

OFFER OF GRANT FOR []

HARP REFERENCE NUMBER: []

The Scottish Ministers, in exercise of their powers under sections 1 and 2 of the Housing (Scotland) Act 1988, hereby offer to give to [] (“the Grantee”) a grant of up to [] STERLING, payable over the Financial Year/s 20xx to 20xx, in connection with [], which is more particularly described in Part 1 of **SCHEDULE 1** (“the Project”) and is subject to the following terms and conditions:

1. Definitions and Interpretation

- 1.1. In these Conditions, the words and expressions set out in **SCHEDULE 3** shall have the meanings ascribed to them in that Schedule.
- 1.2. In these Conditions, unless the context otherwise requires, words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.3. The headings in these Conditions are for convenience only and shall not be read as forming part of the Conditions or be taken into account in their interpretation.
- 1.4. Except as otherwise provided in these Conditions, any reference to a clause, paragraph, sub-paragraph or schedule shall be a reference to a clause, paragraph, sub-paragraph or schedule of these Conditions. The schedules are intended to be contractual in nature. They form part of the Agreement and should be construed accordingly.
- 1.5. This Agreement shall not be varied except by an instrument in writing signed by both parties.

2. Purposes of the Grant

- 2.1. The Grant is made to enable the Grantee to carry out the Project.
- 2.2. The Grant shall only be used for the purposes of the Project and for no other purpose whatsoever.
- 2.3. In delivering the Project, the Grantee shall follow published Scottish Government guidance on the operation of the Affordable Housing Supply Programme, which may be updated from time to time.
- 2.4. No part of the Grant shall be used to fund any activity or material which is party political in intention, use, or presentation or appears to be designed to affect support for a political party.
- 2.5. The main objectives/ expected outcomes of the Grant are:

[For social rented units]

- The social rented Units specified in Part 1 of **SCHEDULE 1** will be let or available for letting under a Scottish Secure Tenancy or Short Scottish Secure Tenancy.

[For mid-market rented units]

- The mid-market rented Units specified in Part 1 of **SCHEDULE 1** will be leased to [] and will be let or available for letting at an Intermediate Rent under a Private Residential Tenancy.

Or

- The mid-market rented Units specified in Part 1 of **SCHEDULE 1** will be let or available for letting at an Intermediate Rent under a Private Residential Tenancy.

[For shared equity units]

- The shared equity Units specified in Part 1 of **SCHEDULE 1** will be marketed and administered in accordance with relevant current guidance.
- Without the prior written consent of the Scottish Ministers, the Grantee will not sell or otherwise dispose of the shared equity Units referred to in Part 1 of **SCHEDULE 1**, or any part thereof, otherwise than as part of a shared equity scheme.

2.6. The targets/ milestones against which progress in achieving the objectives/ expected outcomes shall be monitored are:

- When accepting this offer, the Grantee shall confirm to the Scottish Ministers in writing (a) the date upon which the Project is expected to start on site and (b) the Project's estimated date of completion.
- The Grantee will also notify the Scottish Ministers in writing of the actual date of works commencement on site within seven days of this taking place.

2.7. The eligible costs for which the Grant can be claimed are acquisition, works costs, professional fees, development costs, and Value Added Tax (subject to clause 2.8 below).

2.8. The eligible costs exclude any Value Added Tax (VAT) reclaimable by the Grantee.

2.9. In delivering the above Units, the Grantee should adopt fair working practices in line with the Scottish Government's Fair Work First approach – www.gov.scot/publications/fair-work-first-guidance-support-implementation/. In addition, the Grantee must make people who are working on the Project aware of the United Nations Convention on the Rights of the Child and children's rights.

3. Payment of Grant

3.1. The Grant shall be paid by the Scottish Ministers to the Grantee in accordance with the terms of **SCHEDULE 1** attached.

3.2. The Grantee shall within three months following the end of each Financial Year in respect of which the Grant has been paid submit to the Scottish Ministers a statement of compliance with the Conditions of the Grant using the form of words provided in **SCHEDULE 2**. The statement shall be signed by the Grantee's Director of Finance, Head of Internal Audit, or appropriate Chief Officer.

- 3.3. In the event that the amount of the Grant paid by the Scottish Ministers to the Grantee at any point in time is found to exceed the amount of the expenses reasonably and properly incurred by the Grantee in connection with the Project, the Grantee shall repay to the Scottish Ministers the amount of such excess within 14 days of receiving a written demand for it from or on behalf of the Scottish Ministers. In the event that the Grantee fails to pay such amount within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of two per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand from the date of the written demand until payment in full of both the sum and the interest.
- 3.4. The Scottish Ministers shall not be bound to pay to the Grantee, and the Grantee shall have no claim against the Scottish Ministers in respect of, any instalment of the Grant which has not been claimed by the Grantee by 31 March of the applicable Financial Year as set out in **SCHEDULE 1**, unless otherwise agreed in writing by the Scottish Ministers.

4. Inspection and Information

- 4.1. The Grantee shall provide a monthly profile of Project expenditure for the duration of the Project. Any change to the profile or to the overall costs of the Project, together with reasons for any such changes, should be immediately notified to the Scottish Ministers.
- 4.2. Revisions to targets/ milestones against which progress in achieving objectives/ outcomes are monitored shall be subject to the written agreement of the Scottish Ministers.
- 4.3. As soon as all of the homes in the Project have been certified as complete by the Project architect/ supervising officer and have been approved by the Local Authority for occupation, the Grantee shall (a) notify the Scottish Ministers and (b) forward a copy of the completion certificate to the Scottish Ministers.
- 4.4. The Grantee shall also provide any other information that the Scottish Ministers may reasonably require to satisfy themselves that the Project is consistent with the Agreement. The Grantee shall provide the Scottish Ministers with prompt access to any information they reasonably require to ensure compliance with these Conditions.
- 4.5. The Grantee shall keep and maintain, for a period of six years after the expenditure occurs, adequate and proper records and books of account recording all receipts and expenditure of monies paid to it by the Scottish Ministers by way of the Grant. The Grantee shall afford the Scottish Ministers, their representatives, the Auditor General for Scotland, his/ her representatives and such other persons as the Scottish Ministers may reasonably specify from time to time, such access to those records and books of account as may be required by them at any reasonable time in response to a written request for such access from the person seeking it. The Grantee shall provide such reasonable assistance and explanation as the person carrying out the inspection may from time to time require.

4.6. The Grantee must have robust safeguarding policies in place to protect vulnerable groups. The Grantee must also have in place clear processes which must be followed if it becomes aware of specific incidents, including referral to the relevant authorities where necessary. The Grantee must report all and any cases of suspected abuse or malpractice relating to anyone involved in delivery of the Project to the Scottish Ministers and the relevant authorities immediately. The Grantee must, upon request from the Scottish Ministers, provide copies of the safeguarding policies and procedures referred to in this clause.

4.7. In the event of the Grantee becoming aware of or suspecting:

- any irregular or fraudulent activity in relation to the Grant or Project, or any part of either of them; and/ or
- any safeguarding incident by or in respect of any person involved in the Project,

the Grantee shall immediately notify the Scottish Ministers of such activity or incident and provide such other information as the Scottish Ministers may reasonably require in relation to the impact on the Project and the use of the Grant. In so notifying the Scottish Ministers, the Grantee must also confirm that such irregular or fraudulent activity or safeguarding incident has been referred to the relevant regulatory or other authorities as appropriate, in line with any statutory duty. For the avoidance of doubt, in this Agreement, a "safeguarding incident" includes any incident of abuse or mistreatment of any vulnerable person.

4.8. The Grantee shall immediately inform the Scottish Ministers of any change in its constitution, for example, but not limited to, a change in status from one type of body corporate to another.

5. Acquisition Grant

5.1 Where part of the Grant is to be applied towards the purchase of the Subjects the Grantee will obtain vacant possession to the Subjects (unless otherwise agreed by the Scottish Ministers) and obtain delivery of a valid and marketable title to the Subjects and all necessary access thereto with clear searches in the property and personal registers for the prescriptive periods and in the Charges Register and Company File where necessary. The Grantee will confirm this to the Scottish Ministers through HARP within 14 days after payment of the Grant by the Scottish Ministers. If for any reason settlement of the purchase transaction is delayed after receipt of the Grant, the Grantee's solicitors shall place the purchase price in an interest bearing account. The Grant and any interest earned thereon will be immediately repaid to the Scottish Ministers if settlement does not take place within 14 days after payment of the Grant by the Scottish Ministers.

5.2 It is an essential Condition of this offer that there are no burdens, conditions, restrictions or servitudes affecting the Subjects which would adversely affect their development for the purpose proposed.

6. Confidentiality and Data Protection

6.1 The Grantee will respect the confidentiality of any commercially sensitive information that they have access to as a result of the Project.

6.2 Notwithstanding the above, the Grantee may disclose any information as required by law or judicial order. All information submitted to the Scottish Ministers may need to be disclosed and/ or published by the Scottish Ministers. Without prejudice to the foregoing generality, the Scottish Ministers may disclose information in compliance with the Freedom of Information (Scotland) Act 2002, any other law, or, as a consequence of judicial order, or order by any court or tribunal with the authority to order disclosure. Further, the Scottish Ministers may also disclose all information submitted to them to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland, in right of the Scottish Administration or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Scottish Ministers shall if they see fit disclose such information but are unable to impose any restriction upon the information that it provides to Members of the Scottish Parliament, or Members of the United Kingdom Parliament; such disclosure shall not be treated as a breach of this Agreement.

6.3 The Grantee shall ensure that all requirements of the Data Protection Laws are fulfilled in relation to the Project.

6.4 To comply with section 31(3) of the Public Services Reform (Scotland) Act 2010, the Scottish Ministers publish an annual statement of all payments over £25,000. In addition, in line with openness and transparency, the Scottish Government publishes a monthly report of all payments over £25,000. The Grantee should note that where a payment is made in excess of £25,000 there will be disclosure (in the form of the name of the payee, the date of the payment, the subject matter and the amount of grant) in both the monthly report and the annual Public Services Reform (Scotland) Act 2010 statement.

[Clause 7 to be deleted if grant is being awarded to deliver shared equity housing, and subsequent clauses renumbered.]

7. Disposal of Assets

7.1 The Grantee shall not, without prior written consent of the Scottish Ministers, which consent will not be unreasonably withheld, dispose of any asset funded, in part or in whole, with Grant funds. The Scottish Ministers shall be entitled to the proceeds of any disposal up to the value of the Grant. The Scottish Ministers shall also be entitled to the relevant proportion of any proceeds resulting from any provision included as a condition of sale. Recovery by the Scottish Ministers shall not be required where the value of the asset is less than £1,000.

7.2 Condition 7.1 does not apply to a disposal by way of security for a loan.

8. Publicity

8.1 The Grantee shall where reasonably practicable acknowledge in all publicity material relating to the Project the contribution of the Scottish Ministers to its costs. The Scottish Ministers may require to approve the form of such acknowledgement prior to its first publication.

8.2 The Scottish Ministers reserve the right to issue any press release or other public information about the Grant and/ or the Project.

8.3 The Grantee will ensure that a site sign board supplied by the Scottish Ministers will be displayed on the site of the Project from delivery to completion of the Project.

9. Intellectual Property Rights

The Grantee shall ensure that nothing contained in any materials produced or submitted to the Scottish Ministers by the Grantee or anyone acting on its behalf nor the reproduction of such materials shall constitute an infringement of any third party copyright or Intellectual Property Right and shall indemnify the Scottish Ministers against all actions, proceedings, claims and demands made by reason of any such infringement.

10. Default and Recovery etc. of Grant

10.1 The Scottish Ministers may re-assess, vary, make a deduction from, withhold, or require immediate repayment of the Grant or any part of it in the event that:

10.1.1 The Grantee commits a Default;

10.1.2 The Scottish Ministers consider that any change or departure from the purposes for which the Grant was awarded warrants an alteration in the amount of the Grant;

10.1.3 The Grantee fails to carry out the Project;

10.1.4 In the Scottish Ministers' opinion, progress on the Project is not satisfactory; or

10.1.5 In the Scottish Ministers' opinion, the future of the Project is in jeopardy.

10.2 If the Grant (or any part or condition thereof) does not comply with applicable Subsidy Control obligations, the Scottish Ministers may (a) require immediate repayment of the Grant or any part of it together with interest at such rate and on such basis as may be determined from time to time in accordance with law and (b) suspend any other grant payments to the Grantee until (a) is fulfilled. In the event that this Condition 10.2 applies to the extent that the Grant is to be repaid by the Grantee in full, this Agreement will terminate upon the Scottish Ministers confirming receipt of full repayment. Where a part of the Grant is required to be repaid under Condition 10.2, then the Scottish Ministers and the Grantee will agree, acting reasonably, which aspects of the Agreement will continue to apply having regard to the amount of Grant recovered, and the obligations directly relating to that part of the Grant.

10.3 The Scottish Ministers may withhold the payment of the Grant if at any time within the duration of the Agreement:

10.3.1 The Grantee passes a resolution that it be wound up, or a court makes an order that the Grantee be wound up, in either case otherwise than for the purposes of reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order or the Grantee is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

10.3.2 Where the Grantee is an individual, if a petition is presented for the Grantee's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Grantee; or the Grantee makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or

10.3.3 A receiver, manager, administrator or administrative receiver is appointed to the Grantee, or over all or any part of the Grantee's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver.

10.4 In the event that the Grantee becomes bound to pay any sum to the Scottish Ministers in terms of clause 10.1, the Grantee shall pay the Scottish Ministers the appropriate sum within 14 days of a written demand for it being given by or on behalf of the Scottish Ministers to the Grantee. In the event that the Grantee fails to pay the sum within the 14 day period, the Scottish Ministers shall be entitled to interest on the sum at the rate of two per cent per annum above the Bank of England base lending rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.

10.5 Notwithstanding the provisions of this clause 10, in the event that the Grantee is in breach of any of the Conditions, the Scottish Ministers may, provided that the breach is capable of a remedy, postpone the exercise of their rights to recover any sum from the Grantee in terms of clause 10 for such period as they see fit, and may give written notice to the Grantee requiring it to remedy the breach within such period as may be specified in the notice. In the event of the Grantee failing to remedy the breach within the period specified, the Grantee shall be bound to pay the sum to the Scottish Ministers in accordance with the foregoing provisions.

10.6 Any failure, omission or delay by the Scottish Ministers in exercising any right or remedy to which they are entitled by virtue of clauses 10.1 to 10.3 shall not be construed as a waiver of such right or remedy.

11. Assignment

The Grantee shall not be entitled to assign, sub-contract (other than for the delivery of the Project works) or otherwise transfer its rights or obligations under the Agreement without the prior written consent of the Scottish Ministers.

12. Corrupt Gifts and Payments of Commission

The Grantee shall ensure that its employees shall not breach the terms of the Bribery Act 2010 in relation to this or any other grant. The Grantee shall ensure that adequate controls are in place to prevent bribery.

13. Continuation of Conditions

With the exception of Condition 7, these Conditions shall continue to apply for a period of five years after the end of the Financial Year in which the final instalment of the Grant was paid.

14. Compliance with the Law

The Grantee shall ensure that, in relation to the Project, they and anyone acting on their behalf shall comply with the relevant law for the time being in force in Scotland.

15. Governing Law

This contract is governed by the Law of Scotland and the parties hereby prorogate to the exclusive jurisdiction of the Scottish Courts.

If you wish to accept the offer of this Grant on the whole terms and conditions as set out in the letter and annexed Schedules, you should sign and date both copies of the Grant Acceptance below and return one copy of the offer of Grant and Schedules to me at []. You should retain the second copy of the offer of Grant and Schedules for your own records.

Yours sincerely

GRANT ACCEPTANCE

On behalf of [] I accept the foregoing offer of Grant by the Scottish Ministers dated [] on the whole terms and conditions as set out in the letter and annexed Schedules. I confirm that [] is solvent. I confirm that I hold the relevant signing authority.

Signed:

[Director/ Company Secretary/ Authorised Signatory]

Print name:

Position in organisation of person signing:

Date:

Place of signing:

Signed:

[Witness]

Witness name:

Address:

Date:

Place of signing:

This is the schedule referred to in the foregoing Offer of Grant dated [].

SCHEDULE 1

PART 1: THE PROJECT

1. The Project will deliver the following affordable housing Units at []:
2. *x number* of the above Units will meet Section 7, Silver Level, of the 2011 Building Regulations in respect of Energy for Space Heating.

PART 2: PAYMENT OF GRANT

1. The total Grant of up to [] STERLING shall be payable by the Scottish Ministers to the Grantee over the Financial Year/s [20xx to 20xx]. The Grant for each Financial Year has been allocated as follows:
2. Claims and all relevant supporting information should be submitted through HARP.
3. On receipt of each claim (and any required documentation and information), the Scottish Ministers shall determine the amount of expenditure which they consider the Grantee has reasonably and properly incurred in connection with the Project having regard to that claim. The determination shall be based on the information provided by the Grantee in accordance with this Schedule. The Scottish Ministers shall use their best endeavours (but shall be under no obligation or duty) to pay the amount determined to the Grantee within 10 Business Days of receiving a claim and any required documentation and information relevant to the claim.
4. In order to facilitate the accrual of expenditure of the Grant for the relevant Financial Year the Grantee shall advise the Scottish Ministers, when requested to do so, of the amount of the Grant actually expended up to and including 31 March.

This is the schedule referred to in the foregoing Offer of Grant dated [].

SCHEDULE 2

STATEMENT OF COMPLIANCE WITH CONDITIONS OF GRANT

[Name of project]

This is to confirm that the grant claimed by [] in relation to the above project during the financial year ended 31 March [20xx] was properly due and was used for its intended purpose(s) in accordance with the terms and conditions of the Grant. This statement is supported by the records of [].

Signed:

Name in block capitals:

Position:

Date:

This is the schedule referred to in the foregoing Offer of Grant dated [].

SCHEDULE 3

DEFINITIONS

"Affordable Housing Supply Programme" means the programme administered by the Scottish Government to deliver social rented housing, homes for mid-market rent and homes for low cost home ownership;

"Agreement" means the agreement constituted by the Scottish Ministers' invitation to apply for a grant, the Grantee's application, these Conditions and the Grantee's acceptance of these Conditions;

"Broad Rental Market Area" means an area as defined in Paragraph 4 of Schedule 3B to the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997 (SI 1997/1995) as amended by the Rent Officers (Housing Benefit Functions) Amendment (No 2) Order 2008 (SI 2008/3156);

"Business Day" means any day which is not a Saturday, a Sunday or a bank or public holiday in Scotland;

"Conditions" means the grant conditions contained in this grant offer;

"Data Protection Laws" means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any regulatory body including the Data Protection Act 1998, the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR;

"Default" means:

- a) Any breach of the obligations of either party under this Agreement (including, but not limited to, any breach of any undertaking or warranty given under or in terms of this Agreement);
- b) Any failure to perform or the negligent performance of any obligation under this Agreement;
- c) Any breach of any legislation; or
- d) Any negligence or negligent or fraudulent mis-statement or misappropriation of Grant, or any other default,

in all cases by either party, its employees, agents or representatives;

"Financial Year" means a period from 1 April in one year until 31 March in the next;

"Grant" means the grant offered by the Scottish Ministers to the Grantee as specified in this grant offer as varied from time to time in accordance with these Conditions;

"Grantee" means the person, organisation or body to which the Grant will be payable as specified in these Conditions. Where two or more persons, organisations or bodies are the Grantee, references to the "Grantee" are to those persons, organisations or bodies collectively and their obligations under the Agreement are undertaken jointly and severally;

“**HARP**” means the Scottish Government’s Housing and Regeneration Programmes web-based system;

“**Intellectual Property Rights**” means all rights of ownership, including all copyrights and other intellectual property rights in books, leaflets and other printed and published materials in whatever form produced as part of the Project by or on behalf of the Grantee including all reports and any such published materials stored in or made available by means of an information technology system and the computer software relating thereto and all patents, trademarks, registered designs and other rights in the nature of intellectual property;

“**Intermediate Rent**” means, in relation to each property size in each Broad Rental Market Area, a rent for the Financial Year which is no more than (a) the level which is based on the figure provided in the month of November immediately prior to the commencement of the Financial Year by the Scottish Ministers as being the fiftieth percentile point of market rent levels for the property size in question in that Broad Rental Market Area, based on the data collated in respect of the previous year or (b) any other such rental level as may be considered reasonable for the property size in question in that Broad Rental Market Area which is higher than (a), provided such higher level has previously been agreed by the Scottish Ministers and the Local Authority in writing;

“**Local Authority**” means [], being incorporated under the Local Government etc (Scotland) Act 1994;

“**Payment**” means each of the payments specified in Schedule 1 hereto;

“**Project**” means the purpose for which the Grant has been awarded as described in the Offer of Grant, particularly Part 1 of **SCHEDULE 1**;

“**Subjects**” means the land on which the Project is to be situated;

“**Subsidy Control**” means the United Kingdom’s international commitments on subsidy control arising from, amongst others, the EU-UK Trade and Cooperation Agreement, World Trade Organisation Membership, and commitments arising from international treaties and agreements to which the United Kingdom is a party; and

“**Unit**” means each unit of housing in the Project.