      any other public sector finance; or
  - (ii)     any amount recovered pursuant to any litigation and/or claim relating to the installation and/or manufacture of the Unsafe Cladding installed on the Building or any litigation and/or claim relating to the specification and installation of the Unsafe Cladding on the Building.
- (b)      if the Qualifying Expenditure incurred by the Applicant is lower than the Maximum Sum; or
- (c)      to ensure that the amount of finance to be provided under this Agreement complies with State Aid Law and any applicable Statutory Requirements.

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:

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

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

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

**5. THE APPLICANT'S DELIVERY OBLIGATIONS**

**5.1 Project Appraisal**



- 5.1.1 The Applicant must provide to Homes England a Project Appraisal in relation to the Project in accordance with the terms of this Agreement, including the following information:
- (a) the Specifications, the Project Consents and any other information relating to the Development; and
  - (b) a construction programme, together with a budget and cashflow projection showing the anticipated costs and expenses (including any VAT in respect thereof) of the Project, a breakdown of how those costs will be incurred on a monthly basis and indicating the stage the Project should have reached on a monthly basis (where applicable), and any Contingencies.
- 5.1.2 Subject to Clause 5.1.3 below, the Applicant must not agree to any amendment or waiver of, or variation to, any Project Document, the Project Appraisal or the Specifications.
- 5.1.3 The Applicant is permitted to (provide that in each case, this is in consultation in advance with Homes England):
- (a) make variations to the Specifications and the Project Documents where required as a matter of Environmental Law, building or fire safety regulations; and
  - (b) make amendments to the Project Appraisal, the Specifications and the Project Documents provided that:
    - (i) such amendments are agreed by Homes England, acting reasonably;
    - (ii) such amendment will not result in a material adverse impact on the Works;
    - (iii) 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;
    - (iv) no Event of Default will be or is likely to be outstanding as a result of the amendment; and
    - (v) the amendment shall not breach any term of any Lease Document,
- 5.1.4 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).
- 5.1.5 The Applicant shall be responsible for meeting 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 when due.
- 5.1.6 The Applicant shall 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.
- 5.2.2 The Applicant will procure that the Start on Site will occur by the Start on Site Date and that Practical Completion will occur by the Required Completion Date.
- 5.2.3 The Applicant shall procure that the replacement Cladding is of Class A1 or Class A2-s1, d0 standard.
- 5.2.4 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 must not:
  - (a) appoint a Development Party or any other adviser, contractor, sub-contractor or consultant with respect to the Project who was involved in any way with the installation of the Unsafe 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.
- 5.3.3 The Applicant will procure that any Development Party appointed after the first Funding Date delivers a Collateral Warranty to Homes England in form and substance satisfactory to Homes England within 30 days of its appointment.
- 5.3.4 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.

**5.4 Litigation and Insurance Claims**

- 5.4.1 The Applicant shall use all reasonable endeavours to pursue reasonable remedies available to it in respect of the Unsafe Cladding on any Building (including, without limitation, any claims against insurers, any relevant contractors and/or manufacturers and/or warranty providers responsible for the manufacture and/ or installation of the Unsafe Cladding and/or with any liability in relation to the Building) ("**ACM Remedies**").
- 5.4.2 The Applicant will provide any information or evidence:
  - (a) requested by either MHCLG and/or Homes England prior to the Defects Liability Period Expiry Date; or
  - (b) requested by MHCLG after the Defects Liability Period Expiry Date,



(i) detailing any ACM Remedies identified and the pursuit of any ACM Remedies by the Applicant, or (ii) to allow MHCLG 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 ACM Remedies within 12 years of the date of this Agreement, it shall within 10 Working Days of receiving the same, notify the MHCLG (or at the direction of the MHCLG, Homes England) and provide MHCLG with all documentary evidence and/or information requested by MHCLG relating to the payment. The Applicant shall also promptly pay to MHCLG (or at the direction of the MHCLG or any successor body, Homes England) the lower of (i) the aggregate amount it has received in respect of the ACM Remedies and (ii) the amount which is referable to the Project and capped at the Maximum Sum 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, on request and on terms acceptable to MHCLG, assign all of its rights title and interest to any ACM Remedies to MHCLG, but nothing in this Clause 5.4.4 shall prevent the Applicant from pursuing their own claims and/or litigation. In respect of any ACM Remedies assigned to MHCLG, the Applicant shall provide all necessary assistance to MHCLG on an ongoing basis in order to allow MHCLG to pursue such ACM Remedies.

## 5.5 Time extensions

- 5.5.1 Where a Milestone Failure occurs or is in the opinion of Homes England reasonably likely to occur (having regard to any information provided pursuant to any of Clause 7 and Schedule 2 (*Applicant notification obligations*)) and:
- (i) where such failure is directly caused by an Extension Event Homes England shall extend the Start on Site Date and associated Required Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Extension Event; or
  - (ii) where such failure is not directly caused by an Extension Event, Homes England shall notify the Applicant of the Milestone Failure and Homes England and Applicant shall within fifteen (15) Working Days of such notification seek to agree a revised Start on Site Date and/or Required Completion Date and:
    - (1) where revised Start on Site Date and/or Required Completion Date are agreed within such period the Applicant shall promptly amend the Start on Site Date and/or the Required Completion Date accordingly on the Portal and Homes England shall electronically confirm the amendments through the Portal; or
    - (2) where revised Start on Site Date and/or Required Completion Date are not agreed within such period the Milestone Failure shall be treated as an Event of Default under paragraph 1.13 and/or paragraph 1.14 of Schedule 1.
- 5.5.2 Homes England shall not be obliged to extend the Start on Site Date and/or the Required Completion Date:
- (i) unless an Extension Event exists; or
  - (ii) in circumstances where such extension would (when taken individually or together with other extensions in relation to the Applicant) in Homes



England's reasonable opinion materially and adversely affect the delivery of the Project or (when taken individually or together with other extensions allowed in relation to the Applicant or other applicants under the Programme) materially and adversely affect Homes England's projected expenditure profile in relation to any year of the Programme and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant financial year.

- 5.5.3 Homes England shall not under any circumstances be required or obliged to extend the Start on Site Date beyond 16 November 2020 or the Required Completion Date beyond 1 June 2021 but may at its sole discretion elect to do so.

## 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 each and every Contractor shall at all times during the carrying out of the Works maintains full and proper insurance policies including but not limited to an "all risks" and public liability insurance policy covering the usual risks covered by this type of policy in respect of all buildings relating to the Project and all works undertaken on the Project and all unfixed goods and materials in connection with such works for (in each case) full reinstatement or replacement costs (including professional fees);
- (b) 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;
- (c) subject to Clause 6.3.2, if 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 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 the shortfall); and
- (d) 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 Where the Applicant reasonably believes that it would not be appropriate to rebuild or reinstate any Building on the Site or any works forming part of the Works or Project, following any damage or destruction it shall serve notice on Homes England and MHCLG



to explain its proposal and apply for a waiver of Clause 6.3.1(c) above. Homes England shall act reasonably in considering such request and if such waiver is granted, the Applicant shall pay to Homes England an amount that is equal to the amount that would have otherwise been used to procure the rebuilding, reinstatement or replacement of such building, work, goods or materials.

#### 6.4 State Aid

- 6.4.1 The Applicant agrees that it shall ring-fence the Project's income and costs on a separate not-for-profit coding on its accounts from its other commercial activities in order to prevent cross-subsidy to any of its economic activities.
- 6.4.2 In the event that a Leaseholder transfers its interest in a Lease Document to a transferee (a "New Leaseholder"), the Applicant shall promptly obtain a Declaration from the New Leaseholder and, in the event that the Applicant has at that time or after obtained an increase to the Maximum Sum in accordance with Clause 4.5.3, issue a Letter to each New Leaseholder and provide copies of such documents to Homes England.
- 6.4.3 The Applicant agrees to retain all Declarations for a period of 12 years from the date of this Agreement in order to establish that all the conditions laid down in the De Minimis Regulation have been complied with.

- 6.5 The Applicant shall not claim the cost of any Qualifying Expenditure funded by the Funding from any Leaseholder, and shall recompense Leaseholders for any expense they have incurred for paying for Works reimbursed by the Funding (including repaying any deductions from a sinking fund) with such recompense paid directly to the bank account of the relevant Leaseholder or such other appropriate payment method of the Leaseholder's choosing promptly following the first payment of Funding to the Applicant under this Agreement and by no later than the date of second payment of Funding under this Agreement. The Leaseholders may enforce the terms of this Clause 6.5 against the Applicant in the event that the Applicant breaches the terms of this Clause 6.5.

### 7. APPLICANT NOTIFICATION OBLIGATIONS

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

### 8. PROJECT MONITORING

#### 8.1 Provision of information by the Applicant

- 8.1.1 From the date of this Agreement until the Date of Practical Completion the Applicant will promptly following request made by Homes England provide to Homes England via the Portal:-
  - (a) such evidence to satisfy Homes England that a Claim relates to Qualifying Expenditure and that Qualifying Expenditure has been incurred;
  - (b) all such information to Homes England as Homes England has requested in respect of the progress and content of the Works, the Budgeted Costs, Costs Overruns, the Project Appraisal and the Project Documents, and any other evidence satisfactory to Homes England demonstrating that the Applicant has sufficient funding available to it to enable it to complete the Works and to pay all Budgeted Costs envisaged in the Project Appraisal (including any Excluded Expenditure); and
  - (c) with such other information as Homes England may reasonably require in writing in connection with the Works.



- 8.1.2 The Applicant will procure that any officers of the Applicant as may reasonably be requested by Homes England will attend such meetings as Homes England may reasonably request with Homes England and/or the Project Monitor and any third parties invited by Homes England to review progress in relation to 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 and MHCLG, their internal auditors or other duly authorised staff or agents or any Regulatory Body and will allow such persons to audit, inspect and take copies of documents relating to the Project. Homes England and the MHCLG will be entitled to interview employees of the Applicant to obtain oral and/or written explanations of documents, and Applicant shall ensure that such employees are made available for interview at reasonable times and on reasonable notice.
- 8.2.2 The Applicant will provide Homes England and MHCLG, 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 allow Homes England and MHCLG or persons authorised by either of them (including the Project Monitor) it 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 neither Homes England and MHCLG:-
- (a) does not impede or obstruct the progress of the Project;
  - (b) does not issue any instruction to a Contractor or any workman employed on the Site; and
  - (c) complies with any reasonable safety induction procedures of a Contractor on the Site.
- 8.2.4 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:-**

- (a) prior to the Defects Liability Period Expiry Date, Homes England; or
  - (b) on or after the Defects Liability Period Expiry Date,
- MHCLG or Homes England may by notice in writing to the Applicant:
- 9.1.1 require the Applicant to provide Homes England or MHCLG with a plan to remediate and/or mitigate the effects of the Event of Default in which case the Applicant will submit the plan to Homes England or MHCLG (as applicable) for approval within 10 Working Days of the request. The Applicant shall satisfactorily respond to any requests to amend the plan by Homes England or MHCLG (as applicable) within 10 Working Days of any such request and such response must be in a form approved by the requesting organisation.
- 9.1.2 suspend or alter the timing of the payment of Funding for such period as Homes England or MHCLG (as applicable) will determine; and/or



- 9.1.3 vary the Maximum Sum; and/or
- 9.1.4 require the Applicant to pay to MHCLG an amount equal to all or part of the Funding previously paid to the Applicant in which case the Applicant will immediately pay the sums required together with Interest thereon; and/or
- 9.1.5 (where the Event of Default is one falling under paragraphs 1.10 to 1.13 (inclusive) of Schedule 1), exercise its step-in rights under the Collateral Warranties in respect of an Applicant insolvency related event only; and/or
- 9.1.6 (where the nature, type and extent of the Event of Default merits it or if Homes England or MHCLG (as applicable) is not satisfied with any plan provided under **Clause 9.1** above) cancel the Funding made or to be made available under this Agreement in which case Homes England or MHCLG (as applicable) will have no obligation to provide any further Funding and will be entitled to require the Applicant to pay to MHCLG an amount equal to the Funding previously paid to the Applicant and the Applicant will immediately pay the sums required to be paid together with Interest thereon.

9.2 In relation to the exercise by either Homes England or MHCLG of its rights in this **Clause 9**:-

- 9.2.1 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;
- 9.2.2 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
- 9.2.3 Homes England may exercise its rights under **Clause 9** in respect of any Event of Default that arises prior to the date of the Defects Liability Period Expiry Date.

9.3 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).

10. **PUBLICITY**

**Marketing Material**

The Applicant shall not make any communication to the press or any journalist or broadcaster regarding the Project or the Agreement (or the performance of it by any Party) without the prior written approval of Homes England and MHCLG (which consent shall not be valid unless it is coupled with the approval of the MHCLG's Press Office and Homes England's Communications Team) save where such disclosure is in the overwhelming public interest (in which case disclosure will not be made without first allowing Homes England and MHCLG to make representations on such proposed disclosure).

11. **INTELLECTUAL PROPERTY RIGHTS**

11.1 Subject to **Clause 11.3**, the Applicant hereby grants to Homes England or MHCLG (as applicable) a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) (the "Licence") to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information which relate to the Project or which are derived from the Project (including the methods by which the Works were conducted) ("Project Know-how"), for any purpose either relating



to this Agreement or to the dissemination by Homes England or MHCLG (as applicable) of Best Practice and to enable Homes England or MHCLG (as applicable) to amend the Project Know-how or to combine with any other know-how as it thinks fit when compiling and publishing what it regards as Best Practice.

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

- 11.7.1 any intellectual property infringement claim or alleged infringement claim or other claim relating to Homes England's or MHCLG's use of the Project Know-How licensed (or purported to be licensed) under the Licence (including but not limited to all costs and damages of any kind which Homes England and/or MHCLG 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.

## 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 anything in relation to this Agreement, the Project or in the course of their other activities that may bring the standing of Homes England or MHCLG into disrepute or attract adverse publicity for Homes England or MHCLG.



## 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 another 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.
- 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; or
  - (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 the Confidential Information of the another Party.
- 13.1.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
  - (a) to enable the disclosing party to perform its obligations under this Agreement; or
  - (b) by any applicable Statutory Requirement or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIRs or the Freedom of Information Code of Practice and the Applicant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England or MHCLG 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 The Applicant will ensure that all Confidential Information obtained from Homes England and/or MHCLG under or in connection with this Agreement:-
  - (a) is given only to such of its employees, professional advisors, sub-contractors or consultants engaged in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
  - (b) is treated as confidential and not disclosed (without either Homes England's or MHCLG's prior written approval, (as applicable)) or used by any such staff or



professional advisors, sub-contractors or consultants otherwise than for the purposes of this Agreement,

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

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

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

provided that in disclosing information under **Clause 13.1.6(a) or 13.1.6(b)** Homes England and/or the MHCLG 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 and MHCLG are "FOIA Authorities" and:

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

13.2.2 The FOIA Authority in receipt of or to receive the RFI (**Relevant FOIA Authority**) shall be responsible for determining in its absolute discretion whether:



- (a) any Information is Exempted Information or remains Exempted Information; and/or
- (b) any Information is to be disclosed in response to a Request for Information;

and in no event shall any Party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.

- 13.2.3 Subject to the provisions of this Clause 13, each Party acknowledges that the Relevant FOIA Authority may disclose Information following consultation with the other Parties and having taken (or not taken, as the case may be) its views into account.
- 13.2.4 In the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Parties.
- 13.2.5 Each Party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall 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 two (2) 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 or information as may be requested by the Relevant FOIA Authority;
  - (c) provide the Relevant FOIA Authority with any data 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:

- 14.2.1 MHCLG and the Applicant are each an independent Controller in relation to the Personal Data they each Process under or in connection with this Agreement and nothing in this Agreement is intended to construe either such party as Joint Controllers with one another or a Processor of the other; and
- 14.2.2 Homes England act as the Processor of MHCLG in relation to Homes England's Processing of MHCLG Data and nothing in this Agreement is intended to construe either such party as Joint Controllers. The terms which shall govern the Processing by Homes England of MHCLG Data under this Agreement will be set out in a separate agreement between MHCLG and Homes England.



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

**15. FURTHER ASSURANCE**

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

**16. GOOD FAITH**

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

**17. INDEMNITY**

The Applicant will be liable for and will indemnify Homes England and MHCLG 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 MHCLG, or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Applicant of any of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England or MHCLG (other than any act or omission permitted to either such body under this Agreement).

**18. AUTHORITY OF PARTIES' REPRESENTATIVES**

**18.1 Authority of Homes England Representative and MHCLG's Representative**

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

**18.2 Authority of the Applicant's Representative**

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

**19. STATUS OF APPLICANT**

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

**20. ASSIGNMENT AND SUB-CONTRACTING**

- 20.1 Homes England and MHCLG 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 sell or transfer its interest in the Building without first procuring that the proposed transferee accedes to this Agreement and undertakes to perform the obligations of the Applicant under this Agreement, and shall enter into such documentation to give effect to such accession in form and substance satisfactory to Homes England and MHCLG.

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 MHCLG or Homes England under this Agreement is not consideration for any supply for Value Added Tax ("VAT") purposes whether by the Applicant or otherwise.

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

21.3 All sums or other consideration payable to or provided by the Applicant to Homes England or MHCLG 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 or MHCLG (as applicable) all the VAT payable upon the receipt of a valid VAT invoice.

## 22. CONSTRUCTION INDUSTRY TAX DEDUCTION SCHEME

22.1 Not later than 21 Working Days before:-

22.1.1 the date on which the first payment of Funding is due; or

22.1.2 where Regulation 6(4) of the Income Tax (Construction Industry Scheme) Regulations 2005 does not apply, the date on which any further payment of Funding is due;

the Applicant will provide Homes England with its unique taxpayer reference and any other information which Homes England may be required to give to HMRC in order to verify the Applicant's tax status.

22.2 Homes England will verify the Applicant's tax status with HMRC in accordance with the FA Legislation and shall notify the Applicant in writing at least 10 Working Days before the date on which the first payment of Funding is due to be made if it intends to make any Statutory Deduction and at what rate.

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 FA Legislation, at such rate as may be in force from time to time.

22.4 Where any error or omission has occurred in calculating or making the Statutory Deduction then:-

22.4.1 in the case of an over deduction, Homes England will correct that error by repayment of the sum over deducted to the Applicant; and

22.4.2 in the case of an under deduction, the Applicant shall correct that error or omission by repayment of the sum under deducted to Homes England (or at the direction of Homes England, MHCLG).

22.5 If compliance with the provisions of this Clause involves any Party in not complying with any other term of this Agreement then the provisions of this Clause will take precedence.



23. **NO FETTERING OF DISCRETION/STATUTORY POWERS**

Nothing contained in or carried out pursuant to this Agreement and no consents given by Homes England, MHCLG or the Applicant will unlawfully prejudice Homes England's, MHCLG'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 written notice required to be served under this Agreement will be served on the relevant Party specified by the Agreement and in the case of :-

- 24.1.1 MHCLG, by personal delivery or by sending it by recorded postal delivery and marked for the attention of the Director of the Building Safety Programme or to such other address as notified in writing by MHCLG to the other Parties;
- 24.1.2 Homes England, 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 Programme Manager, Private Sector Cladding Remediation Fund or such other addresses as notified in writing by Homes England to the other Parties
- 24.1.3 on the Applicant by personal delivery or by sending it by recorded postal delivery to the address specified in this Agreement and marked for the attention of Nick Massingham or such other addresses as notified in writing by the Applicant to the other Parties.

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

25. **DISPUTE RESOLUTION**

25.1 **Use of Senior Officers**

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 Homes England will be the Programme Manager, Private Sector Cladding Remediation Fund (or such other person notified to the Applicant by Homes England), of MHCLG will be the Director of Building Safety and of the Applicant will be Nick Massingham. 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**

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.

26. **RIGHTS OF THIRD PARTIES**

Save as specified in **Clause 4.3.1(d)** and **Clause 6.5**, nothing in this Agreement will confer any rights or obligations on any person who has not executed this Agreement nor will the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation



or release of its terms. The Parties agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that, save as specified in **Clause 4.3.1(d)** and **Clause 6.5**, they do not intend any person other than a Party to be able to enforce any term of this Agreement.

## 27. ENTIRE AGREEMENT

27.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties and supersede and replace any previous agreement, understanding, representation or arrangement of any nature between the Parties relating to the subject matter of this Agreement including, for the avoidance of doubt, the Prospectus.

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

## 28. COUNTERPARTS

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

## 29. SEVERANCE

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

## 30. NO WAIVER

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

## 31. DISCLAIMER

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

## 32. GOVERNING LAW

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

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

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

## 33. MISCELLANEOUS

33.1 Any approval by Homes England and/or MHCLG or any person on behalf of Homes England or MHCLG pursuant to this Agreement of any matter submitted by the Applicant for approval will not be



Ministry of Housing,  
Communities &  
Local Government

Issued

deemed to be an acceptance by Homes England and/or MHCLG of the correctness or suitability of the contents of the subject of the approval or consent.

- 33.2 Any approval by Homes England and/or MHCLG in respect of the provision of the Funding in principle shall not be construed as giving consent and/or approval to any other matter or document to be submitted by the Applicant in accordance with this Agreement.
- 33.3 Homes England and MHCLG 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 and/or MHCLG 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 undertaking given by it under this Agreement, which if capable of remedy, is not remedied within 30 days after the earlier of:
    - 1.2.1 Homes England and/or MHCLG (as applicable) 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 and/or any Principal Contractor does not have sufficient funds or resources available to complete the Project or the Works (in respect of the Applicant) or the relevant Works (in respect of a Contractor) in accordance with this Agreement and/or the relevant Works Contract;
  - 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; or
  - 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 or MHCLG notifying the Applicant of the breach and requesting remedy and/or such further negotiable period as Homes England, or MHCLG (in its sole discretion) agrees.
  - 1.7 the Applicant has committed any default (however described) or any other event entitling Homes England or MHCLG to terminate or demand payment of an amount equal to all or any amounts advanced to the Applicant under any other agreement.
  - 1.8 Any undertaking, declaration, representation 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 or statement; and
    - 1.8.2 receipt by the Applicant of written notice from Homes England and/or MHCLG 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;



Ministry of Housing,  
Communities &  
Local Government

Issued

- 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 2 weeks of the occurrence of any Event of Default specified in paragraphs 1.4 or 1.10 of this Schedule 1 and the Applicant appoints a new Principal Contractor within 2 months of the occurrence of any Event of Default or such further period as Homes England deems reasonable specified in paragraphs 1.4 or 1.10 of this Schedule 1.

- 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 Start on Site Date.
- 1.14 Subject to Clause 5.5, Practical Completion does not occur before the Required Completion Date, or Homes England (acting reasonably) forms the opinion that Practical Completion will not occur before the Required Completion Date.
- 1.15 The Funding is used by the Applicant for any purpose other than the funding of Qualifying Expenditure or the Applicant charges or attempts to charge Leaseholders a service charge in respect of the Works financed by the Funding or fails to reimburse Leaseholders in respect of costs of Works previously charged to Leaseholders as service charge.
- 1.16 Any of the events listed in paragraphs 1.10 to 1.12 inclusive occurs in relation to any Cost Consultant.
- 1.17 There is a material breach of the Duty of Care Deed which, if capable of remedy, has not been remedied within 30 days of Homes England or MHCLG notifying the Cost Consultant.



## 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 Works and/or Project. The Applicant will be required to provide an explanation for the increase and Homes England and/or MHCLG will decide whether to increase the Maximum Sum;
  - 1.1.3 on becoming aware of any event or circumstance which might have any Material Adverse Effect;
  - 1.1.4 on becoming aware of any proposed changes to the dates specified in Clause 5.2.2;
  - 1.1.5 on becoming aware of any event or circumstance which may attract adverse publicity to the Project and/or Homes England or MHCLG;
  - 1.1.6 on becoming aware of any claim brought against the Applicant and/or any Contractor relating to the Works and/or the Funding;
  - 1.1.7 of any intention to sell its interest in the Building and/or Site before completion of the Project. In the event of any such sale the Applicant must ensure the purchaser of its interest in the Site enters into a deed of accession in respect of this Agreement in a form and content approved by Homes England and/or MHCLG and separately covenants with Homes England and MHCLG 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.

#### 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); and
- 2.1.4 on the occurrence of an Event of Default.

### 3. **RESOLUTION**

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



SCHEDULE 3

CONDITIONS PRECEDENT

**1. The Applicant**

- (a) A copy of the constitutional documents of the Applicant.
- (b) A copy of a resolution of the board of directors / the members of the Applicant:
  - (i) approving the terms of, and the transactions contemplated by, the Agreement and resolving that it execute, deliver and perform its obligations under the Agreement;
  - (ii) authorising a specified person or persons to execute the Agreement; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Claim) to be signed and/or despatched by it under or in connection with this Agreement.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of the Applicant (signed by a director / member) confirming that its entry into the Agreement and the receipt of funds pursuant to the Agreement would not cause any funding or similar limit binding on it to be exceeded.
- (e) A certificate of an authorised signatory of the Applicant certifying that each copy document relating to it specified in this Schedule is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.
- (f) A structure chart setting out the ownership of the Applicant.
- (g) A schedule detailing the Leaseholders in the Building and the amount of each Leaseholder's responsibility for service charge.

**2. Inspection and survey**

A survey of the Cladding installed on the Building.

**3. Insurance**

- (a) Evidence that the insurance cover in force in respect of the Works complies with the terms of this Agreement.
- (b) Evidence of the extent and level of the professional indemnity insurance of each Development Party, including (without limitation), Cardoe Martin, Bell Safety Services, Ballymore Services and Gowling WLG.

**4. Building**

- (a) A report on the Building incorporating details of the Leaseholders prepared by Homes England's solicitors and addressed to Homes England and MHCLG.



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

**5. Development Documents**

- (a) The Budgeted Costs.
- (b) A copy of each Works Contract and any appointment of a Development Party, including (without limitation) Cardoe Martin, Wintech, International Fire Consultants Group, Ballymore Services and Gowling WLG.
- (c) A copy of the Specifications.
- (d) A Collateral Warranty from each Development Party.
- (e) Copies of the Consents.
- (f) A copy of the Full Plans Approval for the Project, including a copy of the Building Regulations Full Plans Certificate and evidence that the local authority have confirmed that planning approval is not required.
- (g) A report on the Project, the Contracts and ancillary documents (including the Development Parties, all plans, the Specifications, the Budgeted Costs and the development programme) prepared by the Project Monitor and addressed to Homes England and MHCLG. This report must include confirmation that all Consents have been obtained and any applicable judicial review period has passed.
- (h) A report on the Contracts and the Collateral Warranties prepared by the Project Monitor (with input from the legal advisers to Homes England in England) and addressed to Homes England and MHCLG.
- (i) Written confirmation from the Applicant and/or the fire engineer that the design of the Works meets the Cladding System Guidance, including that the materials and products meet the specifications of the Private Sector Cladding Remediation Fund specifically their fire classification in accordance with BS EN13501-1:2007+A1:2009. The confirmation given by the Applicant and/or the fire engineer may be checked by the Project Monitor.
- (j) The Project Appraisal.

**6. State Aid**

- (a) A Declaration from each Leaseholder.
- (b) A copy of each Letter sent by the Applicant to each Leaseholder.
- (c) Where the Applicant is a RP or a RP is a Leaseholder of the Applicant, a SGEI Agreement between MHCLG and Homes England and the RP.

**7. Other documents and evidence**

- (a) The Duty of Care Deed.
- (b) 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



Ministry of Housing,  
Communities &  
Local Government

Issued

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

OFFICER'S CERTIFICATE

To: The Secretary of State for Housing, Communities and Local Government (the "MHCLG") and the Homes and Communities Agency (trading as Homes England) ("Homes England")

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

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

**1. INCORPORATION AND CAPACITY**

The Applicant is [a company limited by shares/ other] and is validly existing under the laws of [England and Wales] and has full corporate capacity and power to enter into the Agreement and to exercise its rights and perform its obligations thereunder.

**2. CONSTITUTIONAL DOCUMENTS**

The constitutional documents of the Applicant (a certified copy of which are annexed at Schedule 1 to this Certificate) are in full force and effect at the date of this Certificate.

**3. AUTHORISATION AND EXECUTION**

All corporate and other action required by the Applicant's constitutional documents or by law to authorise the execution of the Agreement by the Applicant and the performance of its obligations thereunder has been duly taken and the Agreement has been duly executed and delivered on the Applicant's behalf.

The resolutions annexed at Schedule 2:

- 3.1 were passed at a properly convened, constituted and conducted meeting of [board of directors/ the members of the Applicant] at which all constitutional, statutory and other formalities were observed and such resolutions have not been amended or rescinded and are in full force and effect;
- 3.2 approve the terms of, and the transactions contemplated by, the Agreement and resolve that the Applicant execute, deliver and perform its obligations under the Agreement;
- 3.3 authorise a specified person or persons to execute the Agreement; and
- 3.4 authorise a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Claim) to be signed and/or despatched by it under or in connection with the Agreement.

**4. NO CONFLICT**

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

- 4.1 breach, or constitute an event of default under, any agreement, deed or instrument binding on the Applicant; or
- 4.2 breach any borrowing or other limit binding on or applicable to the Applicant pursuant to any statute, regulation, trust deed, contract or other agreement of whatsoever nature.



**5. AUTHORISED SIGNATORIES**

The signatures (annexed at Schedule 3 to this Certificate) are the specimen signatures of each person authorised on behalf of the Applicant to execute Agreement or to sign or send any document or notice under or in connection with the Agreement.

**6. CERTIFIED COPIES**

All copies annexed to this Certificate are correct, complete and up to date copies of the document to which they relate and are in full force and effect as at a date no later than the date of the Agreement.

**CERTIFICATION**

**7.** As an authorised signatory of the Applicant, I hereby certify that as the date hereof (save as disclosed in Schedule 4 to this Certificate):

- (a) all data or other information submitted on the Portal or each Claim and in each is accurate and the Applicant is not aware (having made reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate; and
- (b) all data or other information supplied to Homes England and MHCLG in connection with or related to the Project is accurate.

Signed: .....

Name: .....



SCHEDULE 5

FORM OF STATE AID DECLARATION

Declaration for Leaseholders

<https://www.gov.uk/government/publications/private-sector-acm-cladding-fund-state-aid-guidance-and-declaration>



SCHEDULE 6

FORM OF STATE AID FOLLOW-UP LETTER  
Part 1

Letter for Leaseholders who are Undertakings

[To be on headed notepaper of [the MHCLG]/[Homes England]]

Dear [xxx],

**Private Sector ACM Cladding Remediation Fund – De Minimis Aid offer letter**

On 9 May 2019 and 26 May 2020, the Government announced that it would pay for the replacement of, respectively, unsafe Aluminium Composite Material (ACM) cladding and unsafe non-Aluminium Composite Material (ACM) cladding on private sector high-rise residential buildings (**Unsafe Cladding**).

Your landlord has successfully applied on behalf of the leaseholders for government funding to pay for the replacement of the Unsafe Cladding on [X building].

In order for the Government to provide funding for replacing the cladding on your building we need to send you this letter to comply with rules on government providing state aid to private businesses. This is because, based on the State Aid Declaration you have provided and/or information provided by your landlord, you are an 'undertaking' for the purposes of the state aid rules. An undertaking in this context means anybody (including an individual, corporation, a partnership, a family trust, etc.) who either owns and lets out properties to others or uses the property in this building solely for the purposes of operating a business.

The grant funding to be provided by the Government to your landlord on your behalf is an award of de minimis State Aid under EC Regulation No 1407/2013<sup>1</sup> (de minimis aid regulation). The value of the de minimis aid made by way of the grant funding is £[XXXX]. This funding is being provided to meet your service charge obligations for the remediation of the Unsafe Cladding.

The amount of grant funding may change if the cost of the work necessary to remediate the cladding changes. If that happens we will need to recalculate the amount of grant we can pay on your behalf and we will write to you again to confirm any revised amount.

This de minimis aid funding awarded to you under this offer letter will be relevant if you wish to apply, or have applied, for any other de minimis aid. You must declare this amount of de minimis aid to any other aid awarding body who asks in the future for information from you on how much de minimis aid you have received. This includes any other buildings in which you are a leaseholder for which an application is being made to the Private Sector ACM Cladding Remediation Fund, in which case you should include the information in this letter in any state aid declaration you are asked to sign.

You do not need to respond to this letter. For the purposes of the de minimis aid regulation, you should keep this letter for 12 years and produce it on any request by the UK public authorities or the European Commission.

Your landlord will contact you to let you know when the works to replace cladding on the building are due to start and complete. Your landlord will be able to answer any questions about the works to replace the cladding measures to keep the building safe while the works are ongoing, or your landlord's application to the Private Sector ACM Cladding Remediation Fund.

Yours sincerely,

<sup>1</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352 24.12.13, p1.



## Part 2

### Letter for Leaseholders who are not Undertakings

*[To be on headed notepaper of [the MHCLG]/[Homes England]]*

Dear [xxx],

#### Private Sector ACM Cladding Remediation Fund – Provision of funding

On 9 May 2019 and 26 May 2020, the Government announced that it would pay for the replacement of, respectively, unsafe Aluminium Composite Material (ACM) cladding and unsafe non-Aluminium Composite Material (ACM) cladding on private sector high-rise residential buildings (**Unsafe Cladding**).

Your landlord has successfully applied on behalf of the leaseholders for government funding to pay for the replacement of the Unsafe Cladding on [X building]. The value of the funding which is being provided for your benefit is [£xxx]. This funding is being provided to meet your service charge obligations for the remediation of the U nsafe Cladding.

The amount of grant funding may change if the cost of the work necessary to remediate the cladding changes. If that happens we will need to recalculate the amount of grant we can pay on your behalf and we will write to you again to confirm any revised amount.

You do not need to take any further action following receipt of this letter.

Your landlord will contact you to let you know when the works to replace cladding on the building are due to start and complete. They will also be able to answer any questions about the works to replace the cladding, measures to keep the building safe while the works are ongoing, or your landlord's application to the Private Sector ACM Cladding Remediation Fund.

Yours sincerely,

The Building Safety Programme  
Ministry of Housing, Communities and Local Government



## SCHEDULE 7

### MINIMUM STANDARDS

REQUIREMENT	NOTES
A Principal Designer for the purposes on the Construction Design and Management Regulations 2015 (CDM Regs) must be named in the works contract and must meet the level of competence required by the regulations.	Evidence will need to be provided that the Principal Designer meets the required competency standards.
A Contract Administrator (CA), Employer's Agent (EA) or Architect must be named in the works contract and be responsible for administering the contract for the duration for the works. The CA, EA or Architect must be a member of a chartered professional body (i.e. RICS, RIBA, CIOB etc.) and have appropriate experience for the scale of the proposed works.	Evidence will need to be provided that the CA, EA or Architect meets the required competency standards.
The main contractor named within the works contract must be appointed as the Principal Contractor under the Construction Design and Management Regulations 2015 (CDM Regs). The Principal Contractor must meet the level of competence required by the regulations.	Evidence will need to be provided that the Principal Contractor meets the required competency standards.
For works contract values over £200,000 a Quantity Surveyor must be named within the contract and be responsible for contract valuations and cost monitoring. The Quantity Surveyor must be a member of a relevant chartered professional body (i.e. RICS).	Evidence will need to be provided that the Quantity Surveyor meets the required competency standards.
A defects rectification period of a minimum of 12 months must be included in the contract and a minimum of 2.5% of the overall works contract value must be held as retention for this period.	
A provision must be included in the works contract for a minimum of 5% of the overall works contract value to be held as retention from commencement to Practical Completion of the works.	
Adequate professional indemnity insurance must be stipulated in the works contract where the contractor has a responsibility for any design work.	The level of insurance sought will need to be provided and must reflect the scale of the works.
There must be an arbitration and / or adjudication procedure for dispute resolution included within the contract.	
The works contract must be executed as a deed.	



**EXECUTION PAGE**

**EXECUTED AS A DEED by the  
SECRETARY OF STATE FOR  
HOUSING, COMMUNITIES AND LOCAL  
GOVERNMENT**

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

**Authorised Signatory \_\_\_\_\_**

**Print Name: \_\_\_\_\_**

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

**Authorised Signatory**



## **THE APPLICANT**

**EXECUTED as a DEED by  
20:20 HOUSE (RESIDENTIAL  
MANAGEMENT) LIMITED  
acting by NICK MASSINGHAM  
a Director, in the presence of:**

Director

**Witness Signature**  
**Witness Name**  
**Witness Address**

Po3  
PHIL POSSON  
52, GLACIERWOOD RD.  
LS6 3NS

### **Witness Occupation**