

DATED

20[.].]

(1) BRECON BEACONS NATIONAL PARK AUTHORITY
(2) [] HOUSING AUTHORITY

**Service Level Agreement in relation to the distribution of funding collected
for affordable housing**

Geldards
law firm

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THIS AGREEMENT IS MADE ON 20[]

BETWEEN:

- (1) Brecon Beacons National Park Authority of Plas y FFynnon, Cambrian Way, Brecon LD3 7HP (“the National Park Authority”); and
- (2) [Name of Housing Authority] of [Address of Housing Authority] (“the Housing Authority”)

WHEREAS

- A The National Park Authority is the Local Planning Authority for that area of [Specify area] that is the Brecon Beacons National Park.
- B The Housing Authority has statutory responsibility for the provision of housing in the [Specify area] area.
- C The National Park Authority has collected finance pursuant to agreements entered into under the power in section 106 of the Town and Country Planning Act 1990.
- D The National Park Authority has decided to use the power in section 106 of the Town and Country Planning Act 1990 to enter into an agreement with the Housing Authority under which the Housing Authority shall use finance collected by the National Park Authority to provide support for affordable housing projects. The National Park Authority has decided to enter into such an agreement to further the National Park Authority’s Affordable Housing Strategy.

IT IS AGREED AS FOLLOWS

1. Definitions and Interpretation

- 1.1 The following definitions and rules of interpretation apply in this Agreement:

“Affordable Housing Fund” the fund to which monies paid by the National Park Authority to the Housing Authority in accordance with this Agreement are designated in accordance with clause 3.2 of this Agreement

“Affordable Housing Project” a project to develop and make available in the area of the Brecon Beacons National Park housing that is accessible to persons who cannot afford market housing

“Affordable Housing Strategy” the affordable housing strategy adopted by Brecon Beacons

National Park Authority (as amended)

“Commencement Date” [Commencement Date to be inserted]

“Confidential Information” all Know-How and other information relating to the business affairs or methods of the National Park Authority or the Housing Authority which is contained in or discernible in any form whatsoever (including without limitation software, data, drawings, films, documents and computer-readable media) whether or not marked or designated as confidential or proprietary or which is disclosed orally or by demonstration and which is described at the time of disclosure as confidential or is clearly so from its content or the context of disclosure

“Eligible Body” a body which is eligible under the Affordable Housing Strategy of the National Park Authority to apply for funding for an Affordable Housing Project

“Government Authority” any government (de jure or de facto) of the United Kingdom or any political sub-division of the United Kingdom or any local jurisdiction of the United Kingdom; and any governmental authority or statutory legal fiscal monetary or administrative body which operates or has jurisdiction directly or indirectly in the United Kingdom; or any instrumentality commission court or agency of any of the above however constituted; or any association organisation or institution of which any of the above is a member or to whose jurisdiction any of the above is subject or in whose activities any of the above is a participant;

“Intellectual Property Rights” patents, rights to inventions copyright and related rights trade-marks trade names and domain names rights in get-up rights in goodwill or to sue for passing off rights in designs rights in computer

software database rights rights in confidential information (including Know-How and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world

“Know-How”

Information data know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research; design development manufacture use or sale;

“Local Planning Authority”

as defined in the Town and Country Planning Act 1990;

“Party”

each of the National Park Authority and the Housing Authority as the context requires and “Parties” means both of them;

“Working Day”

a day which is not a Saturday Sunday or public holiday in England and Wales;

- 1.2 The headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.3 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.4 A reference in this Agreement to any clause, paragraph or schedule is, except where it is expressly stated to the contrary, a reference to a clause or paragraph of or schedule to this Agreement.
- 1.5 Any reference to this Agreement or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Agreement or otherwise agreed in writing between the relevant parties.
- 1.6 Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context and the rule of interpretation known as “eiusdem generis” shall not apply.

- 1.7 The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and references to this Agreement includes the Schedules.
- 1.8 A reference to a recital or clause or schedule or part of a schedule is, unless the context otherwise requires, a reference to a recital to or a clause of or a schedule or a part of a schedule to this agreement, and references to this agreement include its schedules, and recitals and references in a schedule to paragraphs are to paragraphs of that schedule.
- 1.9 References to “the Parties” shall be to the parties to this Agreement.
- 1.10 Any provision which provides that an action or thing may not be taken or done by one Party without the “consent” or “approval” of the other Party will be deemed to provide also that:
- (a) the Party seeking to take the action or do the thing in question shall request the consent or approval of the other Party in writing and provide promptly and in sufficient time for the other Party to consider it, all information reasonably necessary for the other Party to make an informed decision as to whether or not consent or approval should be granted;
 - (b) the Party receiving the request for consent or approval shall consider it in good faith; and
 - (c) the consent or approval must be given in writing and the relevant action or thing may not be done unless and until the consent or approval has been granted;
 - (d) a reference to “the National Park Authority” or “the Housing Authority” or any other person includes its (and any subsequent) successor(s) in title and permitted transferee(s) or permitted assignee(s).
- 1.11 Any reference to a “person” shall be construed as a reference to an individual, firm, company, corporation, government state or agency of a state or any association or partnership (whether or not having a separate legal entity) of two or more of the foregoing.
- 1.12 A reference to any document includes that document as amended, varied, novated or supplemented from time to time.
- 1.13 A reference to law includes without limitation any (1) statute, decree, constitution, regulation, order, judgment or directive of any Government Authority (2) treaty, pact or other agreement to which any Government Authority is a signatory or party and/or (3) judicial or administrative interpretation or application thereof and, in each such case, is a reference to the same as amended, substituted or re-enacted from time to time.

2. Duties of the National Park Authority

- 2.1 The National Park Authority shall pay to the Housing Authority sums collected by the National Park Authority pursuant to agreements entered into under section 106 of the Town and Country Planning Act 1990 for Affordable Housing Projects in any of the areas set out in Schedule 1 to this Agreement.

- 2.2 If the Housing Authority returns to the National Park Authority funds paid to the Housing Authority under the terms of this Agreement because the Housing Authority has failed to use the funds with five (5) years of receipt of payment of those funds to the Housing Authority the National Park Authority shall in the exercise of its powers use reasonable endeavours to use those funds to address the greatest level of need it has identified in the area of the Brecon Beacons National Park.

3. Duties of the Housing Authority

- 3.1 The Housing Authority shall use any funds paid to it by the National Park Authority under the terms of this Agreement for the purpose of an Affordable Housing Project.
- 3.2 The Housing Authority shall designate funds paid to it by the National Park Authority under the terms of this Agreement as the Housing Authority's Affordable Housing Fund.
- 3.3 The Housing Authority shall invite Eligible Bodies to apply for funding from the Housing Authority's Affordable Housing Fund.
- 3.4 The Housing Authority shall assess applications from Eligible Bodies against the criteria of:
- (a) Appropriateness of the application to meet housing needs in the area;
 - (b) Deliverability of the scheme.
- 3.5 Subject to clause 3.6 and clause 3.7 the Housing Authority may pay funding from the Housing Authority's Affordable Housing Fund to Eligible Bodies whose applications the Housing Authority assesses as satisfactory against the criteria set out in clause 3.4.
- 3.6 The Housing Authority shall award funding from the National Park Authority's Affordable Housing Fund based on priority areas as identified in the Affordable Housing Strategy of the National Park Authority.
- 3.7 Before making any payment of funding from the Housing Authority's Affordable Housing Fund the Housing Authority shall notify the National Park Authority in writing of its intention to award funding and shall provide the National Park Authority with the following details:
- (a) The name of the scheme to which funding has been awarded.
 - (b) The location of the scheme.
 - (c) The number of units to be provided by the scheme.
 - (d) The tenure of the units to be provided by the scheme.
 - (e) The name of the housing provider responsible for the scheme.

[Note: Is notification sufficient or does the National Park Authority require to approve each payment?]

- 3.8 The Housing Authority shall use any funds paid to it by the National Park Authority under the terms of this Agreement no later than five (5) years after receipt of the payment from the National Park Authority. If any payment made by the National Park Authority to the Housing Authority under the terms of this Agreement is not used within five (5) years of receipt of the payment from the National Park Authority the sum paid shall be returned to the National Park Authority together with interest accrued at a rate of 1.5% per annum above the Bank of England Bank Rate.

4. Reporting Obligations of the Housing Authority

- 4.1 The Housing Authority shall provide the National Park Authority with a written report every quarter which reports on the use of funds paid to the Housing Authority by the National Park Authority in accordance with the terms of this Agreement. The report shall be submitted to the National Park Authority's Planning and Heritage Manager and the National Park Authority shall present the report to its Members Affordable Housing Group.
- 4.2 The Housing Authority shall provide the National Park Authority with a written report every year which reports on housing needs in the area of the Housing Authority. The report shall be a summary of data on the Housing Authority's housing waiting list that records details of persons who are classed to be in housing need. The report shall be submitted to the National Park Authority's Planning and Heritage Manager on 1 April each year for the duration of this Agreement.

5. Confidentiality

- 5.1 The Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of the Confidential Information of the Parties other than as permitted under the provisions of this Agreement. Each Party shall not use or disclose other than as permitted under the provisions of this Agreement any Confidential Information about the business of or belonging to the other Party or a third party which has come to its attention as a result of or in connection with this Agreement.
- 5.2 The obligation in clause shall not apply to:
- (a) Any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement.
 - (b) Any matter which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause.
 - (c) Any disclosure which is required by any law (including any order or a court of competent jurisdiction) any statutory obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law.
 - (d) Any disclosure of information which is already lawfully in the possession of the disclosing Party without restrictions as to its use prior to its disclosure by the disclosing Party.

- (e) Any disclosure which is required or recommended by the rules of any governmental or regulatory authority including any guidance from time to time as to openness and disclosure of information by public bodies.
 - (f) Any disclosure which is necessary to be disclosed to provide relevant information to any insurance broker in connection with obtaining any insurance required by this Agreement.
 - (g) Any disclosure for the purpose of the examination and certification of a Party's accounts.
- 5.3 Where disclosure is permitted under clauses 5.2(a), 5.2(f), or 5.2(g) the recipient of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Party.

6. Freedom of Information

- 6.1 The Parties acknowledge that the National Park Authority and the Housing Authority are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and each Party shall assist and co-operate with the other Party to enable the other Party to comply with these information disclosure requirements and shall provide all necessary assistance as reasonably requested by the other Party to enable the other Party to respond to a request for information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.

7. Duration

- 7.1 This Agreement shall come into force on the Commencement Date and subject to termination in accordance with clause 8 shall continue for a period of two years.
- 7.2 The Agreement may be extended by the agreement of the Parties.
- 7.3 The Agreement shall be reviewed every year as soon as is practicable after the anniversary of the Commencement Date.

8. Termination

- 8.1 The National Park Authority may terminate this Agreement on giving the Housing Authority three months' written notice for a material breach of the Agreement by the Housing Authority which breach has not been remedied by the Housing Authority within thirty days of written notice by the National Park Authority.
- 8.2 This Agreement may be terminated after six months after the Commencement Date:
- (a) By the agreement of the Parties; OR
 - (b) By one Party giving the other Party one month's notice in writing.
- 8.3 If this Agreement is terminated in accordance with this clause 8 the reporting obligations of the Housing Authority under clause 4 shall continue in force and

the National Park Authority shall have the right to monitor the use of funding provided to the Housing Authority in accordance with this Agreement for such time until the funding has been used or returned to the National Park Authority in accordance with clause 3.8.

- 8.4 In the event of termination or expiry of this Agreement clauses 2.2, 3.8, 5, 6 and 8.3 shall continue to apply.

9. Intellectual Property Rights

- 9.1 The Intellectual Property Rights in all reports documents and information prepared by the National Park Authority or any of its officers pursuant to this Agreement shall vest in the National Park Authority.

10. Dispute Resolution

- 10.1 The Parties to this Agreement undertake and agree to pursue a positive approach towards dispute resolution which seeks to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Parties.
- 10.2 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 10.
- 10.3 All disputes, claims or differences between the Parties arising out of or in connection with this Agreement or its subject matter or formation, including any question regarding its existence, validity or termination, (a "Dispute") shall, at the written request of any Party be referred by the National Park Authority to its Chief Executive and by the Housing Authority to [Housing Authority to provide details of most senior officer].
- 10.4 If the Chief Executive of the National Park Authority and the [] of the Housing Authority do not agree a resolution of the Dispute within ten (10) Working Days of the date of service of any such request, either Party may require the other Party by notice in writing to attempt to settle the Dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. Within five Working Days of the date of service of such notice the Parties shall each propose a mediator and shall seek to agree as to the selection of a mediator.
- 10.5 If the Parties are unable to agree on a mediator within ten Working Days of date of service of the notice referred to in clause or the mediator agreed upon is unable or unwilling to act and the Parties cannot agree upon a substitute, any party may apply to CEDR to appoint a mediator as soon as practicable.
- 10.6 The Parties shall within five Working Days of the appointment of the mediator (the "Mediator") meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 10.7 All negotiations connected with the Dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future proceedings.

- 10.8 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by the Parties or their duly authorised representatives, shall be and remain binding upon the Parties.
- 10.9 The costs and expenses of the mediation shall be borne equally by the Parties. Each Party shall bear its own costs and expenses of its participation in the mediation.
- 10.10 If mediation fails to secure a resolution within ten Working Days of the Mediator being appointed, the Parties shall attempt to settle the Dispute by arbitration under the Rules of the London Court of International Arbitration (which Rules are deemed to be incorporated by reference into this clause) and otherwise in accordance with clause 10.11.
- 10.11 In the event that an arbitration is commenced pursuant to clause 10.10 the Parties agree that:
- (a) the tribunal shall consist of one arbitrator who is to be a chartered accountant who is a member of the Chartered Institute of Public Finance & Accountancy (CIPFA) if the dispute relates to a financial matter or a solicitor of at least ten years standing as a qualified solicitor if the dispute relates to any other matter;
 - (b) the place of the arbitration shall be Cardiff;
 - (c) the decision of the arbitrator shall be final and binding on the Parties (save in the case of manifest error).

11. Contracts (Rights of Third Parties) Act 1999

- 11.1 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

12. Entire Agreement

- 12.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements promises assurances warranties representations and understandings between them whether written or oral relating to its subject matter. Nothing in this Agreement shall exclude liability for fraudulent misrepresentation or any other liability in consequence of any fraudulent act.

13. Severability

- 13.1 If at any time any provision of this Agreement is or becomes illegal invalid or unenforceable in any respect that shall not affect or impair the legality validity or enforceability of any other provision of this Agreement.

14. Execution

- 14.1 This Agreement may be executed and delivered in any number of counterparts but will only be effective when both Parties have executed at least one counterpart. Each counterpart of this document shall constitute an original of this document but the counterparts together constitute one and the same

document and together shall have the same effect as if each Party had signed the same document.

15. Governing Law

15.1 This Agreement shall be governed by and construed in accordance with the law of England and Wales.

15.2 The National Park Authority and the Housing Authority irrevocably agree that any legal action or proceedings arising out of or relating to this Agreement may be brought and enforced in the courts of England and Wales and irrevocably submit to such jurisdiction.

IN WITNESS whereof the Parties have executed this Agreement on the date set out at the start of this Agreement.

EXECUTED for and on behalf of
BRECON BEACONS NATIONAL PARK AUTHORITY

SIGNATURE

NAME

POSITION

EXECUTED for and on behalf of
[HOUSING AUTHORITY]

SIGNATURE

NAME

POSITION

SIGNATURE

NAME

POSITION

In the presence of

WITNESS SIGNATURE

NAME

ADDRESS

OCCUPATION

Schedule 1 Areas covered by this agreement

- 1 [List areas in the area of the Brecon Beacons National Park for which the Housing Authority has statutory responsibility for housing]

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