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Homes and Communities Agency (trading as Homes England)

and

[Grant Recipient]

Strategic Partnership - Grant Agreement (For Profit RP)

in relation to the Affordable Homes Programme 2021-2026

Homes England

Housing.Contracts@homesengland.gov.uk

SPFPAHP2126002

OFFICIAL

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Grant agreement

dated 20

Parties

- (1) **Homes and Communities Agency** (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry, CV1 2GN (including any statutory successor) (**Homes England**); and
- (2) [] [a company (with registered number [])] [limited liability partnership registered in England and Wales (with number [])] whose registered office is at [] (the **Grant Recipient**).

Introduction

- (A) Homes England is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia, to make grants available to facilitate the development and provision of housing.
- (B) Homes England has agreed in response to a bid submitted by or on behalf of the Grant Recipient (the **Bid**) to advance grant funding to the Grant Recipient pursuant to Homes England's Affordable Homes Programme 2021 – 2026 (**AHP 21/26**) in an initial amount of £[] to facilitate the delivery by the Grant Recipient and others of certain affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (C) The Bid for grant funding was submitted to Homes England on behalf of the Grant Recipient and others to assist them in the construction and delivery of the affordable housing identified in the Bid.
- (D) The Grant Recipient has agreed to coordinate the delivery of the affordable housing identified in the Bid and to assume responsibility and liability under this Agreement for securing its delivery.
- (E) Grant paid by Homes England pursuant to this Agreement is social housing assistance as defined in section 32(13) of the Housing and Regeneration Act 2008.
- (F) The grant funding provided under this Agreement is (at its date) made in compliance with the United Kingdom Competition Requirement.
- (G) In using the grant funding provided under this Agreement, the Grant Recipient must comply with the applicable requirements of the Capital Funding Guide, the Recovery Determination and the information submitted and approved on IMS.
- (H) The Grant Recipient has been entrusted with the public service obligation and assigned the task of providing social housing in England by virtue of registering as a provider of social housing with the Regulator as the same is provided for under the Housing and Regeneration Act 2008.

Agreed terms

1 Definitions and interpretations

1.1 In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

Acceptance Date means the date upon which Homes England accepts a Proposed Firm Scheme as a Firm Scheme in IMS in accordance with paragraph 3 of Part 2 to Schedule 4 (*Profiling Conditions*);

Acquisition Amount means the amount payable in respect of each Housing Output to be delivered on an Active Site that is subject to an Acquisition Processing Route, such amount to be the sum of the following calculation:

Acquisition Amount = Acquisition Percentage (expressed as a decimal) x Blended Grant Rate

Acquisition Percentage means forty percent (40%);

Acquisition Processing Route means the "Acquisition and Works" and "Package Deal (including land)" scheme processing routes specified on IMS each of which entitle a claim to be made for payment of Baseline Funding on the achievement of Acquisition Stage;

Acquisition Stage means the point at which the Grant Recipient, Group Company or Delivery Partner acquires a Qualifying Secure Legal Interest in respect of an Active Site and the Grant Recipient or Delivery Partner (as applicable) has incurred Development Expenditure in respect of that Active Site which is equal to or more than the aggregate of the Acquisition Amounts payable in respect of that Active Site;

Active Site means a Site:

- (a) which is identified and listed in the "Site List" screen with "Active Site" status in the "Status in Deal" list on IMS;
- (b) which will deliver only Housing Outputs; and
- (c) is one in respect of which the Grant Recipient, a Delivery Partner or Group Company holds a Qualifying Secure Legal Interest;

Actual Development Expenditure means in respect of:

- (a) each Firm Scheme the amount of Development Expenditure actually incurred by the Grant Recipient or any Delivery Partner in acquiring, developing and/or (where permitted) Rehabilitating that Firm Scheme; and/or
- (b) the Housing Outputs, the amount of Development Expenditure actually incurred by the Grant Recipient and any Delivery Partners in acquiring, developing and/or (where permitted) Rehabilitating the Housing Outputs;

Additional Community-Led/Rural Grant Rate means the additional grant sum payable per relevant Housing Output (if any) specified in the "Agreed provider profile for community led and rural" screen on IMS and made available from the Additional Funding;

Additional Funding means the sum of £[] being funding made available or to be made available by Homes England to the Grant Recipient under this Agreement for the purposes of reimbursing Development Expenditure incurred by the Grant Recipient in delivering the Eligible MMC Outputs, Eligible Community-Led Outputs and Eligible Rural Outputs;

Additional MMC Grant Rate means the additional grant sum payable per relevant Housing Output (if any) specified in the "Agreed provider profile for modern methods of construction" screen on IMS and made available from the Additional Funding;

Affiliate means:

- (a) in respect of the Grant Recipient, a third party whose relationship with the Grant Recipient falls within limb (b) of the definition of Grant Recipient Party; or
- (b) in respect of any Delivery Partner, any subsidiary or holding company of the Delivery Partner or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;

Affordable Rent means a rent which does not exceed eighty per centum (80%) of the market rent (inclusive of service charges) for an equivalent property of the relevant size and location such rent to be assessed and set in accordance with the applicable requirements of Legislation and of the Rent Standard;

Affordable Rent Dwelling means an AHP Dwelling let or to be let at an Affordable Rent but for the purposes only of:

- (a) assessing the Grant Recipient's compliance with its obligation to deliver the Committed Number of Housing Outputs and to achieve the Tenure Balance; and
- (b) ensuring that the Agreed Grant Rate referable to a HAPA Social Rent Dwelling is not attributed to a Non-HAPA Social Rent Dwelling,

the term "Affordable Rent Dwelling" includes a Non-HAPA Social Rent Dwelling;

Agreed Grant Rate means the sum of grant allocated to a Tenure Type on a per unit basis and by region as set out in the "Agreed Grant Rates per unit by tenure and region" screen on IMS (as amended from time to time in accordance with the terms of this Agreement) and as such sum may be adjusted to include:

- (a) the Additional Community-Led/Rural Grant Rate for Eligible Community-Led Outputs and Eligible Rural Outputs; and
- (b) the Additional MMC Grant Rate for Eligible MMC Outputs;

Agreed Principles means the terms set out in Part 1 of Schedule 1 (*Acknowledgments, Representations and Warranties*);

Agreed Profile means the information identified in the "Deal Summary" "Agreed Provider Profile" and "Forecasts Submission" screens on IMS subject to such amendments, variations or updates to the same:

- (a) as may be agreed by the parties from time to time and as evidenced in IMS by Homes England; or
- (b) as may be required by Homes England pursuant to clause 5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*) and clause 8 (*Notifications, reporting and audit*);

Agreed Provider Profile means the information in the "Agreed Provider Profile" screen on IMS comprising amongst other things the details of the Housing Outputs, Tenure Types, each Committed Strategic Housing Number and Agreed Grant Rates (on a per unit basis and by region) subject to such amendments, variations or updates to the same as may be agreed or required from time to time in accordance with this Agreement;

Agreed Purposes means the purposes for which each of the AHP Dwellings are to be used as such purposes are described in the Firm Scheme Details;

Agreement means this grant agreement (including its Schedules);

Agreement Funding means the Allocated Grant Funding, any RCGF Proceeds applied to the Housing Outputs and any other funding given to the Grant Recipient by Homes England or permitted by Homes England to be utilised under the provisions of this Agreement;

AHP 2021/26 means the programme described in the guidance issued by Homes England on this website: <https://www.gov.uk/guidance/apply-for-affordable-housing-funding> (as the same may be supplemented, amended or updated from time to time);

AHP 2021/26 Funds means grant funding made available pursuant to the AHP 2021/26;

AHP Dwelling means a house, flat, maisonette or other form of dwelling which was developed with the benefit of Allocated Grant Funding under this Agreement and in relation to each relevant Firm Scheme as more particularly described in the relevant Firm Scheme Details;

AHP Housing means housing provided by the Grant Recipient or a Delivery Partner pursuant to this Agreement that will be made available:

- (a) in respect of any Firm Scheme other than an OPSO Scheme:
 - i permanently on Shared Ownership Lease terms;
 - ii on Rent to Buy terms for a period of not less than five (5) years from the point at which such housing first becomes available for letting;
 - iii permanently at an Affordable Rent; or
 - iv permanently at a Social Rent; and

- (b) in respect of any OPSO Scheme, as OPSO Housing;

AHP Rent Dwelling means an Affordable Rent Dwelling and/or a Social Rent Dwelling;

Allocated Grant Funding means £[] being the aggregate of the Baseline Funding and the Additional Funding subject to such amendments made to either in accordance with the terms of this Agreement;

Allocation Change Notice means a notification issued by Homes England under clause 5.2 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*);

Annual Forecast means:

- (a) in respect of the first Financial Year of this Agreement, the Forecasts Submission as set out on IMS as at the date of this Agreement; or
- (b) in respect of each subsequent Financial Year of this Agreement until expiry of the Term, the Programme Forecast submitted by the Grant Recipient together with a proposed Grant Drawdown Profile for that Financial Year both of which must be submitted or provided to Homes England prior to the first Quarterly PMB Meeting for the relevant Financial Year;

Annual Reconciliation has the meaning ascribed to it in clause 8.3.12 (*Notifications, reporting and audit*);

AP Proposal has the meaning ascribed to it in clause 8.3.5 (*Review Meetings*);

Availability Period means the period from the date of this Agreement until 31 March 2026 unless otherwise brought to an end pursuant to clause 2.4 (*Provision of Allocated Grant Funding*);

Balancing Sum means such sum as represents the amount by which:

- (a) the Public Sector Funding in respect of a Firm Scheme exceeds the Actual Development Expenditure incurred by the Grant Recipient in relation to that Firm Scheme; or
- (b) the Public Sector Funding in respect of the Housing Outputs exceeds the aggregated Actual Development Expenditure incurred by the Grant Recipient and its Delivery Partners in respect of the delivery of the Housing Outputs;

Baseline Funding means the sum of £[] being funding made available or to be made available by Homes England to the Grant Recipient under this Agreement for the purposes of reimbursing Development Expenditure incurred by the Grant Recipient and its Delivery Partners in delivering or procuring the delivery of the Housing Outputs but which excludes the Additional Funding (as such Baseline Funding sum may be adjusted in accordance with the provisions of this Agreement);

Blended Grant Rate means the grant rate to be applied (for the purposes of a claim for Baseline Funding) to Housing Outputs being delivered on an Active Site and calculated pursuant to the following formula:

Baseline Funding ÷ Committed Number

as such grant rate may be adjusted pursuant to clause 5.7 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*);

Building a Safer Future Charter means the charter entitled "Building a Safer Future Charter" which sets out a list of built environment safety values for homebuilders to comply with ahead of all other building priorities and as more particularly described at <https://buildingasaferfuture.org.uk/> (as the same may be amended or updated from time to time);

Building Contract means a contract entered into between the Grant Recipient, any Group Company or any Delivery Partner (or on behalf of the Grant Recipient or such Delivery Partner) and a Contractor relating to the construction, development and/or Rehabilitation (as applicable) of an Active Site;

Business Day means any day other than a Saturday, Sunday or statutory Bank Holiday in England;

Capital Funding Guide means the guide of that name published on the GOV.UK website at <https://www.gov.uk/guidance/capital-funding-guide> or any successor guide so published subject to such amendments, variations or updates to the same as may be published from time to time;

Capital Grant has the meaning set out in the Recovery Determination;

Capital Grant Recoverable means such amount of Capital Grant and interest thereon as Homes England is entitled to Recover under the Recovery Determination;

CDM Regulations means the Construction (Design and Management) Regulations 2015 S.I. No. 2015/51;

Change Event means the coming into effect or the proposed coming into effect after the date of this Agreement of any change in Legislation or of government policy or any other event which materially and adversely affects the financial resources available to Homes England under AHP 2021/26, the Programme and/or Homes England's ability to perform its obligations under this Agreement;

Change in Control means a change in Control in respect of the Grant Recipient or a Delivery Partner;

CIPFA means the Chartered Institute of Public Finance and Accountancy;

Committed Community-Led Number means the aggregate number of Community-Led Outputs required by Homes England to be delivered pursuant to this Agreement as set out in the Agreed Provider Profile;

Committed MMC Number means the aggregate number of MMC Outputs required by Homes England to be delivered pursuant to this Agreement as set out in the Agreed Provider Profile;

Committed Number means the aggregate number of Housing Outputs required by Homes England to be delivered as AHP Housing pursuant to this Agreement as set out in the Deal Summary;

Committed Rural Number means the aggregate number of Rural Outputs required by Homes England to be delivered pursuant to this Agreement as set out in the Agreed Provider Profile;

Committed Social Rent Number means the aggregate number of HAPA Social Rent Dwellings required by Homes England to be delivered pursuant to this Agreement as set out in the Agreed Provider Profile;

Committed Strategic Housing Number means each and any of the Committed Community-Led Number, Committed MMC Number, Committed Rural Number and the Committed Social Rent Number;

Committed Strategic Number Default means the Grant Recipient fails to procure Practical Completion of each Committed Strategic Housing Number by 31 March 2026 (or such other date as may be agreed by Homes England (in its absolute discretion) and set out in IMS);

Community-Led Output means a Housing Output delivered or to be delivered in collaboration with community-led organisations (including any Housing Outputs delivered by community-led organisations in Rural Areas as identified in the Agreed Provider Profile);

Competent Authority means (as the case may be):

- (a) such persons, officeholders and bodies (however constituted) that are specified under any United Kingdom Competition Requirement as having responsibility for monitoring compliance with and/or assessing and/or determining the United Kingdom Competition Requirement or otherwise authorised to recover any Unlawful Subsidy;
- (b) the courts of England and Wales; or
- (c) the Competition Appeal Tribunal;

Completed Delivery Partner Deed means a Delivery Partner Deed which has been entered into by Homes England and the Relevant Delivery Partner;

Completion Authority means irrevocable recorded authority (including in electronic form) from the Relevant Delivery Partner for Homes England to complete the Delivery Partner Deed following its execution by Homes England;

Compliance Audit means the procedure (in a form advised by Homes England from time to time) by which an auditor independent of the Grant Recipient and each Delivery Partner certifies (at the Grant Recipient or Delivery Partner's cost (as applicable)) whether the Firm Schemes developed or (where permitted) Rehabilitated pursuant to this Agreement satisfy

Homes England's procedural compliance requirements (as described in the Capital Funding Guide);

Confidential Information means in respect of Homes England all information relating to Homes England's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement (including the Agreed Grant Rates and Blended Grant Rate) in respect of which the Grant Recipient becomes aware in its capacity as a party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Grant Recipient means such specific information as the Grant Recipient shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or other authority, the local planning authority, landlord, funder, adjoining landowner or any other person which is required to undertake the Works or secure the delivery of the Housing Outputs;

Constitutional Change Notification means a written notification addressed to grant_notifications@homesengland.gov.uk submitted by way of the relevant 'Notification of Constitutional Change Form' required by Homes England on the following website: <https://www.gov.uk/government/publications/homes-england-historical-grant-and-constitutional-changes-notifications> (as the same may be supplemented, amended or updated from time to time) or by any other method which Homes England may notify from time to time;

Contract means any contract entered into or to be entered into by the Grant Recipient, any Group Company or by any Delivery Partner with a Contractor;

Contractor means each contractor or other party (however described and of any tier) engaged by the Grant Recipient, any Group Company or any Delivery Partner (or on behalf of the Grant Recipient or such Delivery Partner) or collaborating with the Grant Recipient or any Delivery Partner in or for the delivery of the Works and/or Housing Outputs;

Control means the power of a person (or persons acting together) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) which shall include:

- (a) being the beneficial owner of more than 50% of the issued share capital, membership rights or voting rights in that corporate body;
- (b) having the right to appoint or remove a majority of the board of management; or
- (c) otherwise controlling the votes at board meetings of that corporate body by virtue of any powers conferred by:
 - i the corporate body's governing document;

- ii any shareholder or members' agreement; or
- iii any other document regulating the affairs of that corporate body;

Cost Overrun means at any time the amount by which the aggregated costs and expenses incurred by the Grant Recipient and/or its Delivery Partners in relation to the Housing Outputs exceed the Total Housing Output Costs;

Data Controller has the meaning ascribed to it in the Data Protection Legislation;

Data Protection Legislation means:

- (a) Data Protection Act 2018 (the **DPA**) and the UK General Data Protection Regulation (**GDPR**) (created by the Data Protection, Privacy and Electronic Communications (EU Exit) Regulations 2019); or
- (b) any successor Legislation to the GDPR or the DPA; and
- (c) all applicable Legislation relating to the processing of personal data and privacy;

Data Subject has the meaning ascribed to it in the Data Protection Legislation;

DDEP means the document submitted by or on behalf of the Grant Recipient for the delivery of the Housing Outputs as accepted by Homes England and set out in IMS;

Deal Summary means the information in the "Deal Summary" screen on IMS comprising amongst other things details of the total Housing Outputs and Allocated Grant Funding, subject to such amendments variations or updates to the same as may be agreed by the parties in accordance with this Agreement;

Defaulting Delivery Partner has the meaning attributed to it in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Delivery Conditions means the conditions set out in Part 1 of Schedule 4 (*Delivery Conditions*);

Delivery Partner has the meaning attributed to it in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Delivery Partner Conditions means the conditions set out in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Delivery Partner Confirmation means the written confirmation from the Grant Recipient referred to in clauses 4.1.1 and 4.1.3 (*Initial condition precedent*) (as applicable);

Delivery Partner Contract means the agreement referred to in paragraph 1.1 of Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Delivery Partner Deed shall have the meaning attributed to in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Delivery Partner Default shall have the meaning attributed to in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Delivery Partner Obligations shall have the meaning attributed to it in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Designation means the designation of a Housing Output as either a MMC Output, a Community-Led Output a Rural Output or a HAPA Social Rent Dwelling;

Development Expenditure means the capital costs relating to the delivery of the Housing Outputs which Homes England is satisfied have been reasonably and properly incurred by the Grant Recipient and its Delivery Partners in respect of the heads of expenditure set out in Part 1 to Schedule 2 (*Costs which are Development Expenditure*) or such other heads of expenditure as Homes England may in its absolute discretion agree **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 2 (*Costs which are not Development Expenditure*) shall not be capable of being treated as Development Expenditure and for the avoidance of doubt Development Expenditure does not include:

- (a) any costs of activities of a political or exclusively religious nature;
- (b) payments reimbursed or to be reimbursed by other Public Sector Financial Assistance or private sector grants;
- (c) contributions in kind;
- (d) depreciation, amortisation or impairment of fixed assets owned by the Grant Recipient or any Delivery Partner;
- (e) gifts, other than promotional items with a value of no more than £10 a year to any one person;
- (f) any costs of entertaining which would be a taxable benefit to the person being entertained according to current UK tax regulations;
- (g) statutory fines, criminal fines or penalties;
- (h) liabilities incurred before the date of this Agreement unless agreed in writing by Homes England;
- (i) the costs of making good any damage to the Works caused by an insurable risk or the costs of making good any defects on the Works,
- (j) payments which are held in escrow until such time as the funds are released unconditionally to the beneficiary; or
- (k) payments made or costs incurred pursuant to or in connection with option agreements over land,

and where any costs relate to both construction works and professional fees (including design) then the proportion attributable to professional fees shall be included in the Development Expenditure (the amount of such proportion to be determined by Homes England);

Differential Amount means the difference between the sum of the calculation at paragraph 3 of Schedule 3 (*Payment Arrangements*) and the lower of the Eligible Development Expenditure Cap and the Quarterly Cap;

Direction means a direction to the Regulator in relation to rent given by the Secretary of State from time to time pursuant to Section 197 of the HRA 2008;

Disposal means a disposal of the whole or any part of a Site or asset funded by Allocated Grant Funding pursuant to this Agreement;

Disposal Conditions means the conditions set out in Part 2 of Schedule 5 (*Disposal Conditions*);

Disposal Default means:

- (a) any breach of or any failure by the Grant Recipient or any Delivery Partner to observe any of the Disposal Conditions; or
- (b) any breach of or any failure by the Delivery Partner to observe any of the terms of the Delivery Partner Deed which relate to the DP Disposal Conditions;

Disposal Notification means a written notification addressed to grant_notifications@homesengland.gov.uk by way of the relevant 'Historical Grant Notification Form' required by Homes England on the following website: <https://www.gov.uk/government/publications/homes-england-historical-grant-and-constitutional-changes-notifications> (as the same may be supplemented, amended or updated from time to time) or by any other method which Homes England may notify from time to time;

DLUHC means the Department for Levelling Up, Housing and Communities (or any successor body with similar or equivalent jurisdiction or authority);

DP Disposal Conditions means the conditions set out in clause 9 (*DP Disposal Conditions*) of a Delivery Partner Deed;

EIR means the Environmental Information Regulations 2004, and any subordinate Legislation made under the Environmental Information Regulations 2004 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation;

EIR Exception means any applicable exemption to EIR;

Eligible Community-Led Output means a Community-Led Output that is identified in the Agreed Provider Profile as eligible to receive the Additional Community-Led/Rural Grant Rate;

Eligible Dwelling means a dwelling identified in paragraph 3.13 of Part 1 of Schedule 5 (*Operational Conditions*) (but not an Exempted Dwelling);

Eligible MMC Output means a MMC Output identified in the Agreed Provider Profile as eligible to receive the Additional MMC Grant Rate subject to satisfying the MMC Funding Condition;

Eligible Rural Output means a Rural Output that is identified in the Agreed Provider Profile as eligible to receive the Additional Community-Led/Rural Grant Rate;

Event of Default means any of a Fundamental Default, a General Default, a Committed Strategic Number Default, a Disposal Default, an Operational Default or a Delivery Partner Default;

Exempted Dwelling means:

- (a) a Rent to Buy Dwelling; or
- (b) any dwelling which is identified in paragraph 2 of the RTSO Guidance or in Legislation as exempted from the Right to Shared Ownership;

Excluded Matter means any matter of the type listed in limbs:

- (a) (c), (d), (e) or (f) of the definition of General (A) Default; and
- (b) (a) to (d) (inclusive) or (f) to (j) (inclusive) of the definition of General (B) Default;

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

Expert means:

- (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in the area of law which is most relevant to the point of law or legal drafting in question (as applicable) being such Counsel as may be appointed by the parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) (where a matter concerns a financial dispute or difference) a qualified accountant from the Institute of Chartered Accountants in England and Wales may be jointly appointed by the parties (acting unanimously) or, failing agreement, such accountant as shall be appointed at the request of either or both of the parties by or on behalf of the President of the ICAEW or CIPFA; or
- (c) (in the case of any other matter) a senior Chartered Surveyor having at least ten (10) years' post-qualification experience in the development and/or management of affordable housing in England as may be jointly appointed by the parties (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the parties by or on behalf of the President for the time being (or the next

most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to them hereunder,

and "failing agreement" shall for these purposes mean failing to agree any such joint appointment by the parties of an Expert within five (5) Business Days of notice by one of the parties to the other that the dispute or difference is to be referred to an Expert;

Financial Year means the period from the date of this Agreement to the next 31 March and thereafter the period from 1 April to 31 March in each year until the expiry of the Term or earlier termination of this Agreement;

Final Balance has the meaning ascribed to it in clause 5.11 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*);

Firm Scheme means each scheme (identified as a "Phase" on IMS) comprising AHP Dwellings accepted by Homes England through IMS pursuant to paragraph 3 of the Profiling Conditions and set out in the "Phase Details" list in the "Completions" screen on IMS for the relevant Site;

Firm Scheme Details means in respect of each Firm Scheme agreed by Homes England pursuant to paragraph 3 of the Profiling Conditions, the descriptive and other details in respect of that scheme accepted by Homes England and set out in the "Completion Phase" screen of the relevant Firm Scheme on IMS;

Firm Scheme Grant means the amount of Allocated Grant Funding agreed by Homes England as attributed to a Firm Scheme pursuant to the Profiling Conditions and as set out in the relevant Firm Scheme Details;

FOIA means the Freedom of Information Act 2000, and any subordinate Legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation;

FOIA Authority/Authorities means a public authority as defined by FOIA and/or EIR;

FOIA Exemption means any applicable exemption to FOIA;

Forecasts Submission means the information in the "Forecasts Submission" screen on IMS comprising amongst other things the details of the budget, cashflow and timetable for the delivery of the Housing Outputs and showing the proposed expenditure up to 31 March 2026 and the Grant Drawdown Profile during each Financial Year within the Availability Period subject to such amendments, variations or updates to the same in accordance with this Agreement;

For Profit Registered Provider means a body entered on the Register as a profit-making organisation (as such term is defined in Section 115 of the HRA 2008);

FTA Matter means any matter of the type listed in limbs:

- (a) (a) or (b) of the definition of General (A) Default; and
- (b) (e) of the definition of General Default (B);

Fundamental (A) Default means the occurrence of any of the following:

- (a) an Insolvency Event has occurred in relation to the Grant Recipient;
- (b) the Grant Recipient or where applicable any Contractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- (c) the Grant Recipient ceases operating or trading;
- (d) the Grant Recipient's status as a For Profit Registered Provider is lost, removed or relinquished;

Fundamental (B) Default means the occurrence of any of the following:

- (a) the Regulator directs or recommends that grant is not to be paid to the Grant Recipient; and
- (b) the Grant Recipient (either by its own actions or omissions, or those of its Contractors (or the Contractors of its Group Companies) or agents) harms Homes England's reputation or brings Homes England or AHP 2021/26 into disrepute;

Fundamental Default means either a Fundamental (A) Default or a Fundamental (B) Default;

Fundamental DP Default has the meaning attributed to it in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Fundamental Termination Amount means the amount calculated by deducting the aggregated amount of all Allocated Grant Funding attributed to Firm Schemes pursuant to paragraph 3 of the Profiling Conditions from the amount of all Allocated Grant Funding paid to the Grant Recipient pursuant to clause 4.3.2 (*Mechanics and payment of Allocated Grant Funding*);

General Default means either a General (A) Default or a General (B) Default;

General (A) Default means the occurrence of any of the following:

- (a) the Grant Recipient's Investment Partner status is lost, removed or relinquished; or
- (b) the Grant Recipient fails to ensure:
 - i Practical Completion of the Housing Outputs comprised in the Committed Number by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) and set out in IMS); or
 - ii that the Tenure Balance is achieved across the Committed Number of Housing Outputs by 31 March 2026 (or such other date expressly agreed by Homes England (in its absolute discretion) in writing); or
- (c) a Repeated Disposal Default; or

- (d) Fundamental DP Default occurs and remains unresolved following the application of the procedure set out in paragraph 3 of Part 3 of Schedule 4 (*Delivery Partner Conditions*); or
- (e) the parties have failed to agree:
 - i the Grant Recipient's submission of a Proposed Firm Scheme following the application of the procedure set out in paragraphs 4 and 5 of the Profiling Conditions; or
 - ii the terms of a revised Agreed Provider Profile or whether a revised Agreed Provider Profile is required, in each case following the application of the procedure set out in clause 8.3.5 to 8.3.9 (*Review Meetings*); or
 - iii the terms of a Remediation Plan following the application of the resolution procedure set out in clause 10.4.5 (*Event of Defaults and Termination*); or
- (f) the Grant Recipient has failed to comply with the terms of a Remediation Plan pursuant to clause 10.4.3 (*Event of Defaults and Termination*);

General (B) Default means the occurrence of any of the following:

- (a) the Grant Recipient fails to comply with any reporting obligation under this Agreement or with the Compliance Audit regime; or
- (b) Homes England determines (acting reasonably) that proper progress against the Grant Recipient's delivery projections (whether in terms of the number of Housing Outputs (including each Committed Strategic Housing Number), their region or the timescales for their delivery) in the Agreed Profile has not been made by the Grant Recipient in delivering the Housing Outputs; or
- (c) the Grant Recipient fails to comply with any of the Programme Conditions (excluding any Programme Condition which falls within limbs (b) or (c) of the definition of General (A) Default or any Committed Strategic Number Default); or
- (d) an event or circumstance occurs in relation to the Grant Recipient or to its ability to deliver the Housing Outputs that has or might in the opinion of Homes England (acting reasonably) have a Material Adverse Effect; or
- (e) the Grant Recipient fails to pay any sum due under this Agreement on or by the due date for payment thereof provided that if Homes England is satisfied that such failure to pay any such amount is due solely to technical delays in the transmission of funds and such amount is paid within two (2) Business Days, this limb (e) shall not apply; or
- (f) Homes England becomes aware (whether as a result of the certification provided by the Grant Recipient under clause 4.3.1(a) (*Mechanics and payment of Allocated Grant Funding*) or notification under clause 9 (*Change in circumstances*) or otherwise) that the Grant Recipient or any

Contractor does not have sufficient funds or resources available to it to complete the Works and/or the Housing Outputs in accordance with the terms of this Agreement; or

- (g) any other material breach by the Grant Recipient of any of its obligations under this Agreement has occurred; or
- (h) any certificate or notification issued or any representation or warranty made by the Grant Recipient to Homes England pursuant to this Agreement is inaccurate or misleading in any material respect when made or repeated; or
- (i) an Interim DP Default occurs; or
- (j) any Consent necessary to the delivery of the Housing Outputs in accordance with the Agreed Profile, the Committed Number, the Committed Strategic Housing Numbers is withdrawn or revoked;

Grant Drawdown Profile means the maximum drawdown of Allocated Grant Funding agreed by Homes England as available to the Grant Recipient in any Quarter as set out in the Forecasts Submission;

Grant Recipient Party means:

- (a) the Grant Recipient, any Contractor, any member of the Professional Team, agent, employee or Contractor of the Grant Recipient and the Grant Recipient's Senior Officer;
- (b) any subsidiary or holding company of the Grant Recipient or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;
- (c) any Delivery Partner or any agent, employee or subcontractor of such Delivery Partner; or
- (d) any Group Company engaged in or in connection with the delivery of the Housing Outputs;

Grant Recipient Senior Officer means the Grant Recipient's Chief Executive Officer or such other senior officer as Homes England may approve from time to time;

Group Company means any company (excluding any Delivery Partner) which is registered in England and Wales and is:

- (a) a subsidiary or holding company of the Grant Recipient or of a Delivery Partner (as applicable); or
- (b) a subsidiary of the Grant Recipient's holding company or of the Delivery Partner's holding company (as applicable),

where "subsidiary" and "holding company" have the meanings ascribed to them under section 1159 Companies Act 2006;

HAPA Social Rent Dwelling means a Social Rent Dwelling delivered or to be delivered in a High Affordability Pressure Area as such area appears in the list of High Affordability Pressure Areas as at the date of this Agreement;

Help to Buy Agent means a body appointed by Homes England to undertake such roles or activities as Homes England may prescribe for Help to Buy Agents from time to time;

High Affordability Pressure Area means a local authority area listed at Schedule 10 (*High Affordability Pressure Areas*) subject to such additions to the areas listed as may be agreed by Homes England in writing;

Home Ownership Agency Agreement means any scheme or arrangement promoted by Homes England from time to time in order to facilitate the process surrounding applications for Shared Ownership Dwellings including any existing arrangements with Help to Buy Agents;

Homes England Senior Officer means the "Affordable Housing Grant Team Relationship Manager" or such other person notified by Homes England to the Grant Recipient;

Housing Acts means the Housing Act 1985 and/or the Housing Act 1988 and/or the Housing Act 1996 and/or the HRA and/or Housing and Planning Act 2016 or any other acts or enablement's relating to the provision or regulation of housing;

Housing Outputs means the dwellings (including their Designation, number, region and Tenure Type) referenced in the Agreed Provider Profile in respect of which Homes England has agreed to provide the Allocated Grant Funding in accordance with this Agreement (as such Housing Outputs may be varied from time to time with the prior written consent of Homes England and set out in IMS);

HRA 2008 means the Housing and Regeneration Act 2008;

HS Act means the Health and Safety at Work etc. Act 1974;

ICAEW means the Institute of Chartered Accountants in England and Wales;

IMS means Homes England's on-line investment management system from time to time or any successor system;

Inactive Site means a Site listed as an "Inactive Site" in the "Status in Deal" list on the "Site List" screen on IMS;

Information has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by Homes England or the Grant Recipient (as appropriate) at the time of receipt of an RFI; and
- (b) EIR, given under the definition of environmental information in Regulation 2 of the EIR and which is held by Homes England or Grant Recipient (as appropriate) at the time of receipt of an RFI;

Information Commissioner has the meaning set out in the Data Protection Legislation;

Insolvency Event means the occurrence of any of the following in relation to the Grant Recipient or a Delivery Partner (as applicable):

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, 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;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness and/or any moratorium pursuant to section 145 of the HRA 2008;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - i 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) other than a solvent liquidation or reorganisation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed);
 - ii a composition, compromise, assignment or arrangement with any of its creditors;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by Homes England, such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, housing administrator, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any of its assets;
 - v any analogous procedure or step is taken in any jurisdiction;other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affects any of its assets which has a Material Adverse Effect in relation to the delivery of the Agreed Profile, the Housing Outputs, a Firm Scheme or an Active Site;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) 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;

Interim DP Default has the meaning attributed to it in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Investment Partner means an organisation which has been confirmed by Homes England as having "Investment Partner Status" under Homes England's Investment Partner qualification procedure from time to time;

Know Your Customer Information means the information identified in the Homes England "know your customer" documentation as pertaining to the Grant Recipient and each Delivery Partner and their "Directors, Decision Makers or equivalent" or any other "know your customer" or comparable information identified by Homes England in connection with the Grant Recipient or any Delivery Partner's Investment Partner application or status or the terms of this Agreement;

Landlord means the For Profit Registered Provider that will be the landlord of the tenants or lessees (as applicable) of the AHP Dwellings comprised in the relevant Firm Scheme and "Landlords" shall be construed accordingly;

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;
- (d) rule of court or directives or requirements of any Regulatory Body or notice of any Regulatory Body;
in each case in the United Kingdom; and
- (e) any regulations, orders, bye-laws, regulatory policy, guidance or codes of practice of any local or statutory or Competent Authority (as the case may be) having jurisdiction over the territory in which the Housing Outputs are situated;

Market Value means the valuation of a property's market value, determined by a Chartered Surveyor who is a Registered Valuer, in accordance with the guidance set out in the Red Book;

Material Adverse Effect means the effect of any present or future event or circumstances which is reasonably likely to be materially adverse to the ability of the Grant Recipient or any Delivery Partner to perform and comply with its respective obligations under this Agreement or any applicable Delivery Partner Contract or Delivery Partner Deed respectively or will materially impair the validity or enforceability of or the effectiveness of this Agreement or the remedies of Homes England under it;

Milestone means each and any of Acquisition Stage, Start on Site and Practical Completion;

Minimum SO Lease Term means a lease with a term of at least nine hundred and ninety (990) years;

Minimum Unexpired Term means the relevant lease has, having regard to the acknowledgment set out in paragraph 19 of the Agreed Principles, an unexpired term of at least one hundred and twenty five (125) years;

MMC Funding Condition means the requirement that the Eligible MMC Output has been delivered using:

- (a) Categories 1 or 2 as set out in Section 3.5.3 (*Modern Methods of Construction (MMC) categories for schemes*) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme issues"; or
- (b) any other Category set out in Section 3.5.3 (*Modern Methods of Construction (MMC) categories for schemes*) where the construction process achieves a pre-manufactured value of fifty-five per centum (55%) or above (based on the calculation methodology set out in Section 3.5 (*Modern Methods of Construction (MMC) categories for schemes*) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme issues");

MMC Output means a Housing Output delivered or to be delivered using Modern Methods of Construction as identified in the Agreed Provider Profile;

Modern Methods of Construction means the methods of construction identified in Section 3.5 (*Modern Methods of Construction (MMC) categories for schemes*) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme issues";

Modern Slavery Policy means Homes England's modern slavery policy displayed on Homes England's web site as updated and amended from time to time;

New Delivery Partner means a Delivery Partner proposed to Homes England after the confirmation at clause 4.1.1 (*Initial condition precedent*) has been provided by the Grant Recipient;

Non-HAPA Social Rent Dwelling means a Social Rent Dwelling delivered or to be delivered outside of a High Affordability Pressure Area as such area appears in the list of High Affordability Pressure Areas as at the date of this Agreement;

Notifiable Event means an event of the type described in clause 8.1 (*Notifications, reporting and audit*) or clauses 9.1 or 9.3 (*Change in circumstances*);

Older People's Shared Ownership Lease has the meaning attributed to it in Schedule 7 (*OPSO Schemes*);

Onward Disponee means the For Profit Registered Provider or Unregistered Body acquiring the relevant AHP Dwelling(s) in connection with an Onward Sale;

Onward Disponee Acknowledgement has the meaning attributed to it in paragraph 8 of the Disposal Conditions;

Onward Sale means a disposal of one or more AHP Dwellings comprised within a Firm Scheme by the Grant Recipient or a Delivery Partner to a For Profit Registered Provider or Unregistered Body where such disposal occurs or is proposed to occur on or after the relevant AHP Dwelling(s) achieve Practical Completion but prior to the relevant AHP Dwelling(s) becoming occupied provided that no AHP Dwelling other than a Shared Ownership Dwelling may be transferred or leased to an Unregistered Body pursuant to an Onward Sale;

Onward Sale Notification means a written notification provided in such form as Homes England may require from time to time and in accordance with any applicable requirements of the Capital Funding Guide from time to time;

Open Book Basis means the full and transparent disclosure and declaration of all information to be undertaken in utmost good faith and to include the declaration of all information which the Grant Recipient or a Grant Recipient Party is required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Operational Conditions means the conditions set out in Part 1 of Schedule 5 (*Operational Conditions*);

Operational Default means:

- (a) any breach of or any failure by the Grant Recipient or any Delivery Partner to observe any of the Operational Conditions; or
- (b) any breach of or any failure by a Delivery Partner to observe any of the terms of the Delivery Partner Deed (save those which relate to the DP Disposal Conditions);
- (c) any failure by the Grant Recipient or any Delivery Partner to comply with the Compliance Audit regime;

OPSO Housing means housing (which may include specialised housing and elements of care and support) to assist individuals over fifty five (55) years of age purchase a home more suitable for their needs on Older People's Shared Ownership Lease terms;

OPSO Scheme means a Firm Scheme identified in IMS as comprising OPSO Housing;

OPSO Standards has the meaning attributed to it in Schedule 7 (*OPSO Schemes*);

Payment Request means an application for the drawdown of an instalment of Allocated Grant Funding;

Permitted Disposal means:

- (a) the granting of a charge over a Site as security in favour of a commercial or institutional lender (which for the avoidance of doubt excludes a Group

Company of the Grant Recipient or any Delivery Partner) on arms' length terms; and/or

- (b) the Disposal of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (c) Disposals made pursuant to a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990, section 33 of the Local Government (Miscellaneous Provisions) Act 1982 or section 111 of the Local Government Act 1972 or section(s) 38 and/or 278 of the Highways Act 1980;
- (d) the Disposal of a dwelling other than an AHP Dwelling as market sale or market rent on condition that such sale has been previously agreed with and endorsed by Homes England in writing; and/or
- (e) in relation to a Firm Scheme only:
 - i the grant of a charge over the Firm Scheme in favour of a commercial or institutional lender on arms' length terms; and/or
 - ii the grant of a Shared Ownership Lease in respect of a Shared Ownership Dwelling (which was not previously occupied as an AHP Rent Dwelling) comprised in the Firm Scheme to one or more individual purchasers and/or the acquisition by the occupier of an increased share of the equity of a Shared Ownership Dwelling comprised in a Firm Scheme including the transfer of the entirety of Grant Recipient's interest in the relevant dwelling to such individual where required under the terms of such Shared Ownership Lease on final staircasing thereof; and/or
 - iii the grant of a tenancy in respect of any single AHP Dwelling comprised in that Firm Scheme to an individual occupier in accordance with the terms of this Agreement; and/or
 - iv the transfer of an AHP Rent Dwelling to an individual occupier pursuant to the Right to Acquire (as applicable); and/or
 - v the grant of an easement which does not materially prejudice the use or amenity of the AHP Dwellings comprised in that Firm Scheme; and/or
- (f) any other Disposal which Homes England agrees from time to time will become a Permitted Disposal;

Persistent Operational Default means an Operational Default by either the Grant Recipient or an individual Delivery Partner which prior to the Profile Completion Date has occurred four (4) times within any period of six (6) consecutive calendar months but which shall not include any breach of the Operational Conditions which could reasonably be regarded as de minimis or trivial;

Personal Data has the meaning ascribed to it in the Data Protection Legislation;

Planning Condition means any condition attached to or imposed upon any decision by a Competent Authority to grant planning permission or reserved matters approval under Part III of the Town and Country Planning Act 1990 (including any approvals issued pursuant to conditions);

Planning Permission means the grant of detailed planning permission either by the local planning authority or by the Secretary of State;

Planning Requirement means a requirement or obligation or duty or restriction arising from:

- (a) an agreement (and any approvals given pursuant to such agreement) in respect of and affecting any AHP Dwelling (or prospective AHP Dwelling) made pursuant to Section 106 of the Town and Country Planning Act 1990 and/or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or Section 38 and/or Section 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 and/or the Housing Acts (and any other enabling powers) or an agreement with any Competent Authority or body relating to other similar services including any nominations agreements or similar; and/or
- (b) a Planning Condition;

Planning Scheme means a scheme where the development of AHP Housing is a Planning Requirement and where the AHP Housing forms or will form part of a wider non AHP Housing scheme;

PMB means the board convened by Homes England and the Grant Recipient to review operational performance and programme management of the Grant Recipient under this Agreement;

PMB Minutes means the minutes of each Quarterly PMB Meeting produced and circulated by Homes England in accordance with clause 8.3.16 (*Review Meetings*) documenting the business of the meeting and in particular (but without limitation) any agreement or disagreement between the parties as to:

- (a) the proposed Payment Request submitted by the Grant Recipient pursuant to clause 8.4 (*Forecasts Submission and Development Expenditure*); or
- (b) changes to be made to the Agreed Profile;

Practical Completion Amount means the sum of the following calculation:

Practical Completion Amount = Blended Grant Rate – (Acquisition Amount + Starts Amount paid in respect of the Housing Output, if any);

Practical Completion means that stage in the execution of all Housing Outputs comprised within a Site when the Works have been completed in accordance with the terms of the relevant Building Contract and/or the terms of this Agreement such that the relevant Housing

Outputs are fit for beneficial occupation as a residential development in accordance with applicable NHBC or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Housing Outputs and which would be reasonable to include in a snagging list, and Practically Complete shall be construed accordingly;

Previous AHP Programme means a Previous Programme supporting the delivery of affordable housing;

Previous Programme means any capital grant funding programme administered by Homes England or any of its statutory predecessors;

Process has the meaning ascribed to it in the Data Protection Legislation and **Processing** shall be construed accordingly;

Procurement Law means the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 (insofar as the same are applicable) together with any statutory modification or replacement regulations or Legislation on procurement by public bodies;

Professional Team means (as applicable) the architect, civil & structural engineer, the mechanical & electrical engineer and any other consultant appointed by the Grant Recipient or any Delivery Partner in connection with the Housing Outputs;

Profile Completion Date has the meaning attributed to it in Part 3 of Schedule 4 (*Delivery Partner Conditions*);

Profiling Conditions means the conditions set out in Part 2 of Schedule 4 (*Profiling Conditions*);

Programme means the Strategic Partnership Programme to be administered by Homes England which provides financial assistance to certain parties to contribute to the delivery at pace of increased volumes of housing supply;

Programme Commitments means the Committed Number which includes each Committed Strategic Housing Number;

Programme Conditions means the conditions referred to in clause 7 (*Programme Conditions*) other than the Operational Conditions;

Programme Default means:

- (a) any failure to achieve Practical Completion across the Committed Number of the Housing Outputs by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) and set out in IMS); or
- (b) any failure to achieve Practical Completion of each Committed Strategic Housing Number by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) and set out in IMS); or

- (c) any failure to achieve the Tenure Balance across the Committed Number of the Housing Outputs by 31 March 2026 (or such other date expressly agreed by Homes England (in its absolute discretion) in writing); or
- (d) the performance of the Grant Recipient or any Delivery Partner in delivering Housing Outputs under or in connection with this Agreement results, is likely to result, or has resulted (without Homes England's prior written approval) in any material departure from the projections contained in the Agreed Profile such that Homes England (acting reasonably) considers that the Grant Recipient will be unable to deliver the Committed Number of the Housing Outputs, each Committed Strategic Housing Number or the Tenure Balance across the Committed Number of the Housing Outputs in accordance with the terms of this Agreement and/or within the total of the Allocated Grant Funding;

Programme Forecast means the update provided by the Grant Recipient to the Forecasts Submission in accordance with and in respect of the matters identified in clause 8.4.2 (*Forecasts Submission and Development Expenditure*);

Programme Reconciliation means the exercise contemplated in clause 5.5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*);

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - ii for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement or any other agreement with Homes England relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by the Grant Recipient, any Group Company or any Delivery Partner or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to Homes England;
- (c) committing any offence:
 - i under Legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010 or the Criminal Finances Act 2017; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England or the Regulator;

Proposed DP Firm Scheme means a Proposed Firm Scheme in respect of which a Delivery Partner has the Required Secure Legal Interest and will be the Landlord;

Proposed Firm Scheme means a scheme comprising AHP Dwellings submitted by the Grant Recipient for consideration by Homes England as a Firm Scheme in the "Completions" screen on IMS for the relevant Active Site;

Proposed Firm Scheme Details has the meaning attributed to it in paragraph 1.2 of the Profiling Conditions;

Public Sector Financial Assistance means any funding (received or receivable by the Grant Recipient, any Group Company or any Delivery Partner) to finance any part of the Housing Outputs from public sector bodies including but not limited to funding by Homes England (other than the Allocated Grant Funding), funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Act 1993 and 1998;

Public Sector Funding means all funding or subsidy in relation to any Housing Outputs or a Firm Scheme in money or money's worth (including any part of the Agreement Funding) received or receivable by the Grant Recipient, any Group Company or any Delivery Partner from public sector bodies including for this purpose funding from government bodies (whether national or local), the European Union or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by Homes England not provided under this Agreement;

Purchase Point means the date upon which a Shared Ownership Dwelling is sold to its first purchaser or, in relation to a Rent to Buy Dwelling, a date which is not earlier than five (5) years after the point at which such Rent to Buy Dwelling first becomes available for letting;

Qualifying Secure Legal Interest means where the "Sites Units Forecast" screen (in the "Site Summary" in the "Site List" screen) on IMS shows that the Active Site is expected to support the delivery of:

- (a) one or more Shared Ownership Dwellings or Rent to Buy Dwellings, a Qualifying SLI (SO Accommodation); and
- (b) one or more AHP Rent Dwellings but no Shared Ownership Dwellings or Rent to Buy Dwellings, a Qualifying SLI (Rented Accommodation),

provided that in each case, where the Grant Recipient, the Delivery Partner or Group Company possesses:

- (c) the freehold estate and one or more leasehold interests derived from the freehold estate; or
- (d) more than one leasehold interest in a chain of leases,

in any Active Site, the interest which is the lowest leasehold interest owned by the Grant Recipient, Delivery Partner or Group Company in the chain of leases must satisfy limb (a) or (b) above (as applicable);¹

Qualifying SLI (Rented Accommodation) means the Grant Recipient, Delivery Partner or Group Company has in respect of the Active Site;

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease will have, as at the date shown on IMS as the forecast practical completion date for the Housing Outputs to be delivered on the Active Site, a Minimum Unexpired Term; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease will have, as at the date shown on IMS as the forecast practical completion date for the Housing Outputs to be delivered on the Active Site, a Minimum Unexpired Term;
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire the requisite interest set out in limbs (a), (b) or (c) and that acquiring that interest is conditional only upon matters that are within the direct and unilateral control of the Grant Recipient, Delivery Partner or Group Company (as applicable);

Qualifying SLI (SO Accommodation) means the Grant Recipient, Delivery Partner or Group Company has in respect of the Active Site;

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the projected Purchase Point; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease will have an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the projected Purchase Point;
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire the requisite interest set out in limbs (a), (b) or (c) and that acquiring that interest is conditional only upon matters that are within

¹ Grant Recipients to note that whilst a Qualifying Secure Legal Interest is required in respect of an Active Site to enable draw down of Allocated Grant Funding against that Active Site, by Practical Completion you must hold the Required Secure Legal Interest and where this includes possessory title or good leasehold title, defective title indemnity insurance will be required with a limit of indemnity to at least the Allocated Grant Funding attributed to that Active Site/Firm Scheme.

the direct and unilateral control of the Grant Recipient, Delivery Partner or Group Company (as applicable);

Quarter means the period between each Quarter Date;

Quarter Date means 31 March, 30 June, 30 September or 31 December;

Quarterly Details means the information referred to in clause 8.4.2(a) – 8.4.2(c) (inclusive) (*Forecasts Submission and Development Expenditure*);

Quarterly PMB Meeting has the meaning ascribed to it in clause 8.3.1 (*Review Meetings*);

RCGF means the Recycled Capital Grant Fund maintained in accordance with the Recovery Determination;

RCGF Dwelling means a dwelling delivered as rental accommodation to which RCGF Proceeds are applied (in whole or in part) on or after 1 April 2021;

RCGF Proceeds means that amount of the RCGF which is utilised to meet (in whole or in part) the capital costs of the delivery of any affordable dwellings;

RCGF-Only Dwelling means a dwelling delivered as rental accommodation with RCGF Proceeds but to which, for the purposes of paragraph 18.1 of Part 1 of Schedule 1 (*Agreed Principles*), no Social Housing Assistance has been applied;

Reconciliation Amount has the meaning ascribed to it in clause 5.5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*);

Recover has the meaning set out in the Recovery Determination;

Recoverable Amount has the meaning ascribed to in clause 11.2 (*Repayment of Allocated Grant Funding*);

Recovery Determination means the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2017 and any successor determination or other instrument;

Red Book means the "Red Book" (RICS Valuation – Global Standards), which is the code of practice and guidance for all members of the Royal Institution of Chartered Surveyors;

Register means the register maintained by the Regulator pursuant to section 111 of the HRA 2008;

Registered Provider means For Profit Registered Provider or a body entered on the Register as a non-profit organisation (as such term is defined in section 115 of the HRA 2008);

Regulator means the Regulator of Social Housing established pursuant to Chapter 2 of Part 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Regulatory Body means any government departments or regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of

practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement, the AHP Dwellings delivered pursuant to this Agreement or any other affairs of Homes England;

Regulatory Compliance Conditions means the provisions of clauses 14 (*Confidentiality and freedom of information*), 15 (*Data protection*) and 16 (*Intellectual property*) (inclusive) and the conditions set out in Schedule 6 (*Regulatory Compliance Conditions*);

Regulatory Downgrade means any regulatory judgment by the Regulator which results in a downgrade to either the governance or viability grade for the Grant Recipient or any Delivery Partner under the Governance and Financial Viability Standard;

Rehabilitated or **Rehabilitation** or **Rehabilitating** shall have the meaning ascribed in Chapter 9, subsection 3.3 of the Capital Funding Guide entitled "Procurement and Scheme Issues";

Relevant Authority means any governmental or other authority, court with relevant jurisdiction, the local planning authority, landlord, funder, adjoining landowner or any other person whose consent is required to undertake the Works necessary to the delivery of the Housing Outputs or perform the Grant Recipient's obligations under this Agreement;

Relevant Body means:

- (a) where a dispute or difference is on a point of law or legal drafting, the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) where a matter concerns a financial dispute or difference, the President of the ICAEW or CIPFA; or
- (c) in the case of any other matter, President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors;

Relevant Delivery Partner has the meaning ascribed to it in clause 1.2.31 (*Interpretation*);

Relevant Event has the meaning attributed to it in the Recovery Determination or URB Recovery Determination (as the context requires);

Remediation Plan means the plan described in clause 10.3.1 (*Event of Defaults and Termination*);

Remediation Process means the process described in clause 10.3 (*Event of Defaults and Termination*) and clause 10.4 (*Event of Defaults and Termination*);

Rent Standard means any standard set by the Regulator in relation to rent (including any associated explanatory notes or guidance) from time to time under the Section 194 HRA 2008 pursuant to any then applicable Direction;

Rent to Buy has the meaning set out in the Capital Funding Guide as at the date of this Agreement;

Rent to Buy Dwelling means an AHP Dwelling let or to be let on Rent to Buy terms;

Rent to Buy Tenant means an individual who is at the time of letting in employment and has demonstrated an intention to buy his/her own home and:

- (a) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling a first time buyer; or
- (b) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling returning to the market following a relationship breakdown and does not own any other residential property;

Repeated Disposal Default means a Disposal Default which occurs on three occasions or more;

Reprofile means:

- (a) an adjustment made to the Agreed Profile pursuant to an Allocation Change Notice; or
- (b) any adjustment made to the Agreed Profile pursuant to clause 5.3 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*); or
- (c) any other adjustment made to the Agreed Profile:
 - i as agreed between the parties; or
 - ii as a result of Homes England exercising its rights pursuant to an Event of Default;

Request for Information/RFI shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Works or the Housing Outputs, this Agreement or any activities or business of Homes England;

Required Secure Legal Interest means with respect to each Proposed Firm Scheme:

- (a) a SLI (SO Accommodation) in relation to each Shared Ownership Dwelling or Rent to Buy Dwelling; and
- (b) a SLI (Rented Accommodation) in respect of each AHP Rent Dwelling, provided that in each case, where the Grant Recipient or Delivery Partner possesses:
 - (c) the freehold estate and one or more leasehold interests derived from the freehold estate; or
 - (d) more than one leasehold interest in a chain of leases,

in any Proposed Firm Scheme, the interest which is the lowest leasehold interest owned by the Grant Recipient or Delivery Partner in the chain of leases must satisfy limb (a) or (b) above (as applicable);

Required Standards means the requirements of this Agreement, the Capital Funding Guide (in so far as they are in force at the point at which an Active Site has achieved Start on Site), all Consents and Legislation and in respect of any OPSO Scheme, the applicable OPSO Standards;

Restructure means any merger or de-merger or consolidation or reconstruction or amalgamation or a transfer of the whole or any part of its undertaking or property to any person or the acceptance of any transfer of the whole or any part of the undertaking or property from any person (whether or not pursuant to section 900 Companies Act 2006) excluding any transfers on commercial arms' length terms and in the ordinary course of business of less than 10% of the transferor's assets or any other arrangement having an equivalent effect to these;

Review Meeting means a meeting of the type described in clause 8.3 (*Review Meetings*);

RIDDOR means Reporting of Injuries Diseases and Dangerous Occurrences Regulations 2013;

Right to Acquire has the meaning given in section 180 of the HRA 2008;

Right to Buy means the right to purchase a dwelling at a discount conferred on tenants of Councils by Part V of the Housing Act 1985 and includes cases in which the right is preserved under section 171A Housing Act 1985;

Right to Shared Ownership means the right for a Tenant to purchase an Eligible Dwelling on Shared Ownership Lease terms as more particularly described in the RTSO Guidance and the Capital Funding Guide;

RTB Receipts means receipts retained by a local authority pursuant to the exercise by a tenant of the Right to Buy;

RTSO Disposal means the grant of a Shared Ownership Lease pursuant to the Right to Shared Ownership;

RTSO Guidance means the guidance entitled "Right to Shared Ownership: initial guidance for registered providers" at <https://www.gov.uk/government/publications/right-to-shared-ownership-initial-guidance-for-registered-providers/right-to-shared-ownership-initial-guidance-for-registered-providers> published by the Ministry of Housing Communities and Local Government on 8 September 2020 (as the same may be supplemented, amended or updated from time to time);

Rural Area means a village, town, hamlet or other settlement with a population of fewer than 3,000 persons;

Rural Output means a Housing Output required to be delivered in a Rural Area as identified in the Agreed Provider Profile (excluding any Housing Output also delivered as Community-Led Output);

Security means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (such as sale or lease and leaseback effected for such purpose, a blocked account, set-off or similar 'flawed asset' arrangement);

Service of Public Economic Interest has the meaning given to it under the United Kingdom Competition Requirement;

Shared Ownership Dwelling means an AHP Dwelling to be disposed of on Shared Ownership Lease terms;

Shared Ownership Lease means a shared ownership lease that:

- (a) satisfies the definition of "Shared ownership arrangements" as set out in Section 70 of the HRA 2008; and
- (a) meets any applicable requirements of the Capital Funding Guide;

Shared Personal Data means Personal Data shared between Homes England and the Grant Recipient for Processing pursuant to this Agreement which is currently anticipated to be limited to Personal Data relating to Homes England employees such as email addresses and contact names and/or data requested pursuant to clause 8.3.19 (*Review Meetings*);

Site means any area of land or buildings upon which any of the Housing Outputs are to be constructed details of which are more specifically set out in the "Site List" screen on IMS;

Site Grant means the total amount of the Allocated Grant Funding which has been allocated (taking into account the proposed Tenure Types, the number of Housing Outputs (including their proposed Designation) and Agreed Grant Rates) to the Site as set out in the "Completion Phase Review" screen on IMS;

SLI (SO Accommodation) means the Grant Recipient or Delivery Partner has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the Purchase Point; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the Purchase Point;

and, in each case defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Firm Scheme Grant for that Site;

SLI (Rented Accommodation) means the Grant Recipient or Delivery Partner has in respect of the Site;

- (a) freehold title registered with title absolute;

- (b) leasehold title registered with title absolute where the lease has a Minimum Unexpired Term; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has a Minimum Unexpired Term,

and, in each case defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Firm Scheme Grant for that Site;

Social Rent means a rent calculated in accordance with the formula for calculating social rents set out in Legislation and (to the extent applicable) in the Rent Standard;

Social Rent Dwelling means an AHP Dwelling let or to be let at a Social Rent;

SPEI Allowable Costs means those costs incurred by the Grant Recipient or any Delivery Partner in providing the AHP Housing as specified in the Forecasts Submission and "Completion Phase Cost and Contributions" screens on IMS (calculated using generally acceptable accounting principles) as follows:

- (a) the Development Expenditure;
- (b) all other direct costs of providing the AHP Housing;
- (c) a proper proportion of costs (including for common infrastructure) if these are shared between AHP Housing and other construction on Sites where the AHP Housing is situated; and/or
- (d) other costs permitted under the United Kingdom Competition Requirement of operating the AHP Housing as affordable housing;

SPEI Entrustment means the assignment of the specific task of providing and/or operating (as the case may be) the AHP Dwellings as social housing (within the meaning of Section 68 of the Housing and Regeneration Act 2008) under the terms of this Agreement (including Schedule 9 (*SPEI Entrustment*)) as a Service of Public Economic Interest under the United Kingdom Competition Requirement;

SPEI Information means such information about or relating to the SPEI Allowable Costs, the SPEI Revenue, the SPEI Necessary Subsidy and such other information as Homes England may reasonably request;

SPEI Necessary Subsidy means under the United Kingdom Competition Requirement the maximum amount of Subsidy which may be provided without either Unlawful Subsidy or an SPEI Overpayment arising;

SPEI Overpayment means the extent to which Public Sector Funding (including Agreement Funding) exceeds the SPEI Necessary Subsidy;

SPEI Revenue means all income (including all Public Sector Funding but excluding Agreement Funding) which the Grant Recipient or a Delivery Partner or an Affiliate receives for the purposes of or earns from the AHP Housing;

SPEI Review means a review by Homes England of the provision of Agreement Funding in order to assess compliance with the United Kingdom Competition Requirement and/or determine whether an SPEI Overpayment has arisen in relation to any Firm Scheme;

Start on Site means that point in the development of an Active Site where;

- (a) a Building Contract has been entered into;
- (b) the Contractor under the Building Contract has taken possession of the Active Site; and
- (c) the Start on Site Works to the Active Site have commenced;

Start on Site Works means:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving;
- (d) drainage works specific to the Housing Outputs forming part of the Active Site; or
- (e) such works of demolition or service diversion as are expressly and strictly contemplated in the section of the Capital Funding Guide entitled "Finance – Grant Claims and Payments";

Starts Amount means the sum of the following calculation:

Starts Amount = Starts Percentage (expressed as a decimal) x Blended Grant Rate

Starts Percentage means either:

- (a) where the Grant Recipient has not been paid any Acquisition Amount in respect of the Housing Output to be delivered on the Active Site subject to the Payment Request, seventy five percent (75%); or
- (b) where the Grant Recipient has been paid the Acquisition Amount in respect of the Housing Output to be delivered on the Active Site subject to the Payment Request, thirty five percent (35%);

Starts Project means a project solely comprising an Active Site in respect of which:

- (a) Start on Site Works have commenced but excludes any Firm Schemes; or
- (b) an Acquisition Amount has been paid and which Homes England has (in its absolute discretion) agreed to treat as a Starts Project;

Statement of Grant Usage means the document provided by the Grant Recipient in a form approved by Homes England which provides details on the usage of the Allocated Grant Funding which it has received;

Strategic Framework Agreement means an agreement providing a framework for collaboration between Grant Recipient and Homes England and dated [];

Subject Site means the Site, AHP Dwelling, Firm Scheme or asset funded by Allocated Grant Funding which is comprised or is to be comprised in the relevant Disposal;

Subsidy means any direct or indirect financial assistance which:

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
 - i a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
 - ii the forgoing of revenue that is otherwise due;
 - iii the provision of goods or services, or the purchase of goods or services; or
 - iv a measure analogous to these,
- (b) confers an economic advantage on one or more economic actors;
- (c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other country or countries which the United Kingdom has entered into a trade agreement with which has provisions in respect of public sector funding arrangements;

Tenancy Standard means the tenancy standard published by the Regulator from time to time pursuant to its power under section 193 of the HRA 2008 (or such other legislative or regulatory requirement or standard as may apply to the Grant Recipient or Delivery Partner from time to time);

Tenant means a tenant of an Eligible Dwelling who satisfies the eligibility criteria identified in Section 3 of the RTSO Guidance;

Tenure Balance means the percentage split between the different Tenure Types identified in the Agreed Provider Profile;

Tenure Type means a tenure of the type listed in limb (a) of the definition of AHP Housing;

Term means the period of time from the date of this Agreement until:

- (a) 30 September 2026; or
- (b) any later date agreed by Homes England (in its absolute discretion) in writing subject always to earlier termination by Homes England of the entirety of this Agreement;

Total Housing Output Costs means if all costs in relation to the Housing Outputs:

- (a) have been incurred, the aggregate of such costs; or
- (b) have not yet been incurred, the actual and forecasted value (as relevant) of the aggregate of such costs,

each of such costs being as identified in the "Forecasts Submission" screen on IMS;

Transparency Obligations means the obligations set out in paragraph 5 (*Transparency Obligations*) of Schedule 6 (*Regulatory Compliance Conditions*);

Undrawn Amount means such part of the Allocated Grant Funding as has not been paid to the Grant Recipient under this Agreement;

United Kingdom Competition Requirement means as provided for in the provisions of Chapter 3 (Subsidy Control) of Title XI (Level Playing Field for Open and Fair Competition and Sustainable Development) of the EU-UK Trade and Cooperation Agreement (as incorporated into the laws of England and Wales, Scotland and Northern Ireland by Section 29 of the European Union (Future Relationship) Act 2020) and/or such other Legislation and/or regulations and/or guidance issued by the Secretary of State and/or approved by Parliament which is in force and/or applies in England which regulates Subsidy;

Unlawful Subsidy means Subsidy which is in contravention of or is an infringement of the United Kingdom Competition Requirement;

Unregistered Body means a body which is not entered on the Register;

Uplift Amount means an amount of the type described in the Recovery Determination or URB Recovery Determination (as applicable) and calculated in accordance with the methodology set out from time to time in the Capital Funding Guide;

URB Recovery Determination means the Recovery of Capital Grants from Unregistered Bodies General Determination 2017 and any successor determination or other instrument;

Valuation means a valuation report to be shared with Homes England presenting the Market Value of the Subject Site by the Valuer prepared on the basis of the most current guidance and statements of asset valuation practice and guidance notes issued by the Royal Institution of Chartered Surveyors;

Valuer means such reputable firm of surveyors as is a member of the Royal Institute of Chartered Surveyors;

VAT means Value Added Tax as presently charged under the Value Added Tax Act 1994 or any tax of similar nature;

Voluntary Right to Buy means the disposal of a dwelling on voluntary terms by a Registered Provider to an existing tenant at a discount equivalent to the Right to Buy discount;

VRTB Receipts means receipts retained by a Registered Provider pursuant to the exercise by a tenant of the Voluntary Right to Buy;

Waiver Condition means the provision of satisfactory evidence by the Grant Recipient to Homes England that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Grant Recipient, a Delivery Partner or a Group Company;
- (b) a Contractor of any tier (or any employee of a Contractor not acting independently of the Contractor);
- (c) an employee of a Contractor of any tier acting independently of such Contractor; or
- (d) any person not specified in parts (a), (b) or (c),

and Homes England is satisfied that the Grant Recipient, Delivery Partner and/or the Contractor (as applicable) has taken such action as is appropriate taking in to account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one or more of the directors of the Grant Recipient, Delivery Partner or relevant Contractor (as applicable); and

Works means all the works (including the Start on Site Works, design, infrastructure works and all other works necessary for obtaining access to the Sites) to be undertaken in order to ensure that the Housing Outputs are delivered in accordance with the terms of this Agreement and meet the Required Standards.

1.2 Interpretation

1.2.1 The masculine includes the feminine and vice versa.

1.2.2 The singular includes the plural and vice versa.

1.2.3 Any reference in this Agreement to any clause, sub-clause, condition, sub-condition, paragraph, schedule, annexure or section heading is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, condition, sub-condition, paragraph, schedule, annexure or section heading of this Agreement.

1.2.4 Any reference to this Agreement or to any other document or publication shall include (except where expressly stated otherwise) any variation, amendment or supplement to or restatement of such document or publication to the extent that such variation, amendment, supplement or restatement is not prohibited under the terms of this Agreement.

1.2.5 Any reference to any enactment, order, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a

reference to the enactment, order, regulation, determination or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.

- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A time of day shall be a reference to London time.
- 1.2.9 A party means a party to this Agreement.
- 1.2.10 The words includes or including are to be construed without limitation.
- 1.2.11 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) or in the form set out in a schedule or annexure to this Agreement.
- 1.2.12 A reference to paragraph in a schedule shall be construed as reference to a paragraph in that particular schedule.
- 1.2.13 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.
- 1.2.14 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by or to Homes England, such consent or approval or notice shall only be validly given if it is in writing (save where required to be given in IMS) and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by Homes England by notice in writing to the other parties from time to time.
- 1.2.15 An obligation to do anything includes an obligation to procure its being done.
- 1.2.16 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.17 The terms "Active Site" "Site" and "Firm Scheme" includes each and every part of it and any estate or interest in it.
- 1.2.18 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally (save where expressly provided otherwise).
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 No review comment or approval by Homes England under the provisions of this Agreement, or under the Strategic Framework Agreement, shall operate to exclude or limit Homes England's entitlements under this Agreement, or the

Grant Recipient's obligations or liabilities under this Agreement, or those of any other party.

- 1.2.21 The Grant Recipient shall be responsible as against Homes England for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 1.2.22 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve the Grant Recipient of any of its obligations under this Agreement or of 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, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.23 Save where a contrary intention is shown or where an express discretion is given by this Agreement, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner in deciding whether to give any consent, agreement, determination or approval or express its satisfaction and whether to give any such consent, agreement, determination or approval or express its satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter its statutory powers, rights or obligations.
- 1.2.24 The term "delivered" when used in the context of the Housing Outputs shall be construed to mean that the Housing Outputs have reached Practical Completion and are available for occupation for their Agreed Purposes.
- 1.2.25 Any reference to the exercise of a discretion by Homes England shall be construed as permitting Homes England to exercise its discretion freely and without constraint of any kind.
- 1.2.26 Where this Agreement refers to information set out in IMS, this Agreement shall be construed as incorporating such information into its terms.
- 1.2.27 Any terms used in the definition of "Subsidy" shall, unless the context requires otherwise, be construed as having the meaning given to them in the United Kingdom Competition Requirement.
- 1.2.28 Any reference to a Section and/or a Chapter of the Capital Funding Guide in this Agreement shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.
- 1.2.29 In the event of any conflict between the Baseline Funding or Additional Funding figures set out in IMS (and accepted by Homes England through IMS) and the Baseline Funding or Additional Funding figures set out in the definition of Allocated Grant Funding in this Agreement, the Baseline Funding or Additional Funding figures set out in IMS shall prevail.

1.2.30 Any link to a website provided in this Agreement or a reference in this Agreement to a website shall refer to any successor or replacement to or for such link or website and to any update to either.

1.2.31 For the purposes of this Agreement, the term "Relevant Delivery Partner" means the Delivery Partner which has or will have a Required Secure Legal Interest in the Firm Scheme or Proposed Firm Scheme (as applicable) and will be the Landlord.

2 **Provision of Allocated Grant Funding**

2.1 Homes England (in exercise of its powers under the HRA 2008) agrees to make available to the Grant Recipient during the Availability Period grant funding in an aggregate principal amount equal to the Allocated Grant Funding on the terms set out in this Agreement.

2.2 The Allocated Grant Funding is made available to the Grant Recipient to provide the AHP Housing subject to and in accordance with the terms and conditions of this Agreement.

2.3 The Grant Recipient acknowledges and agrees that the Allocated Grant Funding may be adjusted by Homes England:

2.3.1 in the exercise of its rights under this Agreement; or

2.3.2 to accommodate factors such as (but without limitation):

(a) changes to the Required Standards or the Agreed Profile;

(b) changes to the Works or the Housing Outputs agreed between the parties;

(c) increases in income or other sources of financial assistance becoming available to the Grant Recipient or any Contractor in relation to the delivery of the Works or the Housing Outputs; or

(d) available Homes England resources; or

(e) any increase in the number of Housing Outputs proposed after the date of this Agreement by the Grant Recipient and agreed by Homes England to be delivered pursuant to this Agreement.

2.4 The Availability Period will come to an end in relation to all Undrawn Amounts on the termination of this Agreement.

3 **Acknowledgements, Representations and Warranties**

3.1 Without prejudice to any other term of this Agreement, the Grant Recipient:

3.1.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;

3.1.2 represents and warrants to Homes England:

- (a) in the terms set out in this Agreement (including those set out in paragraphs 1-7 of Part 2 of Schedule 1 (*Representations and Warranties*)) as at the date of this Agreement, and on the date of each Review Meeting (by reference to the facts and circumstances then existing); and
- (b) in the terms set out in this Agreement (including those set out in Part 2 of Schedule 1 (*Representations and Warranties*)) on the date of each Payment Request; and

3.1.3 acknowledges and agrees that Homes England is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

4 Payment of Allocated Grant Funding

4.1 Initial condition precedent

4.1.1 Homes England's obligations under this Agreement are subject to the condition precedent that:

- (a) it has conducted due diligence (including financial and legal due diligence) satisfactory to it in relation to the Grant Recipient and the Housing Outputs;
- (b) it has received (in form and substance satisfactory to it (acting reasonably)) confirmation from the Grant Recipient (whether in writing and/or via the DDEP) of the identity of each proposed Delivery Partner with whom it has entered into a Delivery Partner Contract (or with whom it is then proposing to enter into a Delivery Partner Contract) and the role they will undertake in delivering the Housing Outputs; and
- (c) Homes England has provided its written approval to each such proposed Delivery Partner's identity and role.

4.1.2 The provision of Homes England's approval pursuant to clause 4.1.1(c) (*Initial condition precedent*) will represent confirmation of the satisfaction of the condition precedent.

4.1.3 The Grant Recipient must provide a comparable written confirmation of the matters referred to in clause 4.1.1(b) (*Initial condition precedent*) to Homes England as soon as practicable following the identification of any New Delivery Partner.

4.2 Conditions Precedent to each Payment Request for Allocated Grant Funding

4.2.1 The obligation of Homes England to make available any Allocated Grant Funding is subject to the conditions precedent that at the time of the Payment Request and at the time of Homes England paying Allocated Grant Funding in response to the Payment Request:

- (a) the amount of Allocated Grant Funding specified in the Payment Request has been considered and endorsed by the PMB at a Quarterly PMB Meeting and approved by Homes England in accordance with clause 8.3 (*Review Meetings*);
- (b) a valid Payment Request has been made in accordance with clause 4.3 (*Mechanics and payment of Allocated Grant Funding*) and the amount of Allocated Grant Funding is, subject always to clauses 4.3.3 (*Mechanics and payment of Allocated Grant Funding*) and 5.11 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*), consistent with the calculation set out in Schedule 3 (*Payment Arrangements*);
- (c) Homes England is in receipt of any approvals Homes England may require whether internally or as required by Legislation or by central Government to permit it to make payments in accordance with this Agreement;
- (d) sufficient resources are available (and in Homes England's opinion (acting reasonably) are likely to remain available) to Homes England (taking account inter alia of its commitments under the AHP 2021/26 or other programme commitments) to support the Payment Request and/or the Allocated Grant Funding contemplated in this Agreement;
- (e) where the Payment Request relates to an Active Site and/or Housing Outputs in respect of which a Delivery Partner has delivery responsibility and/or will be the Landlord of the relevant Housing Outputs:
 - i the Grant Recipient has provided or updated and reissued to Homes England the Delivery Partner Confirmation with respect to such Delivery Partner or has confirmed to Homes England that no change to the relevant information is required;
 - ii the Grant Recipient has confirmed that:
 - A it has undertaken all such due diligence as is necessary in respect of the relevant Delivery Partner to satisfy itself that such Delivery Partner is capable of delivering its obligations under this Agreement and of giving the representations, warranties and undertakings contained in this Agreement; and
 - B a Delivery Partner Contract has been entered into by the Grant Recipient and the Delivery Partner (and remains in place);
 - C the Grant Recipient has complied with clause 9.3 (*Change in circumstances*); and
 - iii Homes England has confirmed that:
 - A such Delivery Partner holds Investment Partner status; and

- B the Know Your Customer Information in respect of such Delivery Partner has been approved by Homes England; and
- C a Delivery Partner Deed (and Completion Authority) has been received by Homes England or has been entered into and completed by the parties;
- (f) Homes England (acting reasonably) is satisfied that there is no continuing or unremedied Event of Default;
- (g) no Remediation Process is underway;
- (h) the Payment Request relates to one or more Active Sites and is consistent with the Forecasts Submission;
- (i) the Grant Recipient has confirmed that where the Payment Request relates to an Active Site which is expected to deliver:
 - i any Eligible MMC Outputs, the relevant Active Site will support the delivery of such Eligible MMC Outputs and the MMC Funding Condition will be satisfied;
 - ii Eligible Community Led Outputs, the Grant Recipient will deliver such outputs with a community led organisation
 - iii any Eligible Rural Outputs, such Rural Outputs will be delivered in a Rural Area; and
 - iv any HAPA Social Rent Dwelling, the Active Site supporting such dwellings will be located in a High Affordability Pressure Area;
- (j) where a Payment Request relates to one or more Housing Outputs in respect of which the Acquisition Amount is claimed, the Development Expenditure incurred by the Grant Recipient or Delivery Partner in acquiring the Active Site relating to such Housing Outputs is no less than the aggregate of the Acquisition Amounts for those Housing Outputs;

4.3 **Mechanics and payment of Allocated Grant Funding**

4.3.1 A Payment Request will not be regarded as having been validly made by the Grant Recipient unless:

- (a) the certifications required in the "Payment Request" screen on IMS have been properly completed by the Grant Recipient;
- (b) it is submitted to Homes England within the Availability Period or such period as may be permitted under clause 4.3.5 (*Mechanics and payment of Allocated Grant Funding*);
- (c) it is submitted to Homes England in accordance with the stages, procedures and requirements set out in Schedule 3 (*Payment Arrangements*);

- (d) the Grant Recipient has provided Homes England with confirmation on IMS that it has all necessary arrangements in place to secure the delivery of the Housing Outputs (which relate to the Payment Request) in accordance with the Agreed Profile and the terms of this Agreement;
- (e) the amount which is the subject of the Payment Request has been approved by Homes England pursuant to clause 8.3 (*Review Meetings*); and
- (f) the conditions at clauses 4.1 (*Initial condition precedent*) and 4.2 (*Conditions Precedent to each Payment Request for Allocated Grant Funding*) have been satisfied.

4.3.2 Subject to the terms of this Agreement, Homes England will pay each undisputed instalment of Allocated Grant Funding to the Grant Recipient within ten (10) Business Days of receipt of a valid Payment Request.

4.3.3 Homes England shall not be obliged to pay any instalment of Allocated Grant Funding where:

- (a) the amount of the instalment which is the subject of the Payment Request is greater than the amount of Allocated Grant Funding forecast as being payable for the relevant Quarter in the Grant Drawdown Profile (**Quarterly Cap**); and/or
- (b) payment of the amount of Allocated Grant Funding subject to the Payment Request would lead to the aggregate amount of the Allocated Grant Funding paid to the Grant Recipient exceeding the aggregate Development Expenditure then incurred by the Grant Recipient and Delivery Partners (**Eligible Development Expenditure Cap**),

provided that nothing in this clause 4.3.3 (*Mechanics and payment of Allocated Grant Funding*) shall preclude the Differential Amount from being carried forward to future Quarterly Forecasts for approval.

4.3.4 Subject to clause 4.3.5 (*Mechanics and payment of Allocated Grant Funding*), any amount of Allocated Grant Funding not claimed by the Grant Recipient during the Availability Period will be automatically cancelled.

4.3.5 The Grant Recipient may make a final application for the payment of Allocated Grant Funding in accordance with the procedures set out in this clause 4 (*Payment of Allocated Grant Funding*) and Schedule 3 (*Payment Arrangements*) in the first Quarter following the expiry of the Availability Period for Development Expenditure incurred in the immediately preceding Quarter.

4.4 Use of Allocated Grant Funding

4.4.1 The Allocated Grant Funding will be the sole property of the Grant Recipient and must be used by the Grant Recipient for Development Expenditure only.

- 4.4.2 Without affecting the obligations of the Grant Recipient in any way, Homes England is not bound to monitor or verify the application of any amount advanced pursuant to this Agreement.
- 4.4.3 The Grant Recipient must not on-lend or advance to a third party (other than a Delivery Partner) the whole or any part of the Allocated Grant Funding without the prior written consent of Homes England, such consent to be given or withheld at its absolute discretion.
- 4.4.4 Insofar as Allocated Grant Funding is advanced by the Grant Recipient to a Delivery Partner or is utilised by the Grant Recipient on behalf of a Delivery Partner the Grant Recipient must ensure that:
- (a) it makes no deductions from the Allocated Grant Funding advanced to or utilised on behalf of that Delivery Partner;
 - (b) there is no differential in the Blended Grant Rate used by the Grant Recipient or the Delivery Partner to whom the relevant Allocated Grant Funding is advanced for the purposes of delivering the Housing Outputs; and
 - (c) the Allocated Grant Funding advanced is used solely for the purposes of meeting Development Expenditure.

4.5 **Set-off**

Following receipt of any Payment Request, Homes England shall be entitled to set-off any monies due to the Grant Recipient under that Payment Request against any monies owed to Homes England by the Grant Recipient in relation to this Agreement (including, any sums payable to Homes England as a result of the application of clauses 5.6 and 5.8 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*)) and any other agreement to which the two are party.

5 **Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations**

5.1 Within ten (10) Business Days of each Quarter Date, the Grant Recipient must provide Homes England with the Quarterly Details in accordance with the requirements of clause 8.4 (*Forecasts Submission and Development Expenditure*).

5.2 Homes England may issue an Allocation Change Notice where:

- 5.2.1 Homes England becomes aware that a Change Event or a Programme Default (including any failure or likely failure to deliver any Committed Strategic Housing Number) has occurred or will occur; and/or
- 5.2.2 an Active Site becomes an Inactive Site on IMS; and/or
- 5.2.3 following completion of the Annual Reconciliation or a Review Meeting,

and such Allocation Change Notice may require:

- 5.2.4 a reduction, increase or other change to the number or location of the Housing Outputs (including to one or more of the Committed Strategic Housing Numbers) to be delivered; and/or
- 5.2.5 a suspension, reduction or other adjustment to the Allocated Grant Funding; and/or
- 5.2.6 a reduction or other adjustment to the Agreed Grant Rates or Blended Grant Rate; and/or
- 5.2.7 any other change to the Agreed Profile as Homes England (acting reasonably) deems necessary,

and such Allocation Change Notice shall be discussed as soon as reasonably practicable by the parties and in any event within 15 Business Days of the date of issue of the Allocation Change Notice.

5.3 Nothing in clause 5.2 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*) shall preclude the parties from agreeing an alternative means of dealing with the Change Event, Programme Default, result of any Review Meeting or Annual Reconciliation to that set out in the Allocation Change Notice **save that** unless such alternative is agreed and reflected in IMS by the end of the next following Quarter, the change required by Homes England in the Allocation Change Notice shall take effect at the end of such Quarter and Homes England shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Allocation Change Notice.

5.4 The Grant Recipient must ensure that IMS is updated in the manner described in paragraph 1 of the Profiling Conditions and must ensure that any information submitted on IMS remains accurate and that IMS has been updated to reflect all the Housing Outputs which have reached Practical Completion by the date that is 10 Business Days from the end of the first Quarter in 2026.

5.5 Homes England shall by no later than 31 July 2026 (or such other date agreed by Homes England in its absolute discretion and in writing or on IMS) calculate and confirm the Reconciliation Amount to the Grant Recipient based on the information submitted by the Grant Recipient on IMS, the number, geographical location, Designation and Tenure Type of the Housing Outputs which have reached Practical Completion and for the purposes of this clause 5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*), the Reconciliation Amount shall be the product of the following calculation:

$$\text{RCA} = \text{AGF (Paid)} - (\text{AGF (Attributed)} - \text{Total Shortfall})$$

Where:

RCA is the Reconciliation Amount

AGF (Paid) is the total amount of Allocated Grant Funding then paid to the Grant Recipient (less any amount of Allocated Grant Funding already recovered by Homes England under this Agreement)

AGF (Attributed) is the total amount of Allocated Grant Funding that has then been attributed to Firm Schemes pursuant to the application of the Profiling Conditions and accepted by Homes England in IMS

Total Shortfall means the Shortfall Amount multiplied by the Total Blended Grant Rate

Total Blended Grant Rate means an amount equal to the total of the Allocated Grant Funding set out in the Agreed Provider Profile divided by the total number of Housing Outputs comprised within the Agreed Provider Profile.

Shortfall Amount means an amount equal to the aggregate shortfall between each Committed Strategic Housing Number and the actual number of the corresponding Community-Led Outputs, MMC Outputs, Rural Outputs and/or Social Rent Outputs delivered (and for the avoidance of doubt any excess against one Committed Strategic Housing Number may not be set off against a shortfall in another).

5.6 In the event of:

5.6.1 a Reprofile; or

5.6.2 an Active Site becoming an Inactive Site,

resulting in either:

5.6.3 a revised Allocated Grant Funding amount which is less than the Allocated Grant Funding paid to the Grant Recipient; or

5.6.4 Development Expenditure incurred by the Grant Recipient and Delivery Partner(s) in relation to Active Sites being less than the Allocated Grant Funding paid,

Homes England shall be entitled to recover an amount sufficient to reduce the Allocated Grant Funding paid to the lesser of the revised Allocated Grant Funding or the Development Expenditure incurred by the Grant Recipient and Delivery Partner(s) in relation to Active Sites (**Reprofile Amount**) and the Reprofile Amount shall be calculated as follows:

Reprofile Amount = the greater of Total Allocation Change Amount or Total Expenditure Change Amount

Where:

Total Allocation Change Amount = AGF (Paid) – RAGF

Total Expenditure Change Amount = AGF (Paid) – DEI

AGF (Paid) is the total amount of Allocated Grant Funding then paid to the Grant Recipient (less any amount of Allocated Grant Funding already recovered by Homes England under this Agreement)

DEI is the revised Development Expenditure incurred as specified in the revised "Quarterly Development Expenditure" screen and Forecasts Submission on IMS;

RAGF is the revised Allocated Grant Funding as a result of the Reprofile or removal of the Active Site;

Provided that in each case where the Total Expenditure Change Amount or the Total Allocation Change Amount is a negative number, such number shall be deemed to be zero.

- 5.7 Where a Reprofile has occurred, the Blended Grant Rate prior to such variation (**Old Blended Grant Rate**) shall be adjusted to be the sum of the following formula (**New Blended Grant Rate**):

New Blended Grant Rate = Baseline Funding ÷ Committed Number (in each case as set out in the (revised) Agreed Provider Profile as a result of the Reprofile)

- 5.8 In the event of a Reprofile resulting in a decrease to the Blended Grant Rate pursuant to clause 5.7 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*), Homes England shall be entitled to recover a sum resulting from the following formula (**Grant Rate Sum**):

$$\text{Grant Rate Sum} = \left(\frac{\text{Old Blended Grant Rate} - \text{New Blended Grant Rate}}{\text{Old Blended Grant Rate}} \right) \times \text{Total AGF Paid}$$

Where:

New Blended Grant Rate is the Blended Grant Rate after the date of the variation to the Baseline Funding or Housing Outputs;

Old Blended Grant Rate is the Blended Grant Rate prior to the date of the variation to the Baseline Funding or Housing Outputs;

Total AGF Paid means the total Baseline Funding paid to the Grant Recipient (excluding the aggregate Additional MMC Grant Rate or Additional Community Led/Rural Grant Rate allocated to a Firm Scheme);

- 5.9 The Grant Recipient must pay Homes England the Reprofile Amount, Reconciliation Amount or Grant Rate Sum (as applicable) in accordance with the timetable set out in clause 11.4 (*Repayment of Allocated Grant Funding*) (mutatis mutandis) unless in any particular case Homes England has exercised its rights of set off under clause 4.5 (*Set-off*).
- 5.10 Where a Reconciliation Amount is repaid pursuant to clause 5.9 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*), Homes England shall reduce the Firm Scheme Grant attributed to each Housing Output within each Firm Scheme by an amount equal to the Total Shortfall divided by the aggregate number of Housing Outputs comprised within all Firm Schemes or by such other proportion as Homes England considers appropriate (subject always that the total reductions should not exceed the Total Shortfall).
- 5.11 Subject to clause 10 (*Events of Default and Termination*) and resources being available to Homes England, where the Reconciliation Amount calculated pursuant to clause 5.5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*) is a negative amount (**Final Balance**), the Grant Recipient may include such amount (expressed as a positive) in the Payment Request to be submitted after 31 March 2026 provided always

that payment by Homes England of such Final Balance will not result in the total amount paid by Homes England under this Agreement exceeding the Allocated Grant Funding sum.

- 5.12 In receiving any payment pursuant to clause 5.11 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*) the Grant Recipient shall be deemed to represent and warrant that all previous representations and warranties provided by it pursuant to this Agreement are true and accurate in all material respects.

6 OPSO Schemes

Where the Grant Recipient or any Delivery Partner is delivering or will deliver one or more OPSO Schemes, the terms of this Agreement shall apply, be interpreted, and take effect subject to the exceptions and adaptations specified in Schedule 7 (*OPSO Schemes*) with respect to each such OPSO Scheme.

7 Programme Conditions

- 7.1 The Grant Recipient must comply with (and, to the extent applicable, procure each Delivery Partner's compliance with) the:

- 7.1.1 Delivery Conditions;
- 7.1.2 Profiling Conditions;
- 7.1.3 Operational Conditions;
- 7.1.4 Disposal Conditions;
- 7.1.5 Regulatory Compliance Conditions; and
- 7.1.6 Delivery Partner Conditions.

8 Notifications, reporting and audit

- 8.1 The Grant Recipient shall notify the Homes England Senior Officer in writing:

8.1.1 as soon as reasonably practicable on becoming aware of any change (whether actual or estimated) required to the Agreed Profile or Housing Outputs;

8.1.2 as soon as reasonably practicable on becoming aware of any event which:

- (a) has or might have a Material Adverse Effect on the Grant Recipient or a Delivery Partner; or
- (b) has a detrimental effect on any aspect of the Agreed Profile;
- (c) may impact adversely on the Grant Recipient's ability to deliver or to procure delivery of the Housing Outputs (including each Committed Strategic Housing Number) in accordance with the timescales set out in this Agreement or the terms of the Agreed Profile;

8.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Grant Recipient or a Delivery Partner arising out of or relating to the

activities of the Grant Recipient or of any Delivery Partner or Group Company in relation to the Programme and/or the Allocated Grant Funding;

8.1.4 as soon as reasonably practicable on becoming aware of there being a proposed change to:

- (a) the use of any asset funded by means of Allocated Grant Funding (including the purposes for which it is to be used and/or any time periods for which the asset is to be used);
- (b) the ownership of any asset funded by means of Allocated Grant Funding;

8.1.5 immediately upon becoming aware of an occurrence which is an Event of Default or a potential Event of Default or of a breach of any of the conditions referred to in clause 7.1 (*Programme Conditions*);

8.1.6 immediately upon becoming aware of any challenge under, any investigations into or any findings of any breach of:

- (a) any equality or anti-discrimination Legislation or regulations directly or indirectly related to the Works (or any part of them) whether or not the Grant Recipient, a Delivery Partner 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/or
- (b) the Data Protection Legislation whether or not the Grant Recipient, a Delivery Partner 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/or
- (c) the Procurement Laws whether or not the Grant Recipient, a Delivery Partner and/or any Contractor and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate);

8.1.7 immediately upon becoming aware of:

- (a) any audit or statutory or regulatory investigation in relation to any aspect of the delivery of the Housing Outputs or the activities or governance of the Grant Recipient, any Delivery Partner, any Group Company or Contractors; or
- (b) the occurrence of any act/omission of the Grant Recipient, any Delivery Partner, any Group Company or of any Contractor that harms or has the potential to harm the reputation of Homes England or the Programme or to bring them into disrepute;

8.1.8 as soon as reasonably practicable upon becoming aware that the Allocated Grant Funding is greater than is necessary to deliver the Housing Outputs;

8.1.9 immediately, in the event of the receipt by it or by any Delivery Partner or any Group Company of any other income or funds or other Public Sector Financial Assistance (other than that already notified to Homes England) or guarantees of

them, or the offer of same, in respect of the Housing Outputs beyond any amounts of the same notified by the Grant Recipient to Homes England in IMS (or otherwise) as part of or in connection with the Agreed Profile;

- 8.1.10 as soon as reasonably practicable upon becoming aware that any Active Site or Firm Scheme does or will include dwellings of any tenure other than one comprised in a Tenure Type.

8.2 Resolution

In the event of notification by the Grant Recipient under this clause 8 (*Notifications, reporting and audit*), if applicable and if requested by Homes England, the Grant Recipient will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all reasonable representations of Homes England on such proposals.

8.3 Review Meetings

- 8.3.1 Homes England and the Grant Recipient shall attend a Review Meeting within twenty-five (25) Business Days from the end of each Quarter (or within such longer period as Homes England may at its absolute discretion agree) (**Quarterly PMB Meeting**) to discuss matters including:

- (a) progress in delivering the Housing Outputs, including the Committed Number of Housing Outputs, each Committed Strategic Housing Number, the Milestones and Tenure Balance against the projections in the Agreed Profile and in the applicable Annual Forecast;
- (b) progress in complying with any Remediation Plan approved by Homes England;
- (c) any continuing or unremedied Event of Default;
- (d) the Grant Recipient's projections in relation to its future performance in delivering the Housing Outputs, each Committed Strategic Housing Number, the Programme Commitments, the Milestones and Tenure Balance;
- (e) the need for any changes to the Agreed Profile, the applicable Annual Forecast or the Agreed Grant Rates or any consequential change to the Blended Grant Rate;
- (f) the proposed Payment Request which the Grant Recipient intends to submit in that Quarter and the associated Quarterly Details;
- (g) any Differential Amount remaining unpaid or held over from a preceding Quarter;
- (h) any Final Balance remaining resulting from the Programme Reconciliation and the manner, if any, in which it is to be accommodated;
- (i) the implications, current status and outcomes of any Notifiable Events;

- (j) any Disposal which has occurred in the previous Quarter and/or is projected to occur in the upcoming Quarter;
- (k) any Onward Sale which has occurred in the previous Quarter and/or is projected or anticipated to occur in the next following twelve months;
- (l) progress in utilising any RCGF Proceeds permitted be applied to the Housing Outputs pursuant to this Agreement; and
- (m) such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Quarterly PMB Meeting.

8.3.2 Where as a result of the Quarterly PMB Meeting the proposed Payment Request has been endorsed by the PMB and approved by Homes England, as evidenced in the PMB Minutes and no changes to the Agreed Profile or Quarterly Details are required by Homes England or pending pursuant to this clause 8.3 (*Review Meetings*), the Grant Recipient shall be entitled to submit its formal Payment Request to Homes England in respect of that Quarter, such Payment Request to be submitted within five (5) Business Days of the Grant Recipient's receipt of the PMB Minutes.

8.3.3 If Homes England is not satisfied with the Quarterly Details or Payment Request provided to the Quarterly PMB Meeting pursuant to clause 8.4 (*Forecasts Submission and Development Expenditure*), it shall notify the Grant Recipient with details of such amendments as it requires and the Grant Recipient shall resubmit the Quarterly Details and proposed Payment Request within 5 Business Days of such notification for further consideration by Homes England. For the avoidance of doubt Homes England may continue to make requests for amendments until it is satisfied with the Quarterly Details provided and the proposed Payment Request and, once satisfied, Homes England shall approve the updated Quarterly Details and proposed Payment Request on IMS. Homes England shall act reasonably in relation to any such requests save that any increase or acceleration of the Grant Drawdown Profile shall always be at the absolute discretion of Homes England.

8.3.4 Where:

- (a) no changes to the Agreed Profile are required by Homes England or are pending pursuant to clause 8.3.5 to 8.3.8 (*Review Meetings*); or
- (b) a change to the Agreed Profile has been requested by the Grant Recipient pursuant to clause 8.4 (*Forecasts Submission and Development Expenditure*) but which Homes England has determined does not need to be resolved prior to submission of the Payment Request,

the Grant Recipient shall be entitled to submit its formal Payment Request to Homes England in respect of that Quarter, such Payment Request to be submitted within five (5) Business Days of Homes England's approval of the revised Quarterly Details and proposed Payment Request pursuant to clause 8.3.3 (*Review Meetings*).

- 8.3.5 Where it is agreed at a Quarterly PMB Meeting (or Homes England determines) that any request by the Grant Recipient pursuant to clause 8.4 (*Forecasts Submission and Development Expenditure*) to change the Agreed Profile does need to be resolved prior to submission of the Payment Request, the Grant Recipient shall provide to Homes England (for its approval) a proposal for such changes within five (5) Business Days from the date of that Quarterly PMB Meeting (together with any supporting documents which Homes England may require) (**AP Proposal**).
- 8.3.6 If Homes England approves the AP Proposal provided pursuant to clause 8.3.5 (*Review Meetings*) it shall update IMS as soon as reasonably practicable and the revised Agreed Profile shall be deemed to be the Agreed Profile for the purposes of this Agreement with effect from the date of that approval and (subject to no changes to the Quarterly Details being then required by Homes England or pending pursuant to this clause 8.3 (*Review Meetings*) and subject further to Homes England being satisfied with the proposed Payment Request) the Grant Recipient shall be entitled to submit its formal Payment Request to Homes England in respect of the relevant Quarter such Payment Request to be submitted within five (5) Business Days of the date of Homes England's approval and updating of the changes in IMS.
- 8.3.7 Where Homes England is not satisfied with the AP Proposal, it shall reject such AP Proposal and notify the Grant Recipient of the reasons for the rejection and the Grant Recipient shall have the opportunity to resubmit in IMS a further AP Proposal (with any supporting documents which Homes England may require) to Homes England for approval.
- 8.3.8 If Homes England approves the further AP Proposal provided pursuant to clause 8.3.7 (*Review Meetings*), it shall update IMS as soon as reasonably practicable and the revised Agreed Profile resulting from the further AP Proposal shall be deemed to be the Agreed Profile for the purposes of this Agreement with effect from the date of that approval and (subject to no changes to the Quarterly Details being then required by Homes England or pending pursuant to this clause 8.3 (*Review Meetings*) and subject further to Homes England being satisfied with the proposed Payment Request) the Grant Recipient shall be entitled to submit its formal Payment Request to Homes England in respect of the relevant Quarter such Payment Request to be submitted within five (5) Business Days of the date of Homes England's approval and insertion of the changes required by the approved AP Proposal in IMS.
- 8.3.9 If Homes England is not satisfied with the Grant Recipient's resubmission under clause 8.3.7 (*Review Meetings*), or the parties cannot agree pursuant to clause 8.3.5 (*Review Meetings*) whether the Agreed Profile should be amended, the matter shall be considered to be a General (A) Default for the purposes of clause 10 (*Event of Defaults and Termination*) unless Homes England has issued and implemented an Allocation Change Notice or the parties have agreed and implemented an alternative means of dealing with the relevant circumstances pursuant to clause 5.3 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*).

- 8.3.10 Homes England or the Grant Recipient may also call a Review Meeting on any matter of substance in relation to the Housing Outputs or the operation of this Agreement at any time outside of the quarterly cycle provided that the party requesting the meeting:
- (a) gives reasonable prior written notice to the other of such meeting; and
 - (b) includes with the notice an agenda for such meeting.
- 8.3.11 The Grant Recipient must provide Homes England with a completed Statement of Grant Usage by 30 April in each new Financial Year and a final Statement of Grant Usage by 30 April 2026, in each case accompanied by a financial audit undertaken by an independent auditor to support the information in such Statement of Grant Usage.
- 8.3.12 At the first Quarterly PMB Meeting in each Financial Year in addition to the matters to be addressed at each Review Meeting, Homes England and the Grant Recipient must compare the Grant Recipient's performance of its obligations under this Agreement and progress in delivering the Programme Commitments against the Agreed Profile, the Annual Forecast for the preceding Financial Year, the Annual Forecast for the then current Financial Year and the Statement of Grant Usage (**Annual Reconciliation**).
- 8.3.13 The Grant Recipient shall provide Homes England as soon as is reasonably practicable with such information or reports as Homes England shall reasonably require to support or facilitate the meetings referred to in this Agreement and to monitor the performance of the Grant Recipient's obligations under this Agreement and must take all reasonable steps to ensure that any information provided to Homes England pursuant to this clause 8 (*Notifications, reporting and audit*) is accurate in all material aspects .
- 8.3.14 Homes England and the Grant Recipient shall each use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 8.3 (*Review Meetings*) have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
- 8.3.15 Subject to the prior approval of the other party (such approval not be unreasonably withheld or delayed) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.
- 8.3.16 Unless Homes England notifies the Grant Recipient to the contrary, any meeting under this clause 8.3 (*Review Meetings*) shall be minuted by Homes England and such minutes shall be distributed within five (5) Business Days following the meeting to the Grant Recipient and any other attendee.
- 8.3.17 Nothing in this clause 8.3 (*Review Meetings*) shall prevent Homes England from requesting (whether on behalf of itself, the Regulator or any Government office) at any other time information from the Grant Recipient in respect of any of the items listed in this clause 8.3 (*Review Meetings*) and the Grant Recipient shall promptly respond to any such request.

- 8.3.18 The parties agree that the Regulator shall also be entitled to send a representative to attend any Review Meeting.
- 8.3.19 The Grant Recipient shall promptly:
- (a) participate (and procure that each Delivery Partner participates) in any evaluation of AHP 2021/26 that DLUHC or Homes England or its or their agents may require from time to time;
 - (b) supply (subject always to its data protection obligations under clause 15 (*Data protection*)) any information and data requested by DLUHC, Homes England or its or their agents in respect of any such evaluation, which may include information/data pertaining to any AHP Dwellings (including, inter alia, addresses and tenures of such dwellings); and
 - (c) accurately update IMS with such information as may be requested by Homes England from time to time (acting reasonably) in connection with the terms of this Agreement.
- 8.3.20 Nothing in this Agreement will preclude the parties from agreeing to hold a Review Meeting by telephone or such other means of communication as they see fit.

8.4 **Forecasts Submission and Development Expenditure**

- 8.4.1 The Grant Recipient must confirm through the "Site List" screen on IMS promptly once it has achieved Acquisition Stage and Start on Site (as applicable) on an Active Site.
- 8.4.2 Within 10 Business Days after each Quarter Date, the Grant Recipient must submit via the Programme Forecast for consideration at the next Quarterly PMB Meeting to be held:
- (a) all Development Expenditure incurred in the previous Quarter in respect of each Active Site;
 - (b) any updates it may request to the expected delivery of the Housing Outputs (including achievement of Start on Site and Practical Completion stages), Development Expenditure and Grant Drawdown Profile in the current and subsequent Quarters;
 - (c) where the Quarterly PMB Meeting is the first in the Financial Year, the Annual Forecast; and
 - (d) its proposed Payment Request for that Quarter.
- 8.4.3 The Grant Recipient represents and warrants that the information submitted on the Forecasts Submission pursuant to:
- (a) clause 8.4.1 (*Forecasts Submission and Development Expenditure*) and clauses 8.4.2(a), 8.4.2(c) and 8.4.2(d) (*Forecasts Submission and*

Development Expenditure) is complete, true and accurate in all material respects;

- (b) clause 8.4.2(b) (*Forecasts Submission and Development Expenditure*) is fairly presented and to the best of its knowledge and belief complete true and accurate.

8.5 Inspection and audit facilities

8.5.1 The Grant Recipient shall as and when requested by Homes England, make available on an Open Book Basis and in a timely manner to Homes England where required in connection with this Agreement a copy of each of:

- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient, its Delivery Partners and any Group Company (including where the source was created by and/or is held by any such person or their consultants) for the purposes of or in connection with this Agreement; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the officers, employees, agents or consultants of the Grant Recipient, its Delivery Partners and of any Group Company relating to the Works or the Housing Outputs (including the elemental breakdown of the construction costs of the Housing Outputs) and which have been supplied to or is otherwise in the possession of the Grant Recipient, its Delivery Partners and any Group Company for the purposes of this Agreement.

8.5.2 The Grant Recipient shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by it in respect of the Works and Housing Outputs, and must procure that each Delivery Partner and any Group Company does likewise in respect of expenditure incurred by it in respect of the Works and Housing Outputs;
- (b) when required to do so by Homes England, provide a summary of any of the income and expenditure referred to in clauses 8.5.2(a) or 8.5.3 (*Inspection and audit facilities*) as Homes England may require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement and the application of the Allocated Grant Funding against Development Expenditure; and
- (c) provide such facilities as Homes England may require for its representatives (or any of its auditors or advisors) to visit any place where any records or information of the type described in this clause 8.5 (*Inspection and audit facilities*) are held or maintained and examine such records or information.

8.5.3 The Grant Recipient shall ensure that it, its Delivery Partners and any Group Company and each Contractor keeps on an Open Book Basis (in accordance

with generally accepted accounting practice) separate books of account for items relating to the Works or Housing Outputs which identify items of revenue received (including items of SPEI Revenue) and expenditure incurred (including SPEI Allowable Costs) in relation to the same (at Programme, Firm Scheme and dwelling level).

- 8.5.4 On the determination of this Agreement or (if earlier) upon its termination, the Grant Recipient shall if requested to do so, deliver up to Homes England all the data, materials, documents and accounts referred to in this clause 8.5 (*Inspection and audit facilities*) which it has in its possession, custody or control and shall procure the delivery by each Delivery Partner, Contractor and Group Company to Homes England of the data, materials, documents and accounts referred to in this clause 8 (*Notifications, reporting and audit*) held by them or as otherwise directed by Homes England.
- 8.5.5 The Grant Recipient must (and shall procure that its Delivery Partners, Contractors and all Group Companies) for a period of ten (10) years from the date of the last payment made to the Grant Recipient under this Agreement retain all of the data, documents, materials and accounts referred to in this clause 8.5 (*Inspection and audit facilities*) and the Grant Recipient and those other parties may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to Homes England pursuant to this clause 8 (*Notifications, reporting and audit*).

9 Change in circumstances

9.1 The Grant Recipient shall notify the Homes England Senior Officer:

- 9.1.1 immediately where there is or has been any change in its financial circumstances; and
- 9.1.2 as soon as it becomes aware of any change in the financial circumstances of any Delivery Partner or Group Company,

which in either case does or might reasonably be expected to affect the ability of the Grant Recipient or any Delivery Partner to perform and comply with its respective obligations under this Agreement or any applicable Contract, Delivery Partner Contract or Delivery Partner Deed, including for the avoidance of doubt any withdrawal or reduction of any funding or income available to the Grant Recipient, Delivery Partner or Group Company relative to the delivery of the Works or the Housing Outputs.

9.2 Save where:

- 9.2.1 the Grant Recipient or any Delivery Partner or their holding company is a public limited company and is prohibited by listing rules from doing so; or
- 9.2.2 a Change in Control of the Grant Recipient or Delivery Partner occurs automatically by operation of law and without the Grant Recipient or a Delivery Partner being able to notify in advance;

the Grant Recipient will provide (and will procure that the Delivery Partner will provide) Homes England with a completed Constitutional Change Notification (in accordance with the requirements of paragraph 1.2 of Part 2 of Schedule 5 (*Disposal Conditions*)) at least ten (10) Business Days prior to any Change in Control of the Grant Recipient or Delivery Partner or Restructure of either. Where the circumstances contemplated in clause 9.2.1 or clause 9.2.2 (*Change in circumstances*) apply the Grant Recipient will provide (and will procure that the Delivery Partner will provide) Homes England with a completed Constitutional Change Notification within ten (10) Business Days of the relevant Change in Control or Restructure occurring.

9.3 The Grant Recipient will promptly notify the Homes England Senior Officer if it becomes aware that:

9.3.1 any Know Your Customer Information is or has become inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request; or

9.3.2 it or any Delivery Partner is subject to a Regulatory Downgrade.

9.4 The parties acknowledge and agree that Homes England may review whether the Grant Recipient or any Delivery Partner continues to meet the requirements for Investment Partner status and the Grant Recipient will co-operate with such review and will provide Homes England with such further information, evidence and/or explanation with respect to any such review as Homes England may request.

9.5 In the event that Homes England (acting reasonably) believes that any change notified to it pursuant to this clause 9 (*Change in circumstances*) or of which it otherwise becomes aware of has or might reasonably be expected to have a Material Adverse Effect, the matter shall be submitted as soon as reasonably practicable to the Remediation Process as a General Default (B).

10 **Event of Defaults and Termination**

10.1 Where a Fundamental Default has occurred Homes England shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to do any one or more of the following:

10.1.1 terminate this Agreement in its entirety;

10.1.2 withhold and cancel any further payment of Allocated Grant Funding due to the Grant Recipient under this Agreement; and/or

10.1.3 reallocate or redirect such part of the Allocated Grant Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.

10.2 Where either a General (B) Default or a Persistent Operational Default has occurred and has not been resolved following the application of the Remediation Process or a General (A) Default has occurred, then (notwithstanding any other term of this Agreement) Homes England on the service of written notice shall without incurring any liability to the Grant Recipient be entitled:

- 10.2.1 to terminate this Agreement in relation to all but Firm Schemes and at Homes England's absolute discretion Starts Projects and cancel any Undrawn Amount save to the extent it relates to a Starts Project preserved by Homes England pursuant to this clause 10.2.1 (*Event of Defaults and Termination*); and/or
 - 10.2.2 to withhold and cancel any further payment of Allocated Grant Funding due to the Grant Recipient under this Agreement; and/or
 - 10.2.3 to reallocate or redirect such part of the Allocated Grant Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 10.3 Where a General (B) Default or a Persistent Operational Default has occurred:
- 10.3.1 Homes England shall (notwithstanding any other term of this Agreement) on the service of written notice be entitled to require the Grant Recipient to prepare a plan to address, remedy and/or mitigate the effects of the General (B) Default or the Persistent Operational Default (as applicable) together with a basis for testing whether satisfactory steps have been achieved to address, remedy and/or mitigate the originating General (B) Default or the Persistent Operational Default within an appropriate timeframe (a **Remediation Plan**) and submit the plan to Homes England for approval; and
 - 10.3.2 the rights of Homes England under clause 10.2 (*Event of Defaults and Termination*) shall be suspended pending completion of the Remediation Process.
- 10.4 Where clause 10.3 (*Event of Defaults and Termination*) applies:
- 10.4.1 the Grant Recipient must submit the Remediation Plan to Homes England within ten (10) Business Days of Homes England's request;
 - 10.4.2 Homes England will notify the Grant Recipient as to whether the Remediation Plan is approved as submitted within ten (10) Business Days of its receipt;
 - 10.4.3 if the Remediation Plan is approved, the Grant Recipient must comply with the obligations set out in the Remediation Plan and any failure to do so will be treated as a General (A) Default entitling Homes England to exercise its rights under clause 10.2 (*Event of Defaults and Termination*);
 - 10.4.4 within ten (10) Business Days of the end of the timeframe specified in the Remediation Plan, senior representatives of the parties must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the originating General (B) Default. If in the opinion of Homes England (acting reasonably) the Remediation Plan has not been effective, Homes England shall be entitled in its absolute discretion either to extend the timeframe for the Remediation Plan's operation or to declare that the Remediation Plan has failed in which case a General (A) Default shall be deemed to have occurred entitling Homes England to exercise any of the rights under clause 10.2 (*Event of Defaults and Termination*);

- 10.4.5 if the Remediation Plan is not approved, Homes England shall notify the Grant Recipient of the reasons for the rejection within ten (10) Business Days of its receipt and the Grant Recipient shall have the opportunity to resubmit a further proposed Remediation Plan (with any supporting documents which Homes England may require) such revised Remediation Plan to be submitted to Homes England for approval within ten (10) Business Days of Homes England's rejection notification and if:
- (a) the Grant Recipient fails to resubmit the proposed Remediation Plan, within the period specified in this clause 10.4.5 (*Event of Defaults and Termination*); or
 - (b) Homes England is not satisfied with the Grant Recipient's resubmission, Homes England shall be entitled freely and without any suspension to exercise any of the rights under clause 10.2 (*Event of Defaults and Termination*).
- 10.5 Where:
- 10.5.1 a General Default which falls within limb (d) of the definition of General (A) Default has occurred; or
 - 10.5.2 a General Default which falls within limb (i) of the definition of General (B) Default has occurred or a Persistent Operational Default occurs solely in connection with a Delivery Partner, and neither have been resolved following the application of the Remediation Process,
- Homes England shall (at its absolute discretion) be entitled in the exercise of its rights under clause 10.2.1 (*Event of Defaults and Termination*) to:
- 10.5.3 terminate this Agreement only insofar as it relates to the Starts Projects to which the relevant occurrence relates and cancel any Undrawn Amount which relates to such Starts Project; and/or
 - 10.5.4 rely on its rights in clause 11.2 (*Repayment of Allocated Grant Funding*).
- 10.6 Where a Committed Strategic Number Default has occurred then (notwithstanding any other term of this Agreement) Homes England on the service of written notice shall without incurring any liability to the Grant Recipient be entitled:
- 10.6.1 to terminate this Agreement in relation to all but Firm Schemes and at Homes England's absolute discretion Starts Projects; and/or
 - 10.6.2 issue and implement an Allocation Change Notice.
- 10.7 Nothing in clauses 10.3 to 10.6 (inclusive) (*Event of Defaults and Termination*) shall require Homes England to agree any measure or extension which would extend the date by which all Housing Outputs must have achieved Practical Completion beyond 31 March 2026.
- 10.8 Where Homes England (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in:

- 10.8.1 claiming the Allocated Grant Funding; or
- 10.8.2 in making any notification, certification, representation or warranty under this Agreement,

such event shall be deemed to be a Prohibited Act and Homes England shall be entitled to exercise the rights under clauses 11.2.1 and 11.3.1 (*Repayment of Allocated Grant Funding*) rather than those referred to under clauses 11.2.3 and 11.3.3 (*Repayment of Allocated Grant Funding*).

- 10.9 The exercise by Homes England of its rights under clause 10.1 to 10.8 (inclusive) (*Event of Defaults and Termination*) will be without prejudice to any other right of action or remedy of Homes England (including any claim for damage) in respect of such Event of Default whether under this Agreement or otherwise.
- 10.10 The parties acknowledge and agree that Homes England shall be under no obligation to accept a Proposed DP Firm Scheme pursuant to paragraph 4 of the Profiling Conditions where a Delivery Partner Default or Operational Default by the Relevant Delivery Partner exists and has not been remedied or where a Disposal Default or Repeated Disposal Default has occurred in respect of the Relevant Delivery Partner.

11 **Repayment of Allocated Grant Funding**

- 11.1 The parties acknowledge and agree that:
 - 11.1.1 the Recovery Determination has effect (mutatis mutandis) in respect of grant paid and/or RCGF Proceeds used under this Agreement and that each party has the respective rights and obligations described in such determination;
 - 11.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and
 - 11.1.3 on the occurrence of a Relevant Event the Grant Recipient must recycle or repay (as applicable) the Capital Grant Recoverable in each case in accordance with the terms of the Recovery Determination.
- 11.2 Without prejudice to any other term of this Agreement, Homes England reserves the right, subject to clause 11.8 (*Repayment of Allocated Grant Funding*), whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) at its discretion to recover from the Grant Recipient the Allocated Grant Funding or such part or aggregation thereof as is determined in accordance with clause 11.3 (*Repayment of Allocated Grant Funding*) (the **Recoverable Amount**) in circumstances where:
 - 11.2.1 a Fundamental (A) Default has occurred;
 - 11.2.2 a Fundamental (B) Default has occurred;
 - 11.2.3 a General Default (comprising an Excluded Matter) has occurred;
 - 11.2.4 a General Default (comprising a FTA Matter) has occurred;

- 11.2.5 an Operational Default or Disposal Default (which (when taken with any previous Disposal Defaults) does not constitute a Repeated Disposal Default) has occurred;
- 11.2.6 Homes England has made an overpayment or has made a payment in error to the Grant Recipient;
- 11.2.7 a Balancing Sum has arisen;
- 11.2.8 the Programme Reconciliation has occurred;
- 11.2.9 this Agreement has determined by mutual agreement;
- 11.2.10 the conduct of the Annual Reconciliation indicates that having regard to the Grant Recipient's performance under this Agreement Homes England has or is likely to have expended more Allocated Grant Funding than the Grant Recipient's projected delivery of Housing Outputs required or is likely to require, taking into account the number, Tenure Type, the Committed Strategic Housing Numbers and region of the Housing Outputs then projected for delivery;
- 11.2.11 a right to recover has arisen pursuant to clause 5.6 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*); or
- 11.2.12 a right to recover has arisen pursuant to clause 5.8 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*).

11.3 In the circumstances set out in:

- 11.3.1 clause 11.2.1 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be a sum equal to the aggregated amount of all Allocated Grant Funding already paid by Homes England to the Grant Recipient under this Agreement;
- 11.3.2 clause 11.2.2 or 11.2.4 (*Repayment of Allocated Grant Funding*) the Recoverable Amount shall be an amount equal to the Fundamental Termination Amount;
- 11.3.3 clause 11.2.3 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be the product of the following calculation:

$$RA = AGF \text{ (Paid)} - (AGF \text{ (Attributed)} + AGF \text{ (Starts)}) + AGF \text{ (Excluded)}$$

Where

RA is the Recoverable Amount;

AGF (Paid) is the total amount of Allocated Grant Funding then paid to the Grant Recipient (less any amount of Allocated Grant Funding already recovered by Homes England under this Agreement);

AGF (Attributed) is the total amount of Allocated Grant Funding that has then been attributed to Firm Schemes pursuant to the application of the Profiling Conditions and accepted by Homes England in IMS;

AGF (Starts) is the total amount of Allocated Grant Funding which Homes England (acting reasonably) is satisfied is necessary to support the delivery of the Starts Projects taking account of the then projected Tenure Types allocated to such Starts Projects and each then projected Committed Strategic Housing Number; and

AGF (Excluded) is the total amount of Allocated Grant Funding paid by Homes England in relation to a Starts Project or a Firm Scheme which Homes England (acting reasonably) considers to be the subject of or affected by a General Default comprising an Excluded Matter;

11.3.4 clause 11.2.5 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be a sum equal to the Firm Scheme Grant allocated to the Firm Scheme to which the Operational Default or Disposal Default relates or, where the Firm Scheme Grant has not been attributed to AHP Dwellings pursuant to Part 2 of Schedule 4 (*Profiling Conditions*), the Site Grant in respect of the Site to which the Operational Default or Disposal Default relates;

11.3.5 clause 11.2.6, clause 11.2.7 and clause 11.2.10 (*Repayment of Allocated Grant Funding*) the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the Balancing Sum as applicable; and

11.3.6 clause 11.2.8 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be a sum equal to the Reconciliation Amount;

11.3.7 clause 11.2.9 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be the product of the following calculation:

$$RA = AGF (\text{Paid}) - (AGF (\text{Attributed}) + AGF (\text{Starts}))$$

Where

RA is the Recoverable Amount;

AGF (Paid) is the total amount of Allocated Grant Funding then paid to the Grant Recipient (less any amount of Allocated Grant Funding already recovered by Homes England under this Agreement);

AGF (Attributed) is the total amount of Allocated Grant Funding that has then been attributed to Firm Schemes pursuant to the application of the Profiling Conditions and accepted by Homes England in IMS; and

AGF (Starts) is the total amount of Allocated Grant Funding which Homes England (acting reasonably) is satisfied is necessary to support the delivery of the Starts Projects taking account of the then projected Tenure Types allocated to such Starts Projects; and

11.3.8 clause 11.2.11 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be a sum equal to the Reprofile Amount; and

11.3.9 clause 11.2.12 (*Repayment of Allocated Grant Funding*), the Recoverable Amount shall be a sum equal to the Grant Rate Sum.

- 11.4 The Grant Recipient must pay any sum due to Homes England under this clause 11 (*Repayment of Allocated Grant Funding*) within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run where the matter giving rise to the payment was a Relevant Event, from the date of the Relevant Event, and otherwise from the date upon which the Allocated Grant Funding (or relevant part thereof), overpayment or payment in error was first paid to the Grant Recipient in each case until the date upon which Homes England receives the repayment required from the Grant Recipient under this clause 11.4 (*Repayment of Allocated Grant Funding*).
- 11.5 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 11.6 Notwithstanding any other term of this clause 11 (*Repayment of Allocated Grant Funding*), where a payment has been made following an administrative error by Homes England, the Grant Recipient shall not be liable for interest on the amount repayable under clause 11.4 (*Repayment of Allocated Grant Funding*).
- 11.7 All payments by the Grant Recipient under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.
- 11.8 In operating its rights under clauses 11.2.3 and/or 11.2.5 (*Repayment of Allocated Grant Funding*) Homes England acknowledges and agrees that the terms of paragraphs 5 and 6 of Part 3 of Schedule 4 (*Delivery Partner Conditions*) will apply.
- 11.9 In so far as a Disposal Default has occurred on less than three occasions, Homes England may exercise its rights under clause 11.2.5 (*Repayment of Allocated Grant Funding*). On the occurrence of any further Disposal Default, a Repeated Disposal Default shall be deemed to occur and Homes England will be entitled to exercise its rights under clause 11.2.3 (*Repayment of Allocated Grant Funding*).
- 11.10 Save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Grant Recipient to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.
- 11.11 In the circumstance where the Grant Recipient on its own behalf or on behalf of any Delivery Partner converts or is deemed by Homes England (acting reasonably) to have converted an Active Site to an Inactive Site on IMS the Grant Recipient must pay to Homes England a sum equivalent to the Site Grant received in respect of the relevant Site within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Allocated Grant Funding (or relevant part thereof) was first paid to the Grant Recipient in respect of such Site until the date upon which Homes England receives the payment required from the Grant Recipient under this clause 11.11 (*Repayment of Allocated Grant Funding*) unless:
- 11.11.1 such conversion is purely as a result of reallocating (as between the Grant Recipient and its Delivery Partners) the proposed landlordship in respect of such Active Site, or

11.11.2 the Grant Recipient is able to satisfy Homes England (acting reasonably) that notwithstanding such conversion, it will within a reasonable period approved by Homes England be able to bring forward additional sites or otherwise support the cash flows in the Forecasts Submission so that the Committed Number of Housing Outputs and the Committed Strategic Housing Numbers are delivered and the Tenure Balance is achieved in accordance with the terms of this Agreement.

11.12 Insofar as the Grant Recipient fails to bring forward the additional sites or support the cashflows referred to in clause 11.11.2 (*Repayment of Allocated Grant Funding*), within the period approved by Homes England, it must pay to Homes England a sum equivalent to the Site Grant received in respect of the relevant Site within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Allocated Grant Funding (or relevant part thereof) was first paid to the Grant Recipient in respect of such Site until the date upon which Homes England receives the payment required from the Grant Recipient under this clause 11.12 (*Repayment of Allocated Grant Funding*).

12 **Public relations and publicity**

12.1 The Grant Recipient shall ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.

12.2 The Grant Recipient grants and must procure that each Delivery Partner grants to Homes England a non-exclusive, royalty free licence (to the extent it can grant such a licence) to use any photographs, records, images, articles or illustrations relating to the delivery of the Housing Outputs undertaken by or for the Grant Recipient or such Delivery Partner for use in any publicity or advertising, whether published alone or in conjunction with any other person.

13 **Reputation of the Parties**

The Grant Recipient will not, and will use all reasonable endeavours to procure that the Grant Recipient Parties will not knowingly do or omit to do anything in relation to the Agreed Profile, Housing Outputs or Programme or in the course of their other activities that may bring the standing of Homes England or the Programme into disrepute or attract adverse publicity for Homes England.

14 **Confidentiality and freedom of information**

14.1 **Confidentiality**

14.1.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.

14.1.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential

Information for any purpose other than that for which it is supplied under this Agreement.

14.1.3 The obligations of confidence referred to in this clause 14.1 (*Confidentiality*) 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;
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
- (c) is lawfully in the possession of the other 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 other party.

14.1.4 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 any loan agreement or proposed loan agreement or funding documentation with a commercial lender;
- (b) by any applicable Legislation or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA or EIR and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information;
- (c) by any Regulatory Body (including any investment exchange and the Regulator) 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.

14.1.5 The Grant Recipient shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:

- (a) is given only to a Delivery Partner or to such of its or any Delivery Partner's employees, professional advisors, or consultants engaged to advise it 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 Homes England's prior written approval) or used by any Delivery Partner or by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement; and
- (c) where it is considered necessary in the opinion of Homes England the Grant Recipient shall ensure that such Delivery Partner, staff, professional advisors, or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

14.1.6 Nothing in this clause 14.1 (*Confidentiality*) shall prevent Homes England from:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources;
- (b) disclosing any Confidential Information obtained from the Grant Recipient:
 - i to any other department, office or agency of the Crown; or
 - ii to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Agreement;
 - iv to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review (or any equivalent review by any successor body or agency carrying out the same or similar functions in whole or in part),

provided that in disclosing information under any of clauses 14.1.6(b)i to 14.1.6(b)iv (*Confidentiality*) of this Agreement, Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

14.1.7 Nothing in this clause 14.1 (*Confidentiality*) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this 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.

- 14.1.8 Nothing in this clause 14.1 (*Confidentiality*) shall prevent Homes England from publishing information relating to the Total Housing Output Costs, the Development Expenditure, or the Housing Outputs.
- 14.1.9 The Grant Recipient shall ensure that where it provides a copy of this Agreement or the Agreed Profile to a Delivery Partner, it shall redact all information Homes England requires including but not limited to the Agreed Grant Rates within the Agreed Provider Profile and procure that the Delivery Partner treats this Agreement and the Agreed Profile as Confidential Information.
- 14.1.10 The Grant Recipient must ensure that each Delivery Partner is bound by equivalent obligations to those set out in this clause 14 (*Confidentiality and freedom of information*).

14.2 **Freedom of information**

14.2.1 The Grant Recipient on behalf of itself, its Delivery Partners and any Group Company acknowledges that Homes England is subject to legal duties which may require the release of information under FOIA and/or EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.

14.2.2 Homes England 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 the Grant Recipient respond directly to or permit any Delivery Partner or Group Company to respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England unless otherwise expressly authorised to do so by Homes England.

14.2.3 Notwithstanding any other provision of this Agreement but subject to clause 14.2.4 (*Freedom of information*) below, the Grant Recipient on behalf of itself, its Delivery Partners and any Group Company acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:

- (a) without consulting it or any of them; or
- (b) following consultation with it or any of them and having taken (or not taken, as the case may be) its or their views into account.

14.2.4 Without in any way limiting clause 14.2.2 or clause 14.2.3 (*Freedom of information*), in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Grant Recipient.

- 14.2.5 The Grant Recipient will assist and co-operate (and procure that each Delivery Partner assists and co-operates) with Homes England as requested by Homes England to enable Homes England 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 its Delivery Partners and any Group Company will), at their own cost:
- (a) transfer any Request for Information received by the Grant Recipient to Homes England as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
 - (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England;
 - (c) provide Homes England with any Information already in its possession or power in the form that Homes England requires within five (5) Business Days (or such other period as Homes England may specify) of Homes England requesting that Information; and
 - (d) permit Homes England to inspect such data or information in its possession as requested from time to time.
- 14.2.6 Nothing in this Agreement will prevent Homes England 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.
- 14.2.7 The obligations in this clause 14 (*Confidentiality and freedom of information*) will survive the expiry or termination of this Agreement for a period of two (2) 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.
- 14.2.8 The Grant Recipient must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Grant Recipient must:
- (a) notify Homes England immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Grant Recipient or if such person leaves the Grant Recipient's employment or relinquishes that role;
 - (b) maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
 - (c) ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
 - (d) ensure that systems are in place to prevent any person accessing IMS under a 'User ID' other than their own.

14.2.9 The Grant Recipient on behalf of itself, its Delivery Partners and any Group Company acknowledges and agrees that Homes England may in its absolute discretion redact all or part of the Information within a Request for Information prior to its publication. In so doing and in its absolute discretion, Homes England may take account of any EIR Exceptions and FOIA Exemptions. Homes England may in its absolute discretion consult with the Grant Recipient regarding any redactions to the Information to be published pursuant to this clause 14 (*Confidentiality and freedom of information*). Homes England will make the final decision regarding publication and/or redaction of the Information.

14.3 **Publication of information before Parliament**

The Grant Recipient acknowledges that the National Audit Office has the right to publish details of this Agreement in its relevant reports to Parliament.

15 **Data protection**

15.1 In so far that Shared Personal Data is Processed under this Agreement it is understood that the parties will each act in the capacity of an independent Data Controller.

15.2 The Grant Recipient (including its employees agents or officers) and each Delivery Partner shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this clause 15 (*Data protection*) and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.

15.3 The Grant Recipient warrants and represents that it and/or any of its employees and each Delivery Partner each have in place appropriate technical and organisational measures to protect the Shared Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.

15.4 The Grant Recipient shall notify Homes England without undue delay on becoming aware of any breach of the applicable Data Protection Legislation in relation to the Shared Personal Data.

15.5 Whilst each party shall be responsible for responding to any complaint in relation to the Shared Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's rights, if necessary the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with the Shared Personal Data Processed under this Agreement.

15.6 The provision of this clause 15 (*Data protection*) shall apply during the continuance of the Agreement and indefinitely after its termination.

15.7 The Grant Recipient shall indemnify Homes England against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by Homes England as a result of the Grant Recipient's destruction of and/or damage to any of the Shared

Personal Data processed by the Grant Recipient, its employees, agents, or a Delivery Partner or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this clause 15 (*Data protection*) by the Grant Recipient, its employees, agents or sub-contractors or any Delivery Partners.

- 15.8 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Grant Recipient's and each Delivery Partner's Processing of the Shared Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner.
- 15.9 The Grant Recipient undertakes to include obligations no less onerous than those set out in this clause 15 (*Data protection*), in all contractual arrangements with its Delivery Partners, Group Companies, agents or sub-contractors engaged by the Grant Recipient in performing its obligations under this Agreement to Homes England and to enforce all such obligations on Homes England's request.
- 15.10 Homes England may, at any time on not less than thirty (30) Business Days' notice, revise this clause 15 (*Data protection*) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

16 **Intellectual property**

- 16.1 Subject to clause 16.5 (*Intellectual property*) the Grant Recipient shall (and must procure that each Delivery Partner grants), to the extent that it is able to do so without incurring material cost, grant to Homes England a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any drawings, reports, specifications, calculations and other documents provided by the Grant Recipient and/or a Delivery Partner or which are or become owned by the Grant Recipient and/or a Delivery Partner and which relate to the delivery of the Housing Outputs, for any purpose relating to this Agreement.
- 16.2 To the extent that any of the data, materials and documents referred to in clause 16.1 (*Intellectual property*) are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by Homes England use its reasonable endeavours (without having to incur material cost) procure for the benefit of Homes England for the duration of this Agreement at the cost of the Grant Recipient the grant of a licence or sub-licence and supply any relevant software and/or database to enable Homes England making such request to access and otherwise use such data for the purposes referred to in clause 16.1 (*Intellectual property*).
- 16.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 16.4 The Grant Recipient shall fully indemnify Homes England within five (5) Business Days of demand under this clause 16.4 (*Intellectual property*) against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 16 (*Intellectual property*), any breach by the Grant Recipient of this clause 16 (*Intellectual property*) and against all costs and damages of any

kind which Homes England may incur in connection with any actual or threatened proceedings before any court or adjudication body.

16.5 The Grant Recipient shall only be entitled to revoke the licence granted to Homes England under clause 16.1 (*Intellectual property*) in the following circumstances and upon the following terms:

16.5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Grant Funding has been paid to the Grant Recipient; or

16.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant Funding has been paid to the Grant Recipient **provided that** nothing in this clause 16.5.2 (*Intellectual property*) shall entitle the Grant Recipient to revoke such licence insofar as it relates to:

(a) Firm Schemes; or

(b) Starts Projects.

17 Further assurance

At any time upon the written request of Homes England the Grant Recipient:

17.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for Homes England the full benefit of this Agreement and of the rights and powers herein granted and the Grant Recipient hereby irrevocably appoints Homes England as its attorney solely for that purpose; and

17.2 shall perform and use its reasonable endeavours to procure that any third party performs such acts as may be reasonably required for the purposes of giving full effect to this Agreement.

18 Senior Officers

18.1 Authority of the Grant Recipient Senior Officer

The Grant Recipient represents to Homes England that the Grant Recipient Senior Officer has full authority to act on its behalf for all purposes under this Agreement. Homes England and the Homes England Senior Officer are entitled to treat any act of the Grant Recipient Senior Officer (or of any person authorised by them under clause 18.2 (*Grant Recipient Senior Officer's power to delegate*)) in connection this Agreement as being expressly authorised by the Grant Recipient (save where the Grant Recipient has notified Homes England that such authority has been revoked) and Homes England will not be required to determine whether any express authority has in fact been given.

18.2 Grant Recipient Senior Officer's power to delegate

The Grant Recipient Senior Officer may authorise any of his or her subordinates to exercise the powers of the Grant Recipient under this Agreement by notice to Homes England.

18.3 **Authority of Homes England Senior Officer**

Homes England represents to the Grant Recipient that the Homes England Senior Officer has full authority to act on its behalf for all purposes under this Agreement. The Grant Recipient is entitled to treat any act of the Homes England Senior Officer (or of any person authorised by them under clause 18.4 (*Homes England Senior Officer's power to delegate*)) in connection with this Agreement as being expressly authorised by Homes England (save where Homes England has notified the Grant Recipient that such authority has been revoked) and the Grant Recipient will not be required to determine whether any express authority has in fact been given.

18.4 **Homes England Senior Officer's power to delegate**

The Homes England Senior Officer may authorise any of its subordinates to exercise any of its powers under this Agreement by notice to the Grant Recipient.

19 **No agency**

19.1 Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties for any purpose whatsoever.

19.2 The Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between Homes England and the Grant Recipient or any of its Delivery Partners. Neither the Grant Recipient nor any of its employees shall at any time hold itself or themselves out to be an employee of Homes England and the Grant Recipient must procure that no Delivery Partner does so.

20 **Assignment and sub contracting**

20.1 Homes England will be entitled to assign, transfer or novate its rights and obligations under all or part of this Agreement at any time without the consent of the Grant Recipient.

20.2 The Grant Recipient will not be entitled to assign, transfer or novate its rights and obligations under this Agreement.

21 **Value Added Tax**

21.1 All payments made by Homes England under or in connection with this Agreement are inclusive of any VAT, including for the avoidance of doubt, payments of grant funding under or in connection with this Agreement to the Grant Recipient.

21.2 The Grant Recipient considers that the payment of grant funding under or in connection with this Agreement is outside the scope of VAT. In the event that Homes England is the recipient of a supply or supplies of specified services (as such term is defined in the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the **Order**)) under or in connection with this Agreement, Homes England confirms that the requirements specified in article (8)(1)(b) of the Order are satisfied in respect of the supply or supplies with the result that Section 55A(6) of the Value Added Tax Act 1994 will not apply to such supply or supplies. The Grant Recipient acknowledges that it will account for and pay any VAT on any taxable supply or supplies it makes to Homes England under or in connection with this Agreement.

21.3 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement for any supply by Homes England is to be treated as exclusive of any VAT and if Homes England (or the representative member of any VAT group of which it is a member) is required to account for VAT on a supply, the Grant Recipient shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of any VAT upon the earlier of:

21.3.1 the time for payment or provision of the consideration; and

21.3.2 the time of the supply for VAT purposes,

and within ten (10) Business Days of receipt of such payment Homes England shall issue a VAT invoice in respect of that VAT.

21.4 Notwithstanding any other provision in this Agreement, Homes England is entitled to deduct any amount from a payment it is required to make under this Agreement where such deduction is required by law.

22 **Construction industry scheme**

22.1 In this clause 22 (*Construction industry scheme*), the following definitions shall apply:

CIS means the provisions of chapter 3 of part 3 of the Finance Act 2004 together with any regulations made pursuant to those provisions including (without limitation) the Income Tax (Construction Industry Scheme) Regulations 2005;

Construction Contract has the same meaning as in Section 57(2) of the Finance Act 2004; and

HMRC means HM Revenue & Customs.

22.2 The Grant Recipient warrants to Homes England that it holds gross payment status for the purposes of the CIS (pursuant to paragraph CISR13040 of the Construction Industry Scheme Reform manual or otherwise) such that the Grant Recipient is entitled to receive payments under Construction Contracts without any deduction under the CIS. The Grant Recipient undertakes to notify Homes England within two (2) Business Days of ceasing to hold gross payment status.

22.3 The Grant Recipient will, on demand, pay to Homes England an amount equal to any tax liability, interest or penalties imposed on Homes England under the CIS as a result of, or in connection with, any payments made by Homes England pursuant to this Agreement, together with any reasonable costs incurred by Homes England in connection with such tax liability, interest or penalty.

23 **No fetter on statutory functions**

Notwithstanding anything apparently or impliedly to the contrary in this Agreement or any of the deeds and documents referred to herein, in carrying out its statutory duties or functions the discretion of Homes England shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Agreement or any such other deed or document.

24 Fees and Expenses

24.1 Costs

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Agreement, and all documents ancillary to it.

24.2 Variations and Enforcement Costs

The Grant Recipient shall, subject to clause 24.3 (*Fees and Expenses*), forthwith on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) reasonably and properly incurred by it:

24.2.1 in connection with the variation or amendment (where such variation or amendment is proposed by the Grant Recipient) of, or the enforcement or preservation of any rights under, this Agreement; or

24.2.2 in investigating any Event of Default which has or is believed to have occurred; or

24.2.3 in entering into each Delivery Partner Deed.

24.3 The Grant Recipient shall not be required to pay any costs or expenses of the type contemplated in clause 24.2.2 (*Fees and Expenses*) if the results of Homes England's investigation reveal that there is no Event of Default.

25 Subsidy

25.1 This Agreement is drafted with the intention that it is lawful and:

25.1.1 complies with the requirements of the United Kingdom Competition Requirement;

25.1.2 assigns and imposes a public service obligation on the Grant Recipient to facilitate and enable the construction of the Housing Outputs; and

25.1.3 ensures the construction of the Housing Outputs.

25.2 The parties acknowledge that the Agreement Funding will only be provided where such payment is compliant with United Kingdom Competition Requirement.

25.3 The Grant Recipient shall ensure that it co-operates with Homes England in relation to compliance with United Kingdom Competition Requirement and if requested by Homes England it shall promptly provide Homes England with its and each Delivery Partner's books of account for the Works and Housing Outputs and any such other information, explanation and/or evidence (including procuring the same from any relevant third party) as Homes England may reasonably require to monitor compliance with the United Kingdom Competition Requirement.

25.4 If the Agreement Funding gives rise to an SPEI Overpayment or otherwise is found to constitute Unlawful Subsidy (or is under investigation, assessment or subject to judicial proceedings in relation to compliance with the United Kingdom Competition Requirement) then:

- 25.4.1 the parties acting in good faith will seek to restructure the arrangements surrounding the delivery of the Housing Outputs and the terms of this Agreement to the extent necessary to ensure compliance with the United Kingdom Competition Requirement; and/or
- 25.4.2 the parties shall promptly cooperate in good faith to provide evidence that the delivery of the Housing Outputs (or their restructured delivery) is or will be compliant with the United Kingdom Competition Requirement.
- 25.5 If the Agreement Funding and/or the delivery of the Housing Outputs gives rise to an SPEI Overpayment or otherwise constitutes Unlawful Subsidy and/or is not capable of being restructured so as to be compliant Homes England shall be entitled to recover from the Grant Recipient the amount of such SPEI Overpayment and/or Unlawful Subsidy together with such interest as it is required by Legislation to recover and the Grant Recipient must pay such amount(s) within ten (10) Business Days of Homes England requesting repayment.
- 25.6 The Grant Recipient shall promptly give written notice to Homes England of any Public Sector Funding it receives from a third party in relation to any AHP Housing.
- 25.7 If, following the date of this Agreement, Legislation requires Homes England to amend this Agreement to comply with a United Kingdom Competition Requirement then Homes England may, acting reasonably, provide written notice to the Grant Recipient to vary this Agreement to the extent necessary to comply with such change in Legislation.
- 25.8 In entering into this Agreement the Grant Recipient acknowledges and accepts the SPEI Entrustment and will procure that each of its Delivery Partners:
- 25.8.1 acknowledges and accepts the SPEI Entrustment;
- 25.8.2 complies with the United Kingdom Competition Requirement; and
- 25.8.3 does not do or omit to do anything which would put Homes England in breach of any United Kingdom Competition Requirement

26 **Co-operation**

- 26.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Works and the Housing Outputs.
- 26.2 The Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:
- 26.2.1 of any auditor (whether internal or external) of Homes England to provide documents, or to procure the provision of documents, relating to the Works or the Housing Outputs, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or
- 26.2.2 of Homes England where Homes England is required under any Legislation or by any Competent Authority to provide any document, evidence or information relating to the Works or the Housing Outputs or this Agreement to any person.

26.3 The Grant Recipient shall:

- 26.3.1 promptly and fully co-operate (and shall procure that each Delivery Partner, Group Company and/or Contractor promptly co-operates) at its or their cost with Homes England during an SPEI Review and it shall if requested promptly provide Homes England with SPEI Information and such other information, evidence and/or explanation as Homes England may reasonably require (to assist with the assessment of compliance with the United Kingdom Competition Requirement or if Homes England is required to provide to a third party such information assess whether any SPEI Overpayment has arisen or evidence either under Legislation or by a Competent Authority);
- 26.3.2 prior to any Disposal (other than a Permitted Disposal) at Homes England's request provide Homes England (and procure that each Delivery Partner provides Homes England) with such information as may be necessary to permit Homes England to assess whether the Agreement Funding attributed or attributable to a Subject Site gives rise to an SPEI Overpayment or otherwise is in excess of that permitted under the United Kingdom Competition Requirement; and
- 26.3.3 provide Homes England (and procure that each Delivery Partner provides Homes England) at Homes England's request with such information as may be necessary to ascertain whether the Grant Recipient has complied with its obligations under Part 2 of Schedule 5 (*Disposal Conditions*).

27 Notices

27.1 Any notice to be given hereunder shall be in writing addressed to Homes England Senior Officer (in the case of notices to be given to Homes England) or to the Grant Recipient Senior Officer (in the case of notices to be given to the Grant Recipient) and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by recorded delivery and addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

27.2 Any notice shall be deemed to be given by the sender and received by the recipient:

- 27.2.1 if delivered by hand, when delivered to the recipient; or
- 27.2.2 if delivered by recorded delivery, three (3) Business Days after and including the date of postage,

provided that if the delivery or receipt is:

- 27.2.3 on a day which is not a Business Day; or
- 27.2.4 is after 4.00 pm

it will be deemed to have been received at 9.00 am on the following Business Day.

28 **Exclusion of third party rights**

Except as otherwise expressly provided no person who is not a party to this Agreement shall be entitled to enforce any terms of this Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

29 **Entire agreement**

29.1 This Agreement and the clauses herein contained together with the Schedules, annexures, documents, instruments and websites contained or referred to in it, constitute the entire agreement between the parties in relation to the subject matter of this Agreement and this Agreement may only be varied or modified in accordance with clause 37 (*Amendment*).

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

30 **Execution**

This Agreement may be executed:

30.1 by the electronic application of a party's authorised signatory's signature and provision of an electronic copy of the same; and

30.2 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.

31 **Severability**

If any term, clause or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

32 **Cumulative rights and enforcement**

32.1 Any rights and remedies provided for in this Agreement whether in favour of Homes England or the Grant Recipient are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties whether under this Agreement or otherwise.

32.2 The parties acknowledge that money damages alone may not properly compensate Homes England for any breach of the Grant Recipient's obligations hereunder and the parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies Homes England may have in law, in equity or otherwise Homes England shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

33 **Waiver**

- 33.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by Homes England of Allocated Grant Funding under clause 4 (*Payment of Allocated Grant Funding*) in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent or continuing breach of any provision of this Agreement or be a waiver of the provision itself.
- 33.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.
- 33.3 Any waiver or release of any right or remedy of a party under this Agreement must be specifically granted in writing signed by that party and shall:
- 33.3.1 be confined to the specific circumstances in which it is given;
 - 33.3.2 not affect any other enforcement of the same or any other right; and
 - 33.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

34 **Disclaimer**

Homes England will not be liable to the other party for any advice given by a representative of Homes England (whether sitting on the PMB or any other committee or board). In addition, Homes England gives no assurance as to the suitability or viability of the Works or the Housing Outputs and no endorsement of the same.

35 **Dispute Resolution**

All disputes and differences arising out of or in connection with this Agreement including in relation to any non-contractual obligation (a **Dispute**) shall be resolved pursuant to the terms of this clause 35 (*Dispute Resolution*).

35.1 **Negotiation**

- 35.1.1 In the event that a party considers that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the Grant Recipient's Senior Officer and Homes England Senior Officer (**Senior Officers**) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 35.1 (*Negotiation*).
- 35.1.2 If there has been no resolution of the dispute within thirty (30) days of the referral to Senior Officers, the Dispute shall be referred to directors of the Grant Recipient and the chief executive officer of Homes England (together, the **Chief Executives**).
- 35.1.3 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of

the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

35.2 Referral to Expert

- 35.2.1 If there has been no resolution of the Dispute within twenty (20) days of the referral to Chief Executives either party may give to the other written notice referring the dispute to a suitably qualified independent Expert for determination in accordance with this clause 35.2 (*Referral to Expert*).
- 35.2.2 The Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three (3) months of the matter being referred to the Expert.
- 35.2.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 35.2 (*Referral to Expert*) then:
- (a) either party may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and
 - (b) this clause 35.2 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.
- 35.2.4 All matters under this clause 35.2 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.
- 35.2.5 The parties shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 35.2.6 To the extent not provided for by this clause 35.2 (*Referral to Expert*), the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their determination.
- 35.2.7 Each party shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause 35.2 (*Referral to Expert*).
- 35.2.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute (which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them or their terms of reference). The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 35.2.9 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the

Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.

35.3 **Submission to Courts**

Notwithstanding the foregoing, at any time Homes England, at its sole discretion, may choose to submit any Dispute to the courts of England. If a process pursuant to either clause 35.1 (*Negotiation*) and/or 35.2 (*Referral to Expert*) has been initiated, at the time that Homes England chooses to submit the matter to the courts of England and Wales, then it is agreed that such process is to be immediately discontinued without any binding determination being made. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England.

35.4 **Continued Performance**

No reference of any dispute to an Expert pursuant to this clause 35 (*Dispute Resolution*) shall relieve any party from any liability for the due and punctual performance of its obligations under this Agreement.

36 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of clause 35 (*Dispute Resolution*) the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

37 **Amendment**

37.1 The parties agree that (save as otherwise provided) this Agreement may be amended by agreement in writing between Homes England and the Grant Recipient.

37.2 Where any amendments are agreed by the parties on IMS such amendments shall be evidenced by Homes England's approval of them through IMS and in default of Homes England's approval, the parties will be bound by the relevant details in IMS as they existed prior to the change proposed.

37.3 In granting any consent or waiver under this Agreement Homes England may impose such conditions as it (acting reasonably) deems to be appropriate to such consent.

37.4 Where this Agreement is amended, the Grant Recipient shall ensure that such amendments are reflected (as necessary) in any underlying contractual arrangements with its Delivery Partners, any Group Company and Contractors.

38 **Survival of this Agreement**

38.1 Insofar as any of the rights and powers of Homes England provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

38.2 Insofar as any of the obligations of the Grant Recipient provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this

Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

38.3 Without limitation the provisions of clauses 3 (*Acknowledgements, Representations and Warranties*), 4 (*Payment of Allocated Grant Funding*), 5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*), 6 (*OPSO Schemes*), 7 (*Programme Conditions*), 8 (*Notifications, reporting and audit*), 10 (*Event of Defaults and Termination*), 11 (*Repayment of Allocated Grant Funding*), 13 (*Reputation of the Parties*), 14 (*Confidentiality and freedom of information*), 15 (*Data protection*), 16 (*Intellectual property*), 17 (*Further assurance*), 21 (*Value Added Tax*), 24 (*Fees and Expenses*), 25 (*Subsidy*), 32 (*Cumulative rights and enforcement*), 33 (*Waiver*), 35 (*Dispute Resolution*), 36 (*Governing law*) and this clause 38 (*Survival of this Agreement*), Schedule 4 (*Delivery and Profiling Conditions*), Schedule 5 (*Operational and Disposal Conditions*), Schedule 6 (*Regulatory Compliance Conditions*), Schedule 7 (*OPSO Schemes*) and such other provisions of this Agreement as are necessary to give effect to such clauses are expressly agreed by the parties to survive the termination or expiry of this Agreement.

38.4 The Grant Recipient undertakes to include provisions with equivalent effect to those contained in this clause 38 (*Survival of this Agreement*) in all contractual arrangements with its Delivery Partners and Group Companies to ensure that the full benefit of this Agreement enures to Homes England.

39 **Miscellaneous**

39.1 Any approval by Homes England or any person on behalf of Homes England pursuant to this Agreement of any matter submitted by the Grant Recipient for approval will not be deemed to be an acceptance by Homes England of the correctness or suitability of the contents of the subject of the approval or consent.

39.2 A certificate by Homes England as to any sum payable hereunder by the Grant Recipient will be conclusive save in the case of manifest error.

Schedule 1

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which Homes England makes the Allocated Grant Funding available to the Grant Recipient and its Delivery Partners (as applicable) for the purposes of sections 19 and 31 HRA 2008.
- 2 The Allocated Grant Funding is being made available by Homes England on the express understanding that it is applied solely for the purposes of funding the Development Expenditure incurred by the Grant Recipient or any Delivery Partner in respect of AHP Dwellings which are to be let or sold to individuals as AHP Housing.
- 3 The Public Sector Funding in respect of a Firm Scheme may not exceed an amount equal to the Actual Development Expenditure incurred by the Grant Recipient or any Delivery Partner in respect of the delivery of that Firm Scheme nor may the Public Sector Funding in respect of the Housing Outputs exceed an amount equal to the aggregated Actual Development Expenditure in respect of the delivery of the Housing Outputs.
- 4 All Allocated Grant Funding paid under this Agreement is:
 - 4.1 social housing assistance as defined in section 32(13) of the HRA 2008; and
 - 4.2 subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 5 The provisions of clause 10 (*Event of Defaults and Termination*) and 11 (*Repayment of Allocated Grant Funding*) represent events and principles determined by Homes England for the purposes of sections 32-34 of the HRA 2008.
- 6 The RCGF Proceeds applied to the Housing Outputs:
 - 6.1 constitute social housing assistance for the purposes of section 32 HRA 2008 and are subject to the terms of the Recovery Determination and this Agreement;
 - 6.2 must be used:
 - 6.2.1 for the purposes of funding (in whole or in part) the Development Expenditure in respect of the relevant Housing Outputs;
 - 6.2.2 in whole or in part by 31 March 2026 (or such other date expressly agreed by Homes England (in its absolute discretion) in writing).
- 7 The parties acknowledge and agree that where Homes England exercises its rights to recover Allocated Grant Funding under this Agreement it may also recover the RCGF Proceeds applied to any affected Active Sites, Housing Output or Firm Scheme.

- 8 Any failure by the Grant Recipient to comply with the terms of this Agreement or the occurrence of an Event of Default constitute a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 9 The Disposal or letting of an AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose and the Disposal of an AHP Dwelling pursuant to an Onward Sale to which Homes England has not provided prior written consent each constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 10 The terms of the Capital Funding Guide and the Recovery Determination are incorporated within this Agreement (mutatis mutandis).
- 11 The Grant Recipient and each Delivery Partner that will be a Landlord must hold For Profit Registered Provider status at the point at which any AHP Rent Dwelling or Rent to Buy Dwelling provided pursuant to this Agreement is made available for rent.
- 12 The AHP Rent Dwellings provided with the benefit of the Allocated Grant Funding, excluding any RCGF-Only Dwelling, shall be deemed to have been provided with public money for the purposes of section 180 HRA 2008.
- 13 Cost Overruns must be met from the Grant Recipient's own resources or those of its Delivery Partners.
- 14 The Grant Recipient shall (notwithstanding the existence or involvement of any Delivery Partner in the delivery of the Housing Outputs) remain directly responsible for the delivery of the Housing Outputs and shall (save as expressly provided to the contrary) remain liable to Homes England for the repayment of any and all Allocated Grant Funding which requires to be repaid under this Agreement.
- 15 The Grant Recipient may only apply (or permit the allocation of) the Allocated Grant Funding towards the costs of Rehabilitation works with the prior written agreement of Homes England.
- 16 Allocated Grant Funding may not be combined with funding from any of the following sources to deliver the Housing Outputs:
- 16.1 RTB Receipts; or
- 16.2 VRTB Receipts.
- 17 Allocated Grant Funding cannot be applied towards the costs of provision of any dwellings intended to replace units sold by the Grant Recipient or any Delivery Partner pursuant to the Voluntary Right to Buy.
- 18 Where the Grant Recipient or any Delivery Partner applies RCGF Proceeds towards the delivery of any dwelling until the expiry of the Term:
- 18.1 the terms of this Agreement will be construed as applying to such RCGF Proceeds (mutatis mutandis), except that paragraph 12 of this Part 1 of Schedule 1 (*Acknowledgements, Representations and Warranties*) does not apply to any RCGF-Only Dwelling; and

- 18.2 the Grant Recipient must comply with any applicable terms of the Capital Funding Guide with respect to such dwelling.
- 19 The Grant Recipient acknowledges that, pursuant to the programme requirements of the AHP 2021/26, where the Grant Recipient or a Delivery Partner possesses or will possess a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease must be of the longest duration that the Grant Recipient or Delivery Partner can reasonably negotiate and the terms of such lease must comply with any applicable requirements of the Capital Funding Guide.
- 20 The Grant Recipient may not claim or seek to attribute the Agreed Grant Rate referable to a HAPA Social Rent Dwelling unless the Social Rent Dwelling in respect of which the relevant Agreed Grant Rate is being claimed or sought is or will be delivered in a High Affordability Pressure Area.
- 21 The parties agree that the terms of the Strategic Framework Agreement will have no effect upon the interpretation or operation of the terms of this Agreement.
- 22 The amount of Allocated Grant Funding allocated to the Grant Recipient under this Agreement is premised on the delivery of the Housing Outputs in accordance with the Committed Number including each Committed Strategic Housing Number. If there is a shortfall between a Committed Strategic Housing Number and the actual number of the associated Community-Led Outputs, MMC Outputs, Rural Outputs and/or Social Rent Outputs delivered (and for the avoidance of doubt any excess in delivery against one of the Committed Strategic Housing Numbers may not be set off against a shortfall in another) then the Allocated Grant Funding shall be reduced in accordance with the calculation of Total Shortfall in clause 5.5 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*) and the parties acknowledge that Homes England will be entitled to recover Allocated Grant Funding overpaid in the manner(s) specified in this Agreement.
- 23 No AHP Rent Dwellings or Rent to Buy Dwellings may be comprised in an Onward Sale unless the Onward Disponee that is to be the landlord of such dwellings is a For Profit Registered Provider.
- 24 In order to form the subject matter of a valid Payment Request, Development Expenditure must have been incurred by the Grant Recipient or a Delivery Partner. Expenditure incurred by a Group Company may not form the subject matter of a Payment Request.

Part 2

Representations and Warranties

1 Powers, vires and consents

1.1 It:

1.1.1 and any Delivery Partner are duly incorporated under the law of England and Wales and have the corporate power to own their assets and to carry on the business which they conduct or proposes to conduct;

1.1.2 has the power to enter into and to exercise its rights and perform its obligations under this Agreement (to which it is a party); and

1.1.3 has taken all necessary action to authorise the execution by it of and the performance by it of its obligations and those of any Delivery Partner under this Agreement.

1.2 It is not subject and will not become subject (and to the best of its knowledge (having made all reasonable enquiries) any Delivery Partner is not subject and will not become subject) to any other obligation, compliance which will or is likely to have a Material Adverse Effect.

1.3 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their terms.

1.4 The execution, delivery and performance by it of this Agreement do not:

1.4.1 insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

1.4.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or

1.4.3 contravene or conflict with its memorandum and articles of association or rules (as applicable) from time to time.

1.5 All consents or steps, required in connection with the execution, delivery, issue, validity or enforceability of this Agreement have been obtained or taken and have not been withdrawn or omitted.

1.6 It is not in breach of or in default (and to the best of its knowledge (having made all reasonable enquiries) no Delivery Partner is in breach or default) under any agreement to which it or they are a party or which is binding on it or any Delivery Partner or any of its assets which has or could have a Material Adverse Effect.

1.7 No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets (or to the best of its knowledge (having made all reasonable

enquiries) any assets of its Delivery Partners) which will or might have a Material Adverse Effect.

1.8 To the best of its knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvency Event has occurred in relation to it.

1.9 It has not (and to the best of its knowledge (having made all reasonable enquiries) no Delivery Partner has) committed any Prohibited Act.

1.10 It has not engaged in and will not engage (directly or indirectly) and has procured that no Grant Recipient Party has engaged in or will engage, at any time, in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

2 **Deliverability**

2.1 No person having any Security over the property or any other assets of the Grant Recipient, a Delivery Partner or a Group Company has enforced or given notice of its intention to enforce such Security

2.2 All necessary Consents as are currently required have been obtained or will by the date by which Practical Completion is achieved be obtained and to the extent that such Consents have been obtained they have not been withdrawn.

2.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.

2.4 The Grant Recipient, Delivery Partner or Group Company (as applicable) has or will have sufficient legal control of each Site to enable Practical Completion of the Housing Outputs to be achieved on it.

2.5 It will procure that all Works have been and will be undertaken in a way to ensure that the Housing Outputs meet the Required Standards and permits the delivery of the Housing Outputs in accordance with the Agreed Profile and the terms of this Agreement.

2.6 All Active Sites are or will by the point of submission of any Payment Request which relates to them be free from any conditions, restrictions or covenants which do or will affect the right to carry out the Works or the successful delivery of the Housing Outputs on them or the Grant Recipient holds a written waiver from Homes England in respect of the subject matter of this warranty in respect of any Active Sites to which the Payment Request relates.

2.7 It shall take all reasonable steps to satisfy Homes England that it, each Delivery Partner, and any Contractor employed in connection with the Works is suitable and competent in all material respects to allow the proper performance of all necessary work or tasks in relation to the Works.

2.8 No Non-HAPA Social Rent Dwelling has benefitted from any Agreed Grant Rate referable to a HAPA Social Rent Dwelling (unless otherwise agreed by Homes England).

2.9 The Grant Recipient is not in breach of its Transparency Obligations.

2.10 Save where expressly agreed by Homes England, all AHP Dwellings will be let or disposed of (as applicable) in accordance with the terms of the applicable Firm Scheme Details.

3 **Operational issues**

3.1 No Event of Default has occurred and is continuing or would result from the making of any payment of Allocated Grant Funding.

3.2 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 be expected to constitute a default by it (or to the best of its knowledge (having made all reasonable enquiries) by its Delivery Partners) under any other document or arrangement which is binding on it or its Delivery Partners or on any of its or their assets in any case to an extent or in a manner which has or could be expected to have a Material Adverse Effect.

3.3 No Payment Request has been made in respect of a Housing Output that is not on an Active Site.

4 **Information**

4.1 All information supplied by or on behalf of it to Homes England or to a Delivery Partner, Group Company or its agents or employees in connection with this Agreement, the DDEP and Agreed Profile, or in the course of the subsequent negotiations, discussions or correspondence was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all material respects.

4.2 It has informed Homes England of any material change that has occurred since the date of submission of the Forecasts Submission of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect, including without limitation the provision or offer of any additional Public Sector Funding.

4.3 It is not aware of any material fact or circumstance that has not been disclosed to Homes England and which might, if disclosed, materially adversely affect the decision of anyone considering whether or not to contract with it.

4.4 The information in the Agreed Profile supplied under or in connection with this Agreement was arrived at after careful consideration and has been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

4.5 All data or other information submitted on IMS is accurate and the Grant Recipient is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate.

4.6 So far as the Grant Recipient is aware (having made all reasonable enquiries) the Housing Outputs remain capable of being delivered in accordance with the terms of the Agreed Profile without the need for change.

- 4.7 It is not aware of any material fact or circumstance that would adversely affect the availability and deliverability of the Agreed Profile (in either case in whole or in part).
- 4.8 All certifications made pursuant to clause 4.3.1(a) (*Mechanics and payment of Allocated Grant Funding*) have been made with the knowledge and approval of the Grant Recipient's Chief Financial Officer.
- 4.9 All data or other information supplied to Homes England and/or the Regulator in connection with this Agreement (including that submitted pursuant to clause 8 (*Notifications, reporting and audit*) or clause 9 (*Change in circumstances*)) and any Grant Recipient Notification is complete and accurate.

5 **Application of Allocated Grant Funding**

- 5.1 Save where expressly agreed by Homes England, no Firm Scheme which is a Planning Scheme is being subsidised by any part of the Allocated Grant Funding or RCGF Proceeds.
- 5.2 No RTB Receipts or VRTB Receipts have been used to support the delivery of the Housing Outputs.
- 5.3 Save where expressly agreed by Homes England, none of the AHP Dwellings to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England (other than that to be provided hereunder) nor have they been included amongst the projected units to be delivered under any Previous AHP Programme.
- 5.4 Save where expressly agreed by Homes England in writing, none of the AHP Dwellings to be provided pursuant to this Agreement will be made available under the Voluntary Right to Buy.
- 5.5 No Active Site or Firm Scheme does or will include dwellings of any tenure other than one comprised in a Tenure Type.
- 5.6 None of the Allocated Grant Funding has or will be applied towards the costs of provision of any dwellings intended to replace units sold by the Grant Recipient or any Delivery Partner pursuant to the Voluntary Right to Buy.

6 **Grant Recipient Senior Officer**

The Grant Recipient Senior Officer is empowered to act on behalf of the Grant Recipient for all purposes connected with this Agreement.

7 **Propriety**

- 7.1 No member, employee, agent or consultant of the Grant Recipient (and to the best of its knowledge (having made all reasonable enquiries) no member, employee, agent or consultant of any Delivery Partner) or of any partner organisation of the Grant Recipient or any Delivery Partner has any personal, proprietary or pecuniary interest in:

7.1.1 any person from whom the Grant Recipient or its Delivery Partners are purchasing land or property for the purposes of or in connection with this Agreement;

- 7.1.2 any Contractor engaged or to be engaged by the Grant Recipient or its Delivery Partners in connection with this Agreement;
- 7.1.3 any land or other property to be acquired or developed refurbished or improved by the Grant Recipient or its Delivery Partners for the purposes of or in connection with this Agreement.
- 7.2 No member, employee, agent or consultant of the Grant Recipient or its Delivery Partners or any partner organisation of the Grant Recipient or its Delivery Partners is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
- 7.2.1 access to properties developed, Rehabilitated or, disposed of pursuant to this Agreement; or
- 7.2.2 the prices at which such properties are let or disposed of.
- 7.3 The Grant Recipient has not at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 7.4 No Grant Recipient Party has bribed another person (within the meaning given in section 7(3) Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business for the Grant Recipient, and the Grant Recipient has in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent the Grant Recipient Parties from undertaking any such conduct.
- 7.5 Neither the Grant Recipient nor any Grant Recipient Party is, or has, been the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, enquiry or proceedings are pending or to the best of the Grant Recipient's knowledge and belief having made all due enquiry have been threatened and there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.
- 7.6 The Grant Recipient is not and its Delivery Partners are not ineligible to be awarded any contract or business under the Public Contracts Regulation 2015 or the Utilities Contracts Regulations 2016 (2016/274) (as amended).

8 **Payment Requests**

- 8.1 In submitting a Payment Request on IMS in accordance with the time frames set out in clause 8.3 (*Review Meetings*) the Grant Recipient:
- 8.1.1 represents and warrants that the Milestones certified to have been achieved on IMS have been achieved for each Housing Output on an Active Site that is the subject of the Payment Request;
- 8.1.2 represents and warrants that where the Payment Request relates to an Active Site which has reached Acquisition Stage or Start on Site, the Grant Recipient or a Delivery Partner, or its Group Company holds a Qualifying Secure Legal Interest;

- 8.1.3 represents and warrants that for each Housing Output that has achieved Practical Completion, the Grant Recipient or Delivery Partner (whichever is named to be the Landlord of the Housing Output on IMS) holds a Required Secure Legal Interest;
- 8.1.4 represents and warrants that it has not made any previous Payment Request for the same Milestones in respect of the Housing Outputs which are the subject of the Payment Request;
- 8.1.5 represents and warrants to Homes England that:
- (a) payment of Allocated Grant Funding pursuant to the Payment Request will not result in the Allocated Grant Funding paid exceeding the Development Expenditure incurred by the Grant Recipient and Delivery Partner(s) (if any);
 - (b) it has procured (or has procured that the Delivery Partner that will be the Landlord of the relevant Housing Outputs has procured) a Valuation of any Active Site that has achieved Acquisition Stage and is subject to the Payment Request in accordance with any applicable requirements of Section 3.6 (Valuations) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme Issues" and any other requirements identified by Homes England from time to time (acting reasonably);
 - (c) for any part of a Payment Request relating to Acquisition Stage, the Development Expenditure incurred by the Grant Recipient or Delivery Partner (as applicable) in relation to the relevant Active Site equals or exceeds the sum of the Acquisition Amounts relating to the number of Housing Outputs being delivered on such Active Site;
 - (d) the Grant Recipient and/or the Delivery Partner that will be the Landlord of the Housing Outputs subject to the Payment Request is a For Profit Registered Provider and retains its status as an Investment Partner;
 - (e) any Change in Control in the Grant Recipient or a Delivery Partner or Restructure in respect of either which has taken place since the date of the Agreement has been notified to Homes England pursuant to clause 9.2 (*Change in circumstance*).

Schedule 2

Part 1

Costs which are Development Expenditure

Heads of expenditure

1 Acquisition

- 1.1 Purchase price of land/Site/buildings.
- 1.2 Stamp Duty Land Tax on the purchase price of land/Site.

2 Works Costs

- 2.1 Main works contract costs (excluding any costs defined as on costs).
- 2.2 Major Site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.
- 2.3 Statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.
- 2.4 Additional costs associated with complying with archaeological works and party wall agreement awards (including all fees, charges and claims attributable to such works) where applicable.
- 2.5 Irrecoverable VAT on the items in paragraphs 2.1 to 2.4 (*Works Costs*) (where applicable).

3 On costs

- 3.1 Legal fees and disbursements.
- 3.2 Net gains/losses via interest charges on development period loans.
- 3.3 Building society or other valuation and administration fees.
- 3.4 Fees for building control and Planning Permission (including any associated financial contributions relating to the Housing Outputs provided that no relevant relief is available in respect of such contributions).
- 3.5 Fees and charges associated with compliance with European Community directives, and Homes England's requirements relating to energy rating of dwellings and Eco-Homes certification.
- 3.6 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 3.7 Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in Works costs).
- 3.8 Contract performance bond premiums.

- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion of the Grant Recipient's development and administration costs.
- 3.11 In-house or external consultants' fees, disbursements and expenses reasonably and properly incurred in the conduct of the Annual Reconciliation or Programme Reconciliation.
- 3.12 Irrecoverable VAT on the items in paragraphs 3.1 to 3.11 (*On costs*) (where applicable).

Note 1

Where the development contract is a design and build contract, the on-costs are deemed to include the builder's design fee element of the contract sum. The amount included by the builder for design fees should be deducted from the Works cost element referred to above, as should other non-works costs that may be submitted by the builder such as fees for building and Planning Permission, building warranty, defects liability insurance, contract performance bond and energy rating of dwellings.

Note 2

Some items will not qualify as Development Expenditure unless the Grant Recipient can clearly demonstrate that such costs are properly chargeable to the housing development, i.e. for the sole use of the residents or to comply with any statutory obligations that may have been imposed.

Examples of these are as follows:

- works to any roads which do not exclusively serve the housing development;
- landscaping to areas of land which lie outside the boundaries of the Site;
- district heating systems;
- trunk sewers and sewage disposal works;
- special refuse treatment buildings;
- public conveniences;
- community halls, club rooms, recreation rooms.

Note 3

Subject to the above, where any cost incurred or to be incurred by the Grant Recipient is common both to the development of the Housing Outputs and to any other activity, asset or property of the Grant Recipient or Delivery Partner, only such part of that cost as is attributable to the development of the Housing Outputs may be treated as a cost in respect of which grant under this Agreement may be paid.

Part 2

Costs which are not Development Expenditure

- 1 Capital costs incurred:
 - 1.1 which are not eligible for social housing assistance as defined in section 32(13) of the HRA 2008;
 - 1.2 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Housing Outputs;
 - 1.3 on estate offices, factories, letting offices;
 - 1.4 on stores;
 - 1.5 on medical or dental surgeries, clinics;
 - 1.6 on police stations, public libraries, bus shelters;
 - 1.7 on shops, restaurants, public houses, offices;
 - 1.8 on transformer and other related buildings;
 - 1.9 on maintenance depots, tools, plant and vehicles;
 - 1.10 on garages (other than integral garages on market purchase scheme types) and greenhouses;
 - 1.11 on separate commercial laundry blocks and related equipment; and
 - 1.12 under or pursuant to option agreements over land.

Schedule 3

Payment Arrangements

1 The Grant Recipient must make Payment Requests to draw down instalments from the Allocated Grant Funding quarterly in accordance with the Grant Drawdown Profile set out in the Forecasts Submission for the relevant Quarter, such Payment Request to relate to the Milestones achieved in the previous Quarter and to have been approved for submission pursuant to the procedures set out in clause 8.3 (*Review Meetings*).

2 Save where otherwise expressly agreed by Homes England in writing, the Grant Recipient must submit a Payment Request in accordance with the time frames set out in clause 8.3 (*Review Meetings*).

3 On receipt of a valid Payment Request submitted pursuant to clause 4.3 (*Mechanics and payment of Allocated Grant Funding*) Homes England shall pay to the Grant Recipient the sum resulting from the following formula:

Total Payable Amount = Total Acquisition Sum + Total Start Sum + Total Practical Completion Sum + Total MMC Sum + Total Rural/Community Led Sum – Allocated Grant Funding Paid

Where:

Total Acquisition Sum means the aggregate of the Acquisition Amounts for each of the Housing Outputs which are to be delivered on all Active Sites which have achieved Acquisition Stage.

Total Start Sum means the aggregate of the Starts Amount for each of the Housing Outputs which are to be delivered on all Active Sites which have achieved Start on Site.

Total Practical Completion Sum means the aggregate of the Practical Completion Amount for each of the Housing Outputs which have achieved Practical Completion and are comprised in Firm Schemes pursuant to the application of the Profiling Conditions.

Total MMC Sum means the Additional MMC Grant Rate multiplied by the aggregate number of Eligible MMC Outputs which have reached Practical Completion and are comprised in Firm Schemes pursuant to the application of the Profiling Conditions.

Total Rural/Community Led Sum means the Additional Community Led/Rural Grant Rate multiplied by the aggregate number of Eligible Rural Outputs and Eligible Community-Led Outputs which have achieved Practical Completion and are comprised in Firm Schemes pursuant to the application of the Profiling Conditions.

Allocated Grant Funding Paid means the total Allocated Grant Funding Paid (less any amount of the Allocated Grant Funding repaid by the Grant Recipient) under this Agreement.

4 Where the Total Payable Amount is a negative figure, Homes England is entitled to recover such amount (expressed as a positive) from the Grant Recipient in accordance with the timetable set out in clause 11.4 (*Repayment of Allocated Grant Funding*) (*mutatis mutandis*).

Schedule 4

Delivery and Profiling Conditions

Part 1

Delivery Conditions

1 Delivery obligations

- 1.1 The Grant Recipient must procure that the Committed Number of Housing Outputs (including each Committed Strategic Housing Number) are delivered in accordance with the terms of this Agreement by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) and set out in IMS) and that the Tenure Balance is achieved in such delivery.
- 1.2 The Grant Recipient must ensure that the Committed Social Rent Number is delivered only in High Affordability Pressure Areas.
- 1.3 Insofar as the Grant Recipient intends to collaborate with any proposed Delivery Partner, the Grant Recipient must secure the prior written approval of Homes England (not to be unreasonably withheld) to the identity of that party and the role that it will undertake in delivering the Housing Outputs.

2 Contractors and employees

- 2.1 The Grant Recipient will procure and will ensure that each Delivery Partner procures that each Contractor complies with each and all of its Contracts which relate to the Works and the Housing Outputs.
- 2.2 The Grant Recipient will take all necessary steps to satisfy Homes England that its procurement policies and procedures and those of each Delivery Partner (as applicable) in relation to employees, suppliers and Contractors (as applicable) are suitable and competent in all respects to secure the proper performance of all work or tasks in relation to the Housing Outputs and compliance with this Agreement.
- 2.3 The Grant Recipient will ensure that all Contracts entered into in connection with the Housing Outputs are or have been competitively procured (utilising a documented decision making process) in compliance with any applicable Procurement Law and that the Development Expenditure represents fair market costs.
- 2.4 The Grant Recipient shall procure that the Works are:
- 2.4.1 conducted and completed in accordance with:
- (a) all Consents and the Required Standards; and
 - (b) any applicable requirements of the Procurement Law; and
- 2.4.2 carried out in a good and workmanlike manner; and
- 2.4.3 carried out so that the Housing Outputs are delivered in all material respects in accordance with the Agreed Profile, the Programme Commitments, and in

accordance with the timescales set out in this Agreement and in any event by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) and set out in IMS).

- 2.5 The Grant Recipient must procure that
- 2.5.1 the Housing Outputs are delivered in accordance with the Required Standards;
 - 2.5.2 Start on Site Works have been commenced on all Active Sites by a date which would not prejudice the ability of the Grant Recipient to achieve Practical Completion of the Housing Outputs on that Active Site by 31 March 2026; and
 - 2.5.3 all of the Housing Outputs have reached Practical Completion by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) and set out in IMS).
- 2.6 The Grant Recipient will and will procure that each Delivery Partner and Group Company will act at all times with the utmost good faith.
- 2.7 The Grant Recipient will at the request of Homes England (acting reasonably) procure access for Homes England to visit the Sites at reasonable times, on reasonable notice and on reasonable frequency for the purposes of monitoring progress in delivering or securing the delivery of the Housing Outputs.
- 2.8 Until such time as the Works and the Housing Outputs have been fully delivered in accordance with the terms of this Agreement, the Grant Recipient will ensure that Homes England has the right to be represented at each project meeting relating to the same and that its representative (the details of which are to be advised by Homes England to the Grant Recipient) is provided with reasonable notice of all such meetings and all relevant meeting materials.
- 2.9 The Grant Recipient shall meet and shall procure that each Delivery Partner meets all of its or their Cost Overruns from its or their own resources.
- 2.10 Where a Group Company holds the Qualifying Secure Legal Interest or Required Secure Legal Interest in a Site, the Grant Recipient must procure that the Group Company enters into a binding contract to transfer the Site at or before Practical Completion to whichever of the Grant Recipient or Delivery Partner will be the Landlord.
- 2.11 The Grant Recipient must ensure (or as applicable procure that each Delivery Partner ensures) that:
- 2.11.1 prior to any Housing Output being occupied, all certification required in respect of the Housing Output (or any part thereof) is obtained (including certification that such Housing Output has passed "Gateway 3" when implemented) under any building safety Legislation arising out of the Building Safety Bill 2021; and
 - 2.11.2 where any Housing Output forms part of a building that is above either 18 metres or 7 storeys in height (whichever is the lower), the Grant Recipient or any Relevant Delivery Partner registers as a signatory to the Building a Safer Future Charter.

Part 2

Profiling Conditions

- 1 The Grant Recipient must:
 - 1.1 incorporate any AHP Dwelling (located on an Active Site) which has achieved Practical Completion within a Proposed Firm Scheme within one (1) calendar month of the final AHP Dwelling on that Active Site reaching Practical Completion or, if in Homes England's opinion (acting reasonably) such incorporation could be achieved earlier, within such earlier timeframe as Homes England (acting reasonably) may direct; and
 - 1.2 input such details of the Proposed Firm Scheme (including the proposed Tenure Type, Designation and Agreed Grant Rate for each dwelling within it and the proposed figure for the Actual Development Expenditure for the Proposed Firm Scheme and each dwelling within it) as Homes England may require onto Homes England's IMS (the **Proposed Firm Scheme Details**).
- 2 In submitting the Proposed Firm Scheme Details in IMS, the Grant Recipient represents and warrants to Homes England for and on behalf of itself and (where applicable) the Relevant Delivery Partner that:
 - 2.1 the Proposed Firm Scheme has reached Practical Completion;
 - 2.2 the Proposed Firm Scheme comprises no Public Sector Funding beyond the Allocated Grant Funding unless otherwise agreed by Homes England;
 - 2.3 it or the Relevant Delivery Partner (as applicable) possesses the relevant Required Secure Legal Interest in the Site having regard to the tenure of the AHP Dwellings delivered on it and the Grant Recipient further warrants that where the relevant Required Secure Legal Interest is a leasehold interest the terms of the relevant lease:
 - (a) are not inconsistent with the principles of the AHP 2021/26, the operation of the Right to Shared Ownership nor the Grant Recipient's obligations under this Agreement or the Delivery Partner's obligations under the Delivery Partner Deed; and
 - (b) do not permit such lease to be terminated (save in the case of non-payment of rent or breach of tenant covenants) prior to the expiry of the Minimum Unexpired Term or Minimum SO Lease Term (as applicable); and
 - (c) where applicable have been complied with;
 - 2.4 it or the Relevant Delivery Partner or Group Company (as applicable) has obtained all Consents necessary for the lawful development of the Proposed Firm Scheme to the Required Standards as are then required or to the extent that they are not obtained that the Grant Recipient, the Relevant Delivery Partner or Group Company (as applicable) has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and neither it nor the Relevant Delivery Partner or Group Company (as applicable) is aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;

- 2.5 the Grant Recipient, the Relevant Delivery Partner or Group Company (as applicable) has complied with all applicable requirements of the Capital Funding Guide in relation to the delivery of the Proposed Firm Scheme and the AHP Dwellings comprised within it;
- 2.6 the AHP Dwellings within the Proposed Firm Scheme have been procured, designed, constructed and delivered in accordance with and meet the Required Standards;
- 2.7 all confirmations and certifications made or to be made by the Grant Recipient or by or on behalf of the Relevant Delivery Partner (as applicable) in IMS in relation to the Firm Scheme have been are or will be correct in all material respects;
- 2.8 the Grant Recipient or the Relevant Delivery Partner is a For Profit Registered Provider;
- 2.9 the Grant Recipient and any Relevant Delivery Partner retain their status as Investment Partners;
- 2.10 the Proposed Firm Scheme is covered by the terms of a current Home Ownership Agency Agreement (where applicable);
- 2.11 the Public Sector Funding in respect of the Proposed Firm Scheme does not exceed an amount equal to the Actual Development Expenditure incurred by the Grant Recipient or Relevant Delivery Partner (as applicable) in respect of the delivery of that Proposed Firm Scheme;
- 2.12 where the Proposed Firm Scheme is a Proposed DP Firm Scheme:
- 2.12.1 the Relevant Delivery Partner has approved the Proposed Firm Scheme Details in IMS;
 - 2.12.2 a Completed Delivery Partner Deed is in place; and
 - 2.12.3 no Delivery Partner Default or Operational Default by the Relevant Delivery Partner exists which has not been remedied;
- 2.13 where the Proposed Firm Scheme will be or is expected by the Grant Recipient or Delivery Partner to be subject to an Onward Sale:
- 2.13.1 the Onward Disponee must be a For Profit Registered Provider unless the AHP Dwellings to be comprised in the Onward Sale are solely Shared Ownership Dwellings; and
 - 2.13.2 the Onward Sale Notification has been provided to Homes England in accordance with the requirements of paragraph 7 of Part 2 of Schedule 5 (*Disposal Conditions*) and the Grant Recipient has updated and reissued such Onward Sale Notification (or confirmed that no change to the relevant information is required);
- 2.14 where the Proposed Firm Scheme includes:
- 2.14.1 any MMC Outputs, such MMC Outputs have been delivered using Modern Methods of Construction and any Eligible MMC Outputs meet the MMC Funding Condition;

- 2.14.2 any Rural Outputs, such Rural Outputs have been delivered in a Rural Area;
 - 2.14.3 Community-Led Outputs, such Community Led Outputs have been delivered with a community-led organisation;
 - 2.14.4 any HAPA Social Rent Dwellings within the Committed Social Rent Number, such dwellings have been provided in High Affordability Pressure Areas; and
 - 2.14.5 any Non-HAPA Social Rent Dwellings no such dwellings have been provided in High Affordability Pressure Areas (unless otherwise agreed by Homes England);
- 2.15 no Event of Default has occurred or arisen.
- 3 If the Proposed Firm Scheme is accepted by Homes England through IMS:
- 3.1 it will become a Firm Scheme for the purposes of this Agreement with effect from the Acceptance Date;
 - 3.2 subject to clause 5.10 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*) the Agreed Grant Rate for each AHP Dwelling comprised within the Firm Scheme shall be the apportioned grant figure for the purposes of part 4 of section 7 of the Capital Funding Guide (or any successor provisions to that part or section); and
 - 3.3 the figure which is the product of the following calculation shall be the Firm Scheme Grant for that Firm Scheme:

$$\text{Firm Scheme Grant} = \text{number of AHP Dwellings (by Tenure Type) within a Firm Scheme} \times \text{relevant Agreed Grant Rate (by Tenure Type)}$$
- 4 If Homes England is not satisfied with the Grant Recipient's submission, (including the level and allocation (by Tenure Type) of the proposed Agreed Grant Rate) having regard (amongst other things) to (a) the Grant Recipient's performance against the Agreed Profile in delivering the Housing Outputs, each Committed Strategic Housing Number and the Tenure Balance and (b) the amount of Actual Development Expenditure incurred) it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the submission in IMS identifying the reason for its dissatisfaction. Homes England must allow the Grant Recipient a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its submission on IMS accordingly in which case the provisions of this paragraph 4 will be reapplied to the Grant Recipient's resubmission.
- 5 If Homes England is not satisfied with the Grant Recipient's resubmission under paragraph 4 above it shall notify the Grant Recipient within ten (10) Business Days of receipt and the Grant Recipient shall have the opportunity to resubmit in IMS the Proposed Scheme Details (with any supporting documents which Homes England may require) to Homes England for approval within ten (10) Business Days of such notification and if:
- 5.1 the Grant Recipient fails to resubmit its submission within the period specified in paragraph 5 above; or
 - 5.2 Homes England is still not satisfied with the Grant Recipient's submission or with the representations and warranties made by the Grant Recipient under paragraph 2,

Homes England shall not be obliged to accept the Proposed Firm Scheme and the matter shall be considered to be a General (A) Default for the purposes of clause 10 (*Event of Defaults and Termination*).

- 6 The Grant Recipient must keep an updated tally of the amount of Allocated Grant Funding it has received and the amount of Allocated Grant Funding apportioned to Firm Schemes pursuant to this Part 2 of Schedule 4 (*Profiling Conditions*).
- 7 The Grant Recipient must notify any Relevant Delivery Partner if the Proposed Firm Scheme Details are not accepted by Homes England pursuant to the paragraphs 4 and 5 and ensure that the Relevant Delivery Partner reviews and approves any updated Proposed Firm Scheme Details before these are resubmitted by the Grant Recipient pursuant to that process.
- 8 Homes England shall be entitled to withhold its acceptance of any Proposed Firm Scheme on IMS:
 - 8.1 if in its opinion (acting reasonably) and having regard to the composition of the then current Firm Schemes it is unlikely that the Committed Strategic Housing Numbers will be delivered; or
 - 8.2 where an Allocation Change Notice has been issued, until such Allocation Change Notice has been implemented or the parties have agreed and implemented an alternative means of dealing with the relevant circumstances pursuant to clause 5.3 (*Adjustments to Allocated Grant Funding, the Blended Grant Rate and Reconciliations*).
- 9 For the purposes of this Part 2 of Schedule 4 (*Profiling Conditions*), references to a "paragraph" are references to a paragraph in this Part 2 of Schedule 4 (*Profiling Conditions*).

Part 3

Delivery Partner Conditions

- 1 Where the Grant Recipient collaborates with a Delivery Partner to deliver the Housing Outputs it must:
 - 1.1 ensure a binding contract is entered into between the Grant Recipient and the Delivery Partner on or before the Grant Recipient submits a claim pursuant to clause 4.2.1 involving the relevant Delivery Partner (*Conditions Precedent to each Payment Request for Allocated Grant Funding*) which:
 - 1.1.1 is capable of securing the execution of the Delivery Partner Obligations under this Agreement; and
 - 1.1.2 enables the Grant Recipient to meet its obligations under this Agreement and to give the representations, warranties and undertakings required by this Agreement (the **Delivery Partner Contract**);
 - 1.2 ensure that the Delivery Partner has the power to enter into the Delivery Partner Contract and to perform its obligations in connection with this Agreement and its obligations under the Delivery Partner Contract and the Delivery Partner Deed; and
 - 1.3 conduct such due diligence as is necessary in respect of each Delivery Partner to satisfy itself that:
 - 1.3.1 the Delivery Partner Obligations can be met by the Delivery Partner; and
 - 1.3.2 the Grant Recipient is capable of procuring the Delivery Partner's compliance with this Agreement and of giving the representations, warranties and undertakings required by this Agreement on behalf of itself and/or the Delivery Partner;
 - 1.4 procure that any Delivery Partner:
 - 1.4.1 complies with the Delivery Partner Obligations;
 - 1.4.2 imposes such conditions as are necessary in any Contracts to ensure that the Delivery Partner Obligations are complied with by such Contractors or third parties (as applicable);
 - 1.4.3 attends any Review Meeting which relates to:
 - (a) the Housing Outputs for which the Delivery Partner has delivery responsibility and/or will be the Landlord of the relevant Housing Outputs; and/or
 - (b) the Delivery Partner Obligations,where so requested by Homes England; and
 - 1.4.4 acknowledges the representations and warranties made by the Grant Recipient on its behalf in this Agreement including those made pursuant to Schedule 1

(*Acknowledgments, Representations and Warranties*) and paragraph 2 of the Profiling Conditions; and

- 1.5 co-operates with and provides the Strategic Partner with such data and information as may be required in relation to any Payment Request made in connection with the relevant Delivery Partner (**Payment Information**) and:
- 1.5.1 ensures such Payment Information is:
- (a) complete, up to date and accurate in all respects;
 - (b) provided by an officer of the Delivery Partner who has access to the information and knowledge needed accurately to give the information required; and
- 1.5.2 notifies Homes England and the Grant Recipient if it becomes aware that any Payment Information provided is erroneous in any material respect; and
- 1.6 notifies Homes England promptly on becoming aware of any DP Notifiable Event.
- 2 The Grant Recipient must submit a Delivery Partner Deed, together with the Completion Authority to Homes England before the date that it submits a claim pursuant to clause 4.2.1 involving the relevant Delivery Partner (*Conditions Precedent to each Payment Request for Allocated Grant Funding*).
- 3 Where a Fundamental DP Default has occurred:
- 3.1 Grant Recipient and Homes England will convene a meeting of the PMB as soon as reasonably practicable and in any event within ten (10) Business Days (or such other period as the parties may agree) of the Fundamental DP Default's occurrence;
- 3.2 where requested by Homes England to do so, the Grant Recipient will procure that the Delivery Partner attends such meeting of the PMB;
- 3.3 the Fundamental DP Default shall be referred to such meeting of the PMB for discussion and resolution; and
- 3.4 if resolution of the Fundamental DP Default cannot be achieved to Homes England's satisfaction within five (5) Business Days following the meeting of the PMB, Homes England shall be entitled to treat the Fundamental DP Default as a General (A) Default and freely to exercise any of its rights under clause 10.2 (*Event of Defaults and Termination*). Failure by the Grant Recipient to attend the PMB or to procure the relevant Delivery Partner's attendance shall be treated as a General (A) Default and Homes England shall be entitled freely to exercise any of its rights under clause 10.2 (*Event of Defaults and Termination*).
- 4 Where an Interim DP Default has occurred Homes England shall be entitled to treat the Interim DP Default as if it were a General (B) Default and the provisions of clauses 10.3, 10.4 and 10.5 (*Event of Defaults and Termination*) shall apply.
- 5 Subject to paragraph 6, where a Delivery Partner Default occurs Homes England shall be entitled to recover the Recoverable Amount from either the Defaulting Delivery Partner under a Delivery Partner Deed or the Grant Recipient but Homes England agrees that it will

not seek to recover the same Recoverable Amount from both the Defaulting Delivery Partner and the Grant Recipient for the same event arising out of the same circumstances.

6 Homes England acknowledges that where a Delivery Partner Default:

6.1 is an Operational Default which occurs solely in connection with a Firm Scheme which has been accepted by Homes England on IMS and which is in the ownership of a Delivery Partner with whom Homes England has entered into a Delivery Partner Deed, Homes England will not seek to recover the Firm Scheme Grant from the Grant Recipient (save that nothing in this paragraph 6.1 shall preclude Homes England from relying on its rights in clauses 10 (*Event of Defaults and Termination*) or 11 (*Repayment of Allocated Grant Funding*) which apply on the occurrence of a Persistent Operational Default); or

6.2 occurs after the Profile Completion Date and Homes England is entitled to recover a sum equivalent to the Recoverable Amount from the Defaulting Delivery Partner for the Delivery Partner Default under the relevant Delivery Partner Deed, Homes England will not seek to recover such Recoverable Amount from the Grant Recipient.

7 In this Part 3 of Schedule 4 (*Delivery Partner Conditions*), the following words and expressions have the following meanings:

Defaulting Delivery Partner means a Delivery Partner that has committed a Delivery Partner Default;

Delivery Partner means any For Profit Registered Provider approved by Homes England in writing working with the Grant Recipient either:

- (a) to deliver Housing Outputs; or
- (b) to acquire Housing Outputs,

and in each case where the For Profit Registered Provider will be the immediate Landlord;

Delivery Partner Deed means a deed to be provided in respect of each Delivery Partner on or before the Grant Recipient submits a claim pursuant to clause 4.2.1 involving such a Delivery Partner (*Conditions Precedent to each Payment Request for Allocated Grant Funding*) which has been accurately populated in accordance with Homes England's requirements from time to time in substantially the form set out in Schedule 11 (*Delivery Partner Deed*) and has been duly executed by the Relevant Delivery Partner;

Delivery Partner Default means a Fundamental DP Default or an Interim DP Default;

Delivery Partner Obligations means;

- (a) where the Grant Recipient is under an obligation to secure the Delivery Partner's compliance with this Agreement or to procure delivery of the Housing Outputs by the Delivery Partner in accordance with this Agreement, the Delivery Partner must take all steps necessary to ensure that the Grant Recipient is placed in a position to comply with such obligations;

- (b) any Allocated Grant Funding received by the Delivery Partner must be used by the Delivery Partner for Development Expenditure only and must not be on-lent or advanced to a third party by the Delivery Partner;
- (c) the Delivery Partner must promptly notify the Grant Recipient:
 - i if any Notifiable Event set out in clauses 8.1.2(a), 8.1.3, 8.1.4, 8.1.6 to 8.1.9 (inclusive) (*Notifications, reporting and audit*) or 9.1 to 9.3 (inclusive) (*Change in circumstances*) occurs in relation to the Delivery Partner;
 - ii upon the occurrence of a Delivery Partner Default;
 - iii upon the receipt by it of any other income or funds or other Public Sector Financial Assistance or guarantees of them, or the offer of same, in respect of the Housing Outputs; or
 - iv if any representation or warranty made by the Grant Recipient on the Delivery Partner's behalf pursuant to Schedule 1 (*Acknowledgments, Representations and Warranties*) or paragraph 2 of Part 2 of Schedule 4 (*Profiling Conditions*) of this Agreement is incorrect in any material respect when made or repeated;
- (d) the Delivery Partner must keep any data and/or information as required under clauses 8.4 (*Forecasts Submission and Development Expenditure*) or 8.5 (*Inspection and audit facilities*) on an Open Book Basis and provide the Grant Recipient with such information as it may require to enable the Grant Recipient to comply with its obligations under clauses 8.4 (*Forecasts Submission and Development Expenditure*) or 8.5 (*Inspection and audit facilities*);
- (e) the Delivery Partner must not do or omit to do anything which would prejudice the Grant Recipient's ability to comply with:
 - i the obligations set out in clauses 14 (*Confidentiality and freedom of information*) to 17 (*Further assurance*) (inclusive) which relate to the Delivery Partner; or
 - ii clause 25 (*Subsidy*);
- (f) the Delivery Partner must co-operate with any request for information, review or re-structuring arrangements contemplated in clause 8.3 (*Review Meetings*), clause 8.5 (*Inspection and audit facilities*), clause 9.4 (*Change in circumstances*) clause 25 (*Subsidy*), clause 26.2 or clause 26.3 (*Co-operation*) as if it was the Grant Recipient (*mutatis mutandis*);
- (g) the Delivery Partner must meet from its own resources such part of any Cost Overruns which relate to the Housing Outputs for which it has delivery responsibility;
- (h) the Delivery Partner must notify the Grant Recipient:

- i at least 30 Business Days prior to a Disposal (other than a Permitted Disposal); and
 - ii immediately where it identifies a prospective Onward Sale,

and provide the Grant Recipient with such co-operation and/or information as it may require to enable it to comply with its obligations in Part 2 of Schedule 5 (*Disposal Conditions*);
- (i) the Delivery Partner must comply with the Regulatory Compliance Conditions as if it was the Grant Recipient (*mutatis mutandis*) and provide the Grant Recipient with such information as it may require to enable it to comply with the Regulatory Compliance Conditions;

DP Notifiable Event means any of the events set out in limb (c) of the definition of Delivery Partner Obligations;

Fundamental DP Default means the occurrence of any of the following:

- (a) an Insolvency Event has occurred in relation to a Delivery Partner;
- (b) the Delivery Partner or where applicable any Contractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- (c) the Delivery Partner ceases operating or trading;
- (d) the Delivery Partner's status as an Investment Partner or For Profit Registered Provider is lost, removed or relinquished;
- (e) the Regulator directs or recommends that grant is not to be paid to the Delivery Partner;
- (f) the Delivery Partner (either by its own actions or omissions, or those of its Contractors (or the Contractor of its Group Companies) or agents) harms Homes England's reputation or brings Homes England or AHP 2021/26 into disrepute;

Interim DP Default means the occurrence of any of the following:

- (a) the Delivery Partner has breached any of the Delivery Partner Obligations;
- (b) the Grant Recipient has not provided Homes England with a Delivery Partner Deed and/or Completion Authority before the time that it submits a claim pursuant to clause 4.2.1(e) (*Conditions Precedent to each Payment Request for Allocated Grant Funding*) or the Delivery Partner Deed and/or Completion Authority is not, in Homes England's opinion (acting reasonably) correct in all material respects;
- (c) an event or circumstance occurs in relation to the Delivery Partner or the Housing Outputs being developed and/or delivered or acquired by the

Delivery Partner which mean that any representation or warranty made by the Grant Recipient on the Delivery Partner's behalf pursuant to Schedule 1 (*Acknowledgments, Representations and Warranties*) or paragraph 2 of Part 2 of Schedule 4 (*Profiling Conditions*) of this Agreement is incorrect in any material respect when made or repeated;

- (d) the Delivery Partner Contract is terminated;
- (e) an event or circumstance occurs in relation to the Delivery Partner that might in the opinion of Homes England (acting reasonably) have a Material Adverse Effect;
- (f) Homes England in its absolute discretion considers (whether as a result of its due diligence or otherwise) that the Delivery Partner or any of its Contractors does not or will not have sufficient funds or resources available to it to complete the Works and/or the Housing Outputs for which it has delivery responsibility in accordance with the terms of this Agreement;

Profile Completion Date means the date upon which:

- (a) each Housing Output to be delivered by the Grant Recipient and each Delivery Partner pursuant to this Agreement has been incorporated within a Firm Scheme accepted by Homes England under paragraph 3 of Part 2 of Schedule 4 (*Profiling Conditions*); and
- (b) a Delivery Partner Deed has been entered into by Homes England and each Delivery Partner which Homes England has agreed will be the owner and Landlord of one or more Firm Schemes;

Recoverable Amount has the meanings attributed to it in clause 11.3 (*Repayment of Allocated Grant Funding*);

8 For the purposes of this Part 3 of Schedule 4 (*Delivery Partner Conditions*), references to a "paragraph" are references to a paragraph in this Part 3 of Schedule 4 (*Delivery Partner Conditions*).

Schedule 5

Operational and Disposal Conditions

Part 1

Operational Conditions

- 1 In delivering the Housing Outputs and in operating and administering the Firm Scheme after Practical Completion, the Grant Recipient must observe and comply and procure that each Delivery Partner observes and complies with Legislation, the applicable terms of the Capital Funding Guide and the Recovery Determination and the Consents.
- 2 The Grant Recipient must notify Homes England in writing of any Operational Default or other event or circumstance in relation to the Firm Scheme as Homes England may reasonably require from time to time and within such timeframes as Homes England may reasonably require.
- 3 Without prejudice to paragraph 1, the Grant Recipient must in operating and administering the Firm Scheme:
 - 3.1 not use the AHP Dwellings for any purpose other than the Agreed Purposes (subject to the application of the Right to Shared Ownership) without Homes England's prior written consent;
 - 3.2 not charge a higher initial rent in relation to an AHP Rent Dwelling or a Rent to Buy Dwelling than set out in the relevant Firm Scheme Details;
 - 3.3 subject to any contrary requirement of Legislation, comply with the Rent Standard in respect of the AHP Rent Dwellings;
 - 3.4 comply with the Tenancy Standard in respect of the AHP Rent Dwellings and Rent to Buy Dwellings;
 - 3.5 observe and comply with the requirements of the Capital Funding Guide (and where applicable, the SO Consultation Outcome and the RTSO Guidance) in relation to:
 - 3.5.1 any Disposal of the Shared Ownership Dwellings and ensure that such Disposal takes effect only at arm's length and on market terms;
 - 3.5.2 the form and content of any Shared Ownership Lease granted by or to be granted by the Grant Recipient in relation to an AHP Dwelling; and
 - 3.5.3 the letting, management or Disposal of AHP Rent Dwellings;
 - 3.5.4 the purpose, client group, letting, rents, management and Disposals of Rent to Buy Dwellings;
 - 3.5.5 the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement;
 - 3.5.6 the operation of the Right to Shared Ownership;

- 3.6 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
- 3.7 in relation to AHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner);
- 3.8 in relation to each AHP Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds;
- 3.9 ensure that it participates in any Home Ownership Agency Arrangements where any Firm Scheme includes Shared Ownership Dwellings or Rent to Buy Dwellings;
- 3.10 not seek possession of any Shared Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988;
- 3.11 actively market the AHP Dwellings with a view to ensuring (as far as practicable) the Disposal or letting of such dwellings to individuals as AHP Housing at Practical Completion (or as soon as reasonably possible thereafter);
- 3.12 ensure that all Rent to Buy Dwellings are made available as Rent to Buy Dwellings for a period of not less than five (5) years from the point at which they first become available for letting and ensure that prior to any change to that purpose or to any Disposal they are offered for sale to the then current Rent to Buy Tenant;
- 3.13 (subject to any contrary Legislation) offer and continue to offer the Right to Shared Ownership to the then current Tenant of each:
- 3.13.1 AHP Rent Dwelling; and
- 3.13.2 RCGF Dwelling,
- which is not an Exempted Dwelling, in accordance with any applicable requirements of the RTSO Guidance, the SO Consultation Outcome and the Capital Funding Guide; and
- 3.14 comply with any Legislation, regulations and guidance issued by any Regulatory Body which is in force and/or applies in England in relation to building safety;
- 3.15 provide Homes England with such information (and within such timescales) as Homes England may reasonably require to enable Homes England to monitor compliance by the Grant Recipient with its obligations under this Agreement; and
- 3.16 procure that a valuation of each Active Site is obtained in accordance with any applicable requirements of Section 3.6 (Valuations) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme Issues" and any other requirements identified by Homes England from time to time (acting reasonably).
- 4 The Grant Recipient shall ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.

- 5 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Housing Outputs in accordance with the Agreed Profile and with proper regard to the need for efficiency in the use of public funds.
- 6 The Grant Recipient must procure that each Delivery Partner complies with the obligations in paragraphs 3 and 4 until the Profile Completion Date.
- 7 Where the Grant Recipient or the Relevant Delivery Partner possesses a Required Secure Legal Interest which is a leasehold interest the Grant Recipient must (and must procure that the Relevant Delivery Partner does):
- 7.1.1 ensure that the terms of the relevant lease:
- (a) are not inconsistent with the principles of the AHP 2021/26, the operation of the Right to Shared Ownership nor the Grant Recipient's obligations under this Agreement or the Delivery Partner's obligations under the Delivery Partner Deed; and
 - (b) do not permit such lease to be terminated (save in the case of non-payment of rent or breach of tenant covenants) prior to the expiry of the Minimum Unexpired Term or Minimum SO Lease Term (as applicable); and
- 7.1.2 not (and procure that the Delivery Partner does not) vary the lease referred to in paragraph 7.1.1 in a manner which could frustrate the operation of this Agreement or the Right to Shared Ownership.
- 8 The parties acknowledge and agree that the Grant Recipient's obligation to procure the Delivery Partner's performance under paragraph 7.1.2 will cease after the Profile Completion Date.
- 9 For the purposes of this Part 1 of Schedule 5 (*Operational Conditions*), references to a "paragraph" are references to a paragraph in this Part 1 of Schedule 5 (*Operational Conditions*).

Part 2

Disposal Conditions

- 1 The Grant Recipient must:
 - 1.1 provide Homes England with:
 - 1.1.1 a Disposal Notification in respect of any Disposal (other than a Permitted Disposal, RTSO Disposal or Onward Sale) and where such Disposal occurs or is projected to occur prior to 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) as the date by which all AHP Dwellings to be developed on the relevant Active Site must have achieved Practical Completion as set out in IMS) the Grant Recipient must contemporaneously provide the Homes England Senior Officer with a copy of the Disposal Notification and append to such copy details of:
 - (a) the price at which the Subject Site was acquired by the Grant Recipient or Delivery Partner; and
 - (b) the sale price of the Subject Site (or the relevant part thereof forming the subject of the Disposal);at least ten (10) Business Days prior to such Disposal taking place; and
 - 1.1.2 an Onward Sale Notification in respect of any Onward Sale, in accordance with the requirements of paragraph 7 (*Disposal Conditions*); and
 - 1.1.3 such information as Homes England may require to be provided from time to time in respect of RTSO Disposals, such information to be provided within such timescales as Homes England may direct;
 - 1.2 ensure that any Disposal Notification, Onward Sale Notification, Constitutional Change Notification or any other notifications or certificates from the Grant Recipient to Homes England pursuant to this Agreement (together, the **Grant Recipient Notifications**) are provided by the Grant Recipient Senior Officer and must further ensure that such Grant Recipient Senior Officer has access to the information and knowledge needed accurately to provide the information required in relation to such Grant Recipient Notifications; and
 - 1.3 ensure that the disposal documentation relating to any Disposal other than a Permitted Disposal or RTSO Disposal, contains a provision requiring the disponent to procure and provide Homes England with a Valuation (being not more than three months old) prior to any future Disposal by it of the Subject Site and the Grant Recipient must enforce such obligation if required to do so by Homes England;
 - 1.4 notify Homes England if it becomes aware that any Grant Recipient Notification is erroneous in any material respect.
- 2 The Grant Recipient must:
 - 2.1 supply (or procure that a Delivery Partner supplies (as applicable)) to Homes England at the same time as any Disposal Notification a copy of a Valuation (which is not more than three

months old) obtained from an independent Valuer for the Subject Site promptly upon obtaining it together with details of any agreed sale price; and

2.2 supply (or procure that a Delivery Partner supplies (as applicable)) Homes England with a copy of a Valuation obtained from an independent Valuer for the Subject Site in respect of any Onward Sale together with details of any agreed sale price such Valuation and agreed sale price detail to be provided:

2.2.1 simultaneously with any Onward Sale Notification; and

2.2.2 no earlier than three months prior to the Disposal pursuant to an Onward Sale (where the Onward Sale Notification is provided prior to that three month period).

3 If the Grant Recipient, any Delivery Partner or Group Company makes a Disposal (other than a Permitted Disposal or a RTSO Disposal) of any Site which was acquired with the benefit of Allocated Grant Funding:

3.1 after Practical Completion but prior to the AHP Dwellings on the Site having been fully let to residential occupiers; or

3.2 unless the Site has reached Practical Completion and the AHP Dwellings on the Site have been fully let to residential occupiers in accordance with the terms of this Agreement, prior to 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) as the date by which each AHP Dwelling to be developed on the Site must have achieved Practical Completion as set out in IMS),

the Grant Recipient must repay the Site Grant in respect of the Site to Homes England within ten (10) Business Days of a demand for the same unless the Grant Recipient is able to satisfy Homes England (acting reasonably) that it will be able to bring forward additional Sites or otherwise support the cash flows in the Forecasts Submission so that the Committed Number of Housing Outputs and the Committed Strategic Housing Numbers are delivered and the Tenure Balance is achieved in accordance with the terms of this Agreement.

4 In submitting any Disposal Notification or Onward Sale Notification (irrespective of whether the Subject Site is in its ownership or that of a Delivery Partner), the Grant Recipient represents, warrants and undertakes to Homes England:

4.1 that its contents are true and accurate; and

4.2 that the amount of Allocated Grant Funding allowed or attributed to the Subject Site identified in the Disposal Notification or Onward Sale Notification has been formally endorsed by Homes England.

5 The Grant Recipient's notification obligations under paragraphs 1 and 2 (*Disposal Conditions*) shall cease in respect of any Firm Scheme of which a Delivery Partner is a Landlord with effect from the Profile Completion Date.

6 The Grant Recipient must not (and must procure that the Delivery Partner does not):

6.1 allow or transact any Onward Sale of an AHP Dwelling before such AHP Dwelling has been incorporated into a Firm Scheme pursuant to the application of the Profiling Conditions; nor

6.2 make a Disposal (other than a Permitted Disposal) of any AHP Dwelling pursuant to an Onward Sale without:

6.2.1 providing Homes England with the Valuation referred to in paragraph 2.2 (*Disposal Conditions*);

6.2.2 providing the Onward Disponse Acknowledgement to Homes England within the timeframes set out in paragraph 8 (*Disposal Conditions*);

6.2.3 having received written confirmation from Homes England of the amount of Firm Scheme Grant attributed to the Subject Site in IMS (the **Attributed Grant**);

6.2.4 having made any repayment of Allocated Grant Funding required pursuant to paragraph 9 (*Disposal Conditions*);

6.2.5 having received the prior written consent of Homes England; and

6.2.6 having complied with the requirements of paragraphs 7 and 8 (*Disposals*).

7 Within five (5) Business Days from the date the Grant Recipient identifies a prospective Onward Sale or is notified by a Delivery Partner of a prospective Onward Sale (or otherwise becomes aware of a prospective Onward Sale by a Delivery Partner) it must notify Homes England in writing (**Initial Notification**) and must supply a copy of an Onward Sale Notification (setting out the then current details of the Onward Sale) in relation to the Subject Site as soon as possible and in any event by:

7.1.1 the date that is five (5) Business Days prior to the date of the next Quarterly PMB Meeting; or

7.1.2 unless otherwise agreed with Homes England, the date that is six (6) months prior to the proposed date upon which completion of the Onward Sale is then projected to occur,

whichever is earlier;

7.2 provide Homes England with:

7.2.1 a revised Onward Sale Notification:

(a) as soon as reasonably practicable after becoming aware that any of the information set out in any previous Onward Sale Notification relating to the Subject Site is inaccurate (including any change to the sale price); and

(b) no later than ten (10) Business Days prior to the Grant Recipient's submission of the Proposed Firm Scheme Details for the Subject Site in IMS, where the details provided in the previous Onward Sale Notification for the Subject Site are no longer accurate save that where there has been no change in the details previously provided the Grant Recipient must also provide written confirmation of that to Homes England within the timeframe specified in this paragraph 7.2.1(b) (*Disposals*);

- 7.2.2 a further updated Onward Sale Notification (or a confirmation that there has been no change to the information set out in the immediately preceding Onward Sale Notification) at least twenty (20) Business Days prior to the proposed date of exchange of any contract for sale between the Grant Recipient or Delivery Partner (as applicable) and the Onward Disponee (**Exchange**) in relation to the Subject Site and, if later, the date upon which any revision is made to the sale price for the Onward Sale.
- 8 The Grant Recipient must, no earlier than ten (10) Business Days prior to (and excluding) the projected date of Exchange in respect of the Onward Sale, provide Homes England with a written acknowledgement from the Onward Disponee (in such form as Homes England may require from time to time) (an **Onward Disponee Acknowledgement**):
- 8.1 confirming that the information in the most recently issued Onward Sale Notification is true and accurate;
- 8.2 confirming that the Attributed Grant (being the amount confirmed in IMS by Homes England) in the Subject Site (the **Funded Property**) is social housing assistance received by it for the purpose of Section 33(7) of the HRA 2008; and
- 8.3 confirming that any change in the sale price for the Onward Sale will be notified to Homes England promptly;
- 8.4 confirming its understanding that a future disposal by the Onward Disponee of the Funded Property (in whole or in part) will be subject to the terms of the Recovery Determination or URB Recovery Determination (as applicable) and will:
- 8.4.1 where the Onward Disponee is an Unregistered Body, oblige the Onward Disponee to pay the Attributed Grant and Uplift Amount to Homes England together with any interest thereon within ten (10) Business Days of the occurrence of such Relevant Event; or
- 8.4.2 where the Onward Disponee is a For Profit Registered Provider, oblige the Onward Disponee to pay the Attributed Grant and Uplift Amount to Homes England together with any interest thereon (or to recycle the same) in accordance with terms of the Recovery Determination and of any direction from Homes England in that regard; and
- 8.5 confirming that it will procure a Valuation is supplied to Homes England obtained from an independent Valuer in respect of any future Disposals (other than a Permitted Disposal) of the Subject Site together with details of any agreed sale price such Valuation and agreed sale price detail to be provided no earlier than three months prior to such Disposal;
- 8.6 acknowledging that Homes England is relying on the information provided in the Onward Disponee Acknowledgement and if it becomes apparent that any information provided in such Onward Disponee Acknowledgement is misleading, untrue or inaccurate, Homes England will be entitled to seek recovery of the Attributed Grant from the Onward Disponee following completion of the Onward Sale.
- 9 Having regard to the information provided in any Onward Sale Notification, any Onward Disponee Acknowledgement, any notification provided as a result of the requirement under paragraph 8.3 (*Disposal Conditions*) or any evidence provided pursuant to paragraph 10

(*Disposal Conditions*), Homes England may require the Grant Recipient to repay such amount of Agreement Funding as is determined by Homes England to be in excess of that permitted under the United Kingdom Competition Requirement pursuant to clause 25.5 (*Subsidy*).

- 10 Within ten (10) Business Days of completion of the Onward Sale the Grant Recipient must provide Homes England with evidence satisfactory to Homes England (having regard to any requirements of the Capital Funding Guide relating to Onward Sales) of the price at which the Funded Property was disposed of.
- 11 The Grant Recipient must procure that the Delivery Partner notifies the Grant Recipient immediately once the Delivery Partner becomes aware of a prospective Onward Sale in relation to a Site in the Delivery Partner's ownership and co-operates with the Grant Recipient to enable it to comply with the notification requirements under this Part 2 of Schedule 5 (*Disposal Conditions*).
- 12 The Grant Recipient may not make a Disposal of an AHP Rent Dwelling or a Rent to Buy Dwelling to an Unregistered Body nor permit any Delivery Partner to do so.
- 12.1 The Grant Recipient must provide Homes England or any Regulatory Body with such information as may be requested to demonstrate compliance with the Grant Recipient's obligations under this Part 2 of Schedule 5 (*Disposal Conditions*).
- 13 For the purposes of this Part 2 of Schedule 5 (*Disposal Conditions*), references to a "paragraph" are references to a paragraph in this Part 2 of Schedule 5 (*Disposal Conditions*).

Schedule 6

Regulatory Compliance Conditions

1 Consents

The Grant Recipient will procure that no Works are commenced and/or continued without all necessary Consents being received and in particular will procure that no work constituting development for which planning permission is required under the Town and Country Planning Act 1990 is carried out without having obtained detailed planning consent and will provide such documents as Homes England requires to demonstrate compliance with this paragraph 1.

2 Public procurement

The Grant Recipient must comply and procure compliance by each Delivery Partner with all applicable Procurement Laws in connection with the procurement of the Works and the Housing Outputs or any services relating to them and must further ensure that the procurement of works, equipment, goods and services by the Grant Recipient or each Delivery Partner (as applicable) relating to such Works and Housing Outputs are based on value for money.

3 Legislation (including Health & Safety and Equality & Diversity)

3.1 The Grant Recipient will comply in all material respects with all relevant Legislation including but not limited to Legislation relating to health and safety, welfare at work, equality and diversity, modern slavery and other relevant employment matters and will use reasonable endeavours to procure that all Grant Recipient Parties engaged in the delivery of the Works or the Housing Outputs do likewise.

3.2 The Grant Recipient confirms that it has, and is in full compliance with, and shall procure that each Grant Recipient Party has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 or which is made on any other unjustifiable basis is avoided at all times and the Grant Recipient will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.

3.3 The Grant Recipient shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part.

3.4 To the extent that Homes England is a 'client' for the purposes of the CDM Regulations:

3.4.1 where the Grant Recipient or any Delivery Partner is engaging consultants and a contractor or contractors as Subcontractors to deliver the Works the Grant Recipient hereby elects to be and shall procure that each Delivery Partner is the only client in relation to such Works; or

3.4.2 where the Grant Recipient or any Delivery Partner is contracting with a developer as a Subcontractor to deliver the Works the Grant Recipient shall procure and shall procure that each Delivery Partner shall procure that such developer shall elect to be the only client in relation to the Works on or before the date the details

of the relevant Proposed Firm Scheme are submitted to Homes England by the Grant Recipient pursuant to paragraph 2 of the Profiling Conditions,

and Homes England hereby agrees to such election.

- 3.5 The Grant Recipient shall comply and shall procure that each Delivery Partner and any Group Company complies fully with all the obligations, requirements and duties arising under the HS Act and the CDM Regulations by any and all parties appointed in connection with the Works or allowed on the Site.
- 3.6 The Grant Recipient shall not or, as applicable, shall procure that no Delivery Partner seeks to withdraw, terminate or in any manner derogate from such election pursuant to paragraph 3.4 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to paragraph 3.4 without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.
- 3.7 The Grant Recipient shall and shall procure that each Delivery Partner and any Group Company (to the extent applicable) shall at all times procure compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the delivery of the Housing Outputs or allowed on the Site.
- 3.8 The Grant Recipient shall at all times maintain and procure that there is maintained by each Delivery Partner and (to the extent applicable) any Group Company an accurate record of all health, safety and environmental incidents which occur on or in connection with the delivery of the Housing Outputs in the form set out in Schedule 8 (*Form of Health and Safety Report*) to this Agreement.
- 3.9 Without prejudice to any other provision of this Agreement, the Grant Recipient shall notify Homes England's Safety, Health Environmental (SHE) Team on 0300 1234 500 or enquiries@homesengland.gov.uk within five (5) Business Days of the occurrence of any of the following events which arise out of or in connection with any Active Site, the Works or any Firm Scheme:
- 3.9.1 any specified (major) injuries, requiring reporting under RIDDOR;
 - 3.9.2 a fatal accident to any worker or a member of the public;
 - 3.9.3 any injury to a member of the public requiring reporting under RIDDOR;
 - 3.9.4 any dangerous occurrence, as defined by RIDDOR;
 - 3.9.5 any enforcement action taken by the Health and Safety Executive, Local Fire Authority, the Police and Statutory Environmental Regulators (including the serving of enforcement, warning, improvement or prohibition notices);
 - 3.9.6 any incident having health, safety or environmental implications which attracts the attention of the police and/or the media;
 - 3.9.7 the commencement of any criminal prosecution under health and safety or environmental Legislation; and

3.9.8 any environmental incident that may be brought to the attention of the regulatory authorities, either directly or indirectly, which has the potential to give rise to a formal warning or prosecution, either as a single occurrence or as a contributory occurrence in a series of events.

3.10 The Grant Recipient will procure that all its Subcontractors and Professional Team comply at all times with the HS Act and the CDM Regulations and will procure that the Grant Recipient and each Subcontractor and member of the Professional Team shall at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and Legislation relating to the health and safety of workers, and to the undertaking of construction works and the Grant Recipient shall ensure that each Delivery Partner and (to the extent applicable) any Group Company complies with comparable obligations to those in this paragraph 3.10 in connection with the delivery of the Housing Outputs.

4 **Anti-Bribery and Anti-Corruption**

4.1 The Grant Recipient must and must procure that each Delivery Partner and Group Company does:

4.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);

4.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

4.1.3 comply with Homes England's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <https://www.gov.uk/government/collections/homes-england-ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**);

4.1.4 have and maintain in place throughout the duration of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and paragraph 4.1.2 and will enforce them where appropriate;

4.1.5 if required by Homes England, produce a written certificate to it signed by an officer of the Grant Recipient, confirming compliance with this paragraph 4.1 by the Grant Recipient and all persons associated with it under paragraph 4.1.6. The Grant Recipient shall provide such supporting evidence of compliance as Homes England may reasonably request;

4.1.6 ensure that any person associated with the Grant Recipient or Delivery Partner (as applicable) who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Grant Recipient in this paragraph 4.1 (**Relevant Terms**). The Grant Recipient shall be

responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms;

- 4.1.7 immediately report to Homes England's Head of Financial Crime Compliance and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the performance of this Agreement, and

for the purpose of this paragraph 4.1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this paragraph 4.1 a person associated with the Grant Recipient includes any Contractor.

- 4.2 Where the Grant Recipient is aware that it or any Delivery Partner is in breach of an obligation under this paragraph 4 it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

- 4.3 If the Grant Recipient has any grounds for suspecting financial irregularity in the use of any Allocated Grant Funding, it must:

- 4.3.1 notify Homes England immediately;
- 4.3.2 explain to Homes England what steps are being taken to investigate the suspicion; and
- 4.3.3 keep Homes England informed about the progress of the investigation.

For the purpose of this paragraph 4.3 "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of Allocated Grant Funding for purposes other than the purposes permitted under this Agreement.

5 **Transparency Obligations**

- 5.1 The Grant Recipient acknowledges that:

- 5.1.1 where the Allocated Grant Funding (itself or if aggregated with other AHP 2021/26 Funds or funds made available under (i) any subsequent Homes England capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, the Grant Recipient must publish and procure that each Delivery Partner publishes details quarterly of all expenditure in excess of £500 incurred by it in delivering Firm Schemes by such means as ensures that such details can be accessed by the general public; and

- 5.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Grant Recipient hereby consents for Homes England to publish such information as it considers appropriate in relation to the AHP 2021/26, including, but not limited

to, details of the Programme, Development Expenditure, other costs and funding for Firm Schemes, including from time to time agreed changes to this information.

5.2 Homes England shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:

5.2.1 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account; or

5.2.2 without consulting the Grant Recipient.

5.3 The Grant Recipient shall assist and cooperate with Homes England to enable Homes England to publish the information referred to in paragraph 5.1.2.

6 **Modern Slavery**

6.1 The Grant Recipient must and must procure that each Grant Recipient Party:

6.1.1 complies with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;

6.1.2 complies with the Modern Slavery Policy;

6.1.3 does not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

6.1.4 includes in its Contracts with its Contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this paragraph 6 and require that each of its Contractors complies with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

6.2 The Grant Recipient represents, warrants and undertakes that it and its Delivery Partners and Contractors will conduct their business in a manner that is consistent with the Modern Slavery Policy.

6.3 For the purposes of this Schedule 6 (*Regulatory Compliance Conditions*), references to a "paragraph" are references to a paragraph in this Schedule 6 (*Regulatory Compliance Conditions*).

Schedule 7

OPSO Schemes

- 1 The parties agree that in relation to any OPSO Schemes:
- 1.1 the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations and modifications specified in this Schedule 7 (*OPSO Schemes*); and
- 1.2 the term "AHP Dwellings" shall include all those dwellings intended for occupation by the OPSO Client Groups delivered as part of the OPSO Scheme.

2 In clause 1.1 (*Definitions and interpretations*):

2.1 The following defined terms shall be inserted in the appropriate alphabetical order:

Eligible Purchaser means a person who:

- (a) falls within the OPSO Client Group; and
- (b) satisfies the applicable eligibility criteria set out in the Capital Funding Guide and/or as otherwise issued from time to time by Homes England in relation to those entitled to purchase OPSO Housing;

Older People's Shared Ownership Lease means a Shared Ownership Lease which in addition complies with the specific requirements of the Capital Funding Guide relating to Older Persons Shared Ownership and is granted only to a person aged fifty five (55) or over;

OPSO Client Group means individuals over the age of fifty five (55);

OPSO Dwelling means AHP Dwellings intended for occupation by the OPSO Client Group;

OPSO Standards means that:

- (a) each OPSO Dwelling must be an individual dwelling and have (unless Homes England agrees otherwise) its own front door;
- (b) each OPSO Dwelling must be located within an OPSO Scheme which affords easy access to residents to GP or equivalent health services and other local facilities and services appropriate to the needs of the OPSO Client Group served by the relevant OPSO Scheme; and
- (c) each OPSO Dwelling and associated OPSO Scheme must be procured, constructed and/or capable of adaption, including through the installation of equipment or assistive technology, to permit their long term use by the appropriate OPSO Client Group;

Residential Care Home means a residential building or set of buildings in which residents occupy rooms (as opposed to separate dwellings) and have access to on site personal care or nursing care services;

3 The definition of "Shared Ownership Dwelling" shall be deleted and replaced with the following definition:

"Shared Ownership Dwelling means an AHP Dwelling to be disposed of on Shared Ownership Lease terms or, in respect of an OPSO Scheme, on Older People's Shared Ownership Lease terms;"

4 A new paragraph 2.16 of Part 2 of Schedule 4 (*Profiling Conditions*) shall be inserted as follows:

" 2.16 where the Proposed Firm Scheme is an OPSO Scheme it or the Relevant Delivery Partner:

- (a) has received the support of the Local Housing Authority (which it acknowledges will be verified by Homes England with the Local Housing Authority);
- (b) does not and will not (when developed or remodelled) fall in whole or in part within the definition of a Residential Care Home; and
- (c) will comprise no dwellings which have not been procured, constructed and/or designed for use by those in the relevant OPSO Client Group."

5 paragraph 3.1 of Part 1 of Schedule 5 (*Operational Conditions*) shall be deleted and replaced with the following:

"3.1 subject to clause 11 (*Repayment of Allocated Grant Funding*) not without Homes England's prior written consent use the AHP Dwellings:

- (a) for any purpose other than the Agreed Purposes; or
- (b) with respect to any OPSO Dwelling, to accommodate individuals from outside of the Agreed Client Group;"

6 paragraph 3.11 of Part 1 of Schedule 5 (*Operational Conditions*) shall be deleted and replaced with the following:

"3.11 actively market or allocate the AHP Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to Eligible Purchasers (in the case of any OPSO Dwelling) or to individuals as AHP Housing at Practical Completion (or as soon as reasonably possible thereafter);"

7 At paragraph 3.5.2 of Part 1 of Schedule 5 (*Operational Conditions*) the following words shall be inserted after the word "Lease":

"or, with respect to any OPSO Scheme, any Older People's Shared Ownership Lease (including those eligible to enter into such leases)"

8 A new paragraph 3.5.7 of Part 1 of Schedule 5 (*Operational Conditions*) shall be inserted as follows:

"3.5.7 the minimum and maximum amounts of equity which an Eligible Purchaser may acquire in a Shared Ownership Dwelling and the maximum amount of rent payable by the

Eligible Purchaser in relation to the unpurchased equity within such dwelling from time to time;"

9 The word "and" after the semicolon at the end of paragraph 3.15 of Part 1 of Schedule 5 (*Operational Conditions*) shall be deleted.

10 At paragraph 3.15 of Part 1 of Schedule 5 (*Operational Conditions*) the full stop shall be deleted and replaced with a semicolon.

11 At paragraph 3.16 of Part 1 of Schedule 5 (*Operational Conditions*) the full stop shall be deleted and the following shall be inserted at the end of the clause:

"; and".

12 A new paragraph 3.17 of Part 1 of Schedule 5 (*Operational Conditions*) shall be inserted as follows:

"3.17 with respect to any OPSO Schemes, register with the Housing Learning and Improvement Network (HLIN) website to participate in knowledge and information exchange opportunities from time to time and to supply HLIN with details of the completed OPSO Schemes;"

13 Paragraph 9 of Part 1 of Schedule 1 (*Acknowledgements, Representations and Warranties*) shall be deleted and replaced with the following:

"9 The Grant Recipient acknowledges and agrees that the Disposal or letting of an AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose (and in the case of any OPSO Scheme, to any person who does not fall within the relevant Agreed Client Group) and the Disposal of an AHP Dwelling pursuant to an Onward Sale to which Homes England has not provided prior written consent constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination."

Schedule 8

Form of Health and Safety Report

[Grant Recipient] or [Delivery Partner]: []

Site: []

To: Homes and Communities Agency (trading as Homes England)

Reporting period: [] to []

Average number of workers on site per day during reporting period	
Total number of all personal injury accidents	
Accidents resulting in greater than seven (7) days' lost time (RIDDOR)	
Specified (major) injuries (RIDDOR)	
Fatalities (RIDDOR)	
Reportable work-related diseases (RIDDOR)	
Reportable injuries to members of the public as defined under (RIDDOR)	
Dangerous occurrences as defined under RIDDOR	
No of person days lost due to accidents or ill-health incurred by workers	
Accident investigations carried out in the period	
Site inspections, tool-box talks, etc. completed	
Visits by the HSE, Local Fire Authority, the Police and Environment Agency to the site	
Enforcement notices served by the regulatory authorities e.g. improvement, prohibition, warning notices.	

Schedule 9

SPEI Entrustment

Tasks assigned and entrusted under this Agreement: as set out at clauses 2.1 and 2.2 (*Provision of Allocated Grant Funding*) of this Agreement (the **Tasks**).

Compensation for delivery of Tasks: the Allocated Grant Funding, subject to the terms of this Agreement.

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Schedule 10

High Affordability Pressure Areas

Adur	Dacorum	Kettering	Rugby	Teignbridge
Arun	Dartford	King's Lynn and West Norfolk	Runnymede	Tendring
Ashford	Daventry	Leeds	Rushcliffe	Test Valley
Babergh	Derbyshire Dales	Lewes	Rushmoor	Tewkesbury
Basildon	Dorset	Lichfield	Rutland	Thanet
Basingstoke and Deane	Dover	Luton	Salford	Three Rivers
Bath and North East	East Cambridgeshire	Maidstone	Sedgemoor	Thurrock
Bedford	East Devon	Maldon	Sevenoaks	Tonbridge and Malling
Birmingham	East Gosport	Malvern Hills	Sheffield	Torbay
Blaby	East Hampshire	Manchester	Slough	Torridge
Boston	East Hertfordshire	Medway	Solihull	Trafford
Bournemouth, Christchurch and Poole	East Northamptonshire	Mendip	Somerset	Tunbridge Wells
Bracknell Forest	East Staffordshire	Mid Devon	Somerset West and Taunton	Uttlesford
Braintree	East Suffolk	Mid Suffolk	South Cambridgeshire	Vale of White Horse
Breckland	Eastbourne	Mid Sussex	South Gloucestershire	Warrington
Brentwood	Eastleigh	Milton Keynes	South Hams	Warwick
Brighton and Hove	Elmbridge	Mole Valley	South Holland	Watford
Broadland	Epping Forest	New Forest	South Kesteven	Waverley
Bromsgrove	Epsom and Ewell	Newcastle upon Tyne	South Lakeland	Wealden
Broxbourne	Exeter	North Devon	South Norfolk	Wellingborough
Broxtowe	Fareham	North Hertfordshire	South Northamptonshire	Welwyn
Buckinghamshire	Gedling	North Kesteven	South Oxfordshire	West Berkshire
Bury	Gloucester	North Norfolk	South Somerset	West Devon

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Cambridge	Gravesham	North Somerset	South Staffordshire	West Oxfordshire
Canterbury	Guildford	North West Leicestershire	Southampton	West Suffolk
Castle Point	Harborough	Northampton	Southend-on-Sea	Wiltshire
Central Bedfordshire	Harlow	Norwich	Spelthorne	Winchester
Chelmsford	Harrogate	Nottingham	St Albans	Windsor and Maidenhead
Cheltenham	Hart	Oadby and Wigston	Stafford	Woking
Cherwell	Hastings	Oxford	Stevenage	Wokingham
Cheshire	Hatfield	Peterborough	Stockport	Worcester
Chichester	Havant	Portsmouth	Stratford-on-Avon	Worthing
City of Bristol	Hertsmere	Reading	Stroud	Wychavon
Colchester	Horsham	Redditch	Surrey Heath	York
Cornwall	Huntingdonshire	Reigate and Banstead	Swale	
Cotswold	Ipswich	Ribble Valley	Swindon	
Coventry	Isle of Wight	Rochford	Tamworth	
Crawley	Isles of Scilly	Rother	Tandridge	

Schedule 11 – Delivery Partner Deed

This Deed is made the day of 20[]

Parties

- (1) **Homes and Communities Agency** (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**); and
- (2) [] [a company (with registered number [])] [limited liability partnership registered in England and Wales (with number [])] whose registered office is at [] (the **Delivery Partner**).

Introduction

- (A) Homes England has agreed to advance grant funding in response to a bid submitted by or on behalf of [] (the **Strategic Partner**) pursuant to Homes England's Affordable Homes Programme 2021-26 (the **Bid**). Pursuant to that Bid, the Strategic Partner agreed to collaborate with a number of partners to deliver the AHP Housing in the numbers referenced in their bid.
- (B) The Strategic Partner entered into a Strategic Partner Grant Agreement with Homes England dated [] (the **Delivery Agreement**) for the delivery of AHP Housing pursuant to the AHP 2021/26.
- (C) The Strategic Partner agreed to be primarily responsible to Homes England for securing the delivery of the AHP Housing, to co-ordinate the activities of its partners and to act as a conduit for the grant funding to be utilised by or on behalf of those partners in delivering their AHP Housing. In addition, the Strategic Partner acted as a single point of engagement for Homes England in relation to the delivery of the AHP Housing to be delivered both by itself and through its partners pursuant to the Delivery Agreement.
- (D) The Delivery Partner has collaborated with the Strategic Partner to deliver the AHP Dwellings comprised in the Firm Schemes and agrees to be bound by the terms and conditions hereinafter appearing.
- (E) The Delivery Partner has received or will receive grant funding from Homes England in respect of such AHP Dwellings via the Strategic Partner.

IT IS NOW HEREBY AGREED as follows:

1 **Definitions and interpretation**

- 1.1 Capitalised terms defined in the Delivery Agreement shall have the same meaning in this Deed unless the context shall admit otherwise:

Acceptance Date means the date that a Proposed Firm Schemes is accepted by Homes England on IMS in accordance with paragraph 3 of Part 2 of Schedule 4 of the Delivery Agreement (*Profiling Conditions*);

Affordable Rent means a rent which does not exceed eighty per centum (80%) of the market rent (inclusive of service charge) for an equivalent property of the relevant size and location, such rent to be assessed and set in accordance with the applicable requirements of Legislation and of the Rent Standard;

Affordable Rent Dwelling means an AHP Dwelling to be occupied on an Affordable Rent basis;

Agreed Principles means the terms of clauses 2.3.1 to 2.3.10 (*Acknowledgements*) (inclusive);

Agreed Purposes means the purposes for which each of the AHP Dwellings is to be used as such purposes are described in the details of each Firm Scheme as set out in the relevant Firm Scheme Details;

Agreement Funding means the Firm Scheme Grant, any RCGF Proceeds applied to the Housing Outputs or any other funding permitted by Homes England to be utilised in relation to a Firm Scheme;

AHP Dwelling means a house, flat or maisonette developed pursuant to the terms of the Delivery Agreement and as more particularly described in the Firm Scheme Details;

AHP Housing means subsidised housing developed pursuant to the Delivery Agreement that will be made available:

- (a) in respect of any Firm Scheme other than an OPSO Scheme:
 - i permanently on Shared Ownership Lease terms;
 - ii on Rent to Buy terms for a period of not less than five (5) years from the point at which such housing first becomes available for letting;
 - iii permanently at an Affordable Rent; or
 - iv permanently at a Social Rent; and
- (b) in respect of any OPSO Scheme, as OPSO Housing;

AHP Rent Dwelling means an Affordable Rent Dwelling and/or a Social Rent Dwelling;

Business Day means any day other than a Saturday, Sunday or a statutory Bank Holiday in England;

Capital Funding Guide means the guide of that name published on the GOV.UK website at <https://www.gov.uk/guidance/capital-funding-guide> or any successor guide so published subject to such amendments variations or updates to the same may be published from time to time;

Change in Control means a change in Control in respect of the Delivery Partner;

Competent Authority means (as the case may be):

- (a) such persons officeholders and bodies (however constituted) that are specified under any United Kingdom Competition Requirement as having responsibility for monitoring compliance with and/or legally enforcing Subsidy or the United Kingdom Competition Requirement or otherwise authorised to recover any Unlawful Subsidy; or
- (b) the courts of England and Wales;

Confidential Information means in respect of Homes England all information relating to Homes England's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Deed or the Delivery Agreement in respect of which the Delivery Partner becomes aware in its capacity as a party to this Deed or which is received by the Delivery Partner in relation to this Deed from either Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Delivery Partner means such specific information as the Delivery Partner shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Deed;

Constitutional Change Notification means a written notification addressed to grant_notifications@homesengland.gov.uk submitted by way of the relevant 'Notification of Constitutional Change Form' required by Homes England on the following website: <https://www.gov.uk/government/publications/homes-england-historical-grant-and-constitutional-changes-notifications> (as the same may be supplemented, amended or updated from time to time) or by any other method which Homes England may notify from time to time;

Control means the power of a person (or persons acting together) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) which in the case of a corporate body shall include:

- (a) being the beneficial owner of more than fifty per centum (50%) of the issued share capital, membership rights or voting rights in that corporate body;
- (b) having the right to appoint or remove a majority of the board of management; or
- (c) otherwise controlling the votes at board meetings of that corporate body by virtue of any powers conferred by:
 - i the corporate body's governing document;
 - ii any shareholder or members' agreement; or
 - iii any other document regulating the affairs of that corporate body;

Data Controller has the meaning ascribed to it in the Data Protection Legislation;

Data Protection Legislation means (i) Data Protection Act 2018 (the **DPA**) and the UK General Data Protection Regulation (**GDPR**) (created by the Data Protection, Privacy and Electronic Communications (EU Exit) Regulations 2019), (ii) any successor Legislation to the GDPR or the DPA and (iii) all applicable Legislation relating to the processing of personal data and privacy;

Data Subject has the meaning ascribed to it in the Data Protection Legislation;

Delivery Partner Default means a General Delivery Partner Default and/or a Specific Delivery Partner Default;

Delivery Partner Party means:

- (a) the Delivery Partner, any member of the Professional Team, agent, employee or Contractor of the Delivery Partner and the Delivery Partner Senior Officer;
- (b) any subsidiary or holding company of the Delivery Partner or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006; or
- (c) any Delivery Partner Party engaged in or in connection with the delivery of the AHP Dwellings;

Delivery Partner Senior Officer means the Delivery Partner's Chief Executive Officer or such other senior officer as Homes England may approve from time to time;

Disposal means a transaction the effect of which is that the legal or beneficial title in any AHP Dwelling is transferred to becomes vested in, is leased to or reverts to another person;

Disposal Notification means a written notification addressed to grant_notifications@homesengland.gov.uk by way of the relevant 'Historical Grant Notification Form' required by Homes England on the following website: <https://www.gov.uk/government/publications/homes-england-historical-grant-and-constitutional-changes-notifications> (as the same may be supplemented, amended or updated from time to time) or by any other method which Homes England may notify from time to time;

DLUHC means the Department for Levelling Up, Housing and Communities (or any successor body with similar or equivalent jurisdiction or authority);

EIR means the Environmental Information Regulations 2004 and any subordinate Legislation made under the Environmental Information Regulations 2004 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation;

EIR Exception means any applicable exemption to EIR;

Eligible Dwelling means a dwelling identified in clause 4.1.25 (*Covenants by the Delivery Partner*) (but not an Exempted Dwelling);

Eligible Purchaser means a person who:

- (a) falls within the OPSO Client Group; and
- (b) satisfies the applicable eligibility criteria set out in the Capital Funding Guide and/or otherwise issued from time to time by Homes England in relation to those entitled to purchase OPSO Housing (as applicable);

Exempted Dwelling means:

- (a) a Rent to Buy Dwelling; or
- (b) any dwelling which is identified in paragraph 2 of the RTSO Guidance or in Legislation as exempted from the Right to Shared Ownership;

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

Expert means:

- (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in the area of law which is most relevant to the point of law or legal drafting in question (as applicable) being such Counsel as may be appointed by the parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) (where a matter concerns a financial dispute or difference) a qualified accountant from the Institute of Chartered Accountants in England and Wales may be jointly appointed by the parties (acting unanimously) or, failing agreement, such accountant as shall be appointed at the request of either or both of the parties by or on behalf of the President of the ICAEW or CIPFA; or
- (c) (in the case of any other matter) a senior Chartered Surveyor having at least ten (10) years' post-qualification experience in the development and/or management of affordable housing in England as may be jointly appointed by the parties (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the parties by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to them hereunder,

and "failing agreement" shall for these purposes mean failing to agree any such joint appointment by the parties of an Expert within five (5) Business Days of notice by one parties to the other that the dispute or difference is to be referred to an Expert;

Firm Scheme means each scheme (identified as a "Phase" on IMS) comprising AHP Dwellings of which the Delivery Partner is or will be the Landlord accepted by Homes England through IMS pursuant to the Profiling Process;

Firm Scheme Details means the descriptive and other details in respect of each Firm Scheme accepted by Homes England through IMS pursuant to the Profiling Process;

Firm Scheme Grant means the amount of grant attributed to a Firm Scheme pursuant to the Profiling Process as set out in the relevant Firm Scheme Details;

FOIA means the Freedom of Information Act 2000, and any subordinate Legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation;

FOIA Exemption means any applicable exemption to FOIA;

For Profit Registered Provider means a body entered on the Register as a profit-making organisation (as such term is defined in Section 115 of the HRA 2008);

General Delivery Partner Default has the meaning given to it in clause 7.1 (*Delivery Partner Default*);

Home Ownership Agency Arrangement means any scheme or arrangement promoted by Homes England from time to time in order to facilitate the process surrounding applications for Shared Ownership Dwellings including any existing arrangements with Help to Buy Agents;

IMS means Homes England's on-line investment management system from time to time or any successor system;

Information has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by Homes England or the Delivery Partner (as appropriate) at the time of receipt of an RFI; and
- (b) EIR, given under the definition of environmental information in Regulation 2 of the EIR and which is held by Homes England or Delivery Partner (as appropriate) at the time of receipt of an RFI;

Information Commissioner has the meaning set out in the Data Protection Legislation;

Insolvency Event means the occurrence of any of the following in relation to the Delivery Partner:

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, 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;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);

- (c) a moratorium is declared in respect of any indebtedness or Homes England receives a notice under Section 145 of HRA 2008;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - i 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) other than a solvent liquidation or reorganisation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed);
 - ii a composition, compromise, assignment or arrangement with any of its creditors;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed), receiver, housing administrator, administrative receiver, administrator, compulsory manager or other similar officer);
 - iv enforcement of any Security over any assets of the Delivery Partner; or
 - v any analogous procedure or step is taken in any jurisdiction;
 - vi other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affecting any asset or assets of the Delivery Partner which has a Material Adverse Effect;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) 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;

Know Your Customer Information means the information identified in the Homes England "know your customer" documentation as pertaining to the Delivery Partner's "Directors, Decision Makers or equivalent" or any other "know your customer" or comparable information identified by Homes England in connection with the Delivery Partner or as otherwise required under this Deed;

Legislation means:

- (a) any Act of Parliament;

- (b) any delegated or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;
- (d) rule of court or directives or requirements of any Regulatory Body or notice of any Regulatory Body;

in each case in the United Kingdom; and
- (e) any regulations, orders, bye-laws, regulatory policy, guidance or codes of practice of any local or statutory or Competent Authority (as the case may be) having jurisdiction over the territory in which a Firm Scheme is situated;

Market Value means the valuation of a property's market value, determined by a Chartered Surveyor who is a Registered Valuer, in accordance with the guidance set out in the Red Book;

Material Adverse Effect means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Landlord to comply with its obligations under this Deed;

Minimum SO Lease Term means a lease with a term of at least nine hundred and ninety (990) years;

Minimum Unexpired Term means the relevant lease has an unexpired term of at least one hundred and twenty five (125) years (having regard to the acknowledgment set out in clause 2.5 (*Acknowledgements*));

Modern Slavery Policy means Homes England's modern slavery policy displayed on Homes England's website as updated and amended from time to time;

Older People's Shared Ownership Lease means a Shared Ownership Lease which in addition complies with the specific requirements of the Capital Funding Guide relating to Older Persons Shared Ownership and is granted only to a person aged fifty five (55) or over;

Onward Disponee means the For Profit Registered Provider or Unregistered Body acquiring the relevant AHP Dwelling(s) in connection with an Onward Sale;

Onward Disponee Acknowledgement has the meaning attributed to it in clause 9.7 (*DP Disposal Conditions*);

Onward Sale means a disposal of one or more AHP Dwellings comprised within a Firm Scheme by the Delivery Partner to a For Profit Registered Provider or Unregistered Body where such disposal occurs or is proposed to occur on or after the relevant AHP Dwelling(s) achieve Practical Completion but prior to the relevant AHP Dwelling(s) becoming occupied provided that no AHP Dwelling other than a Shared Ownership Dwelling may be transferred or leased to an Unregistered Body pursuant to an Onward Sale;

Onward Sale Notification means a written notification provided in such form as Homes England may require from time to time and in accordance with any applicable requirements of the Capital Funding Guide from time to time;

Open Book Basis means the full and transparent disclosure and declaration of all information to be undertaken in utmost good faith and to include the declaration of all information which the Delivery Partner or a Delivery Partner Party is required to maintain, keep or disclose under this Deed including all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

OPSO Client Group means individuals aged fifty five (55) or over;

OPSO Dwelling means an AHP Dwelling intended for occupation by the OPSO Client Group;

OPSO Housing means housing (which may include specialised housing and elements of care and support) to assist the OPSO Client Group purchase a home more suitable for their needs on Older People's Shared Ownership Lease terms;

Permitted Disposal means any of the following:

- (a) the grant of a charge over a Firm Scheme in favour of a commercial or institutional lender on arm's length terms;
- (b) the grant of a Shared Ownership Lease in respect of a Shared Ownership Dwelling (which was not previously occupied as an AHP Rent Dwelling) to one or more individual purchasers and/or the acquisition by the occupier of an increased share of the equity of a Shared Ownership Dwelling including the transfer of the entirety of Delivery Partner's interest in the relevant dwelling to such individual where required under the terms of such Shared Ownership Lease on final staircasing thereof;
- (c) the grant of a tenancy in respect of any single AHP Dwelling to an individual occupier in accordance with the terms of this Deed;
- (d) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to a Firm Scheme which does not materially prejudice the use or amenity of the AHP Dwellings;
- (e) a disposal pursuant to or required by a planning obligation within the meaning of s106 or s299A of the Town and Country Planning Act 1990 in connection with a Firm Scheme which does not materially prejudice the use or amenity of the AHP Dwellings;
- (f) a disposal to a highway authority for the purposes of or in connection with the adoption of roads, footpaths or cycleways on the Site which does not materially prejudice the use of amenity of the AHP Dwellings;

- (g) the transfer of an AHP Dwelling to an individual occupier pursuant to the Right to Acquire;
- (h) the grant of an easement which does not materially prejudice the use or amenity of the AHP Dwellings; or
- (i) any other disposal which Homes England agrees from time to time in writing will be a Permitted Disposal;

Previous Programme means any capital grant funding programme administered by Homes England or any of its statutory predecessors;

Process has the meaning ascribed to it in the Data Protection Legislation and **Processing** shall be construed accordingly;

Profiling Process means the process for the submission of Proposed Firm Schemes by the Strategic Partner to Homes England on IMS contemplated in Part 2 of Schedule 4 (*Profiling Conditions*) of the Delivery Agreement;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Deed; or
 - ii for showing or not showing favour or disfavour to any person in relation to this Deed;
- (b) entering into this Deed or any other agreement with Homes England relative to this Deed in connection with which commission has been paid or has been agreed to be paid by the Delivery Partner or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to Homes England;
- (c) committing any offence:
 - i under Legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Deed;
 - iii under the Bribery Act 2010 or the Criminal Finances Act 2017; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England or the Regulator;

Proposed Firm Scheme means a scheme comprising AHP Dwellings of which the Delivery Partner will be the Landlord, submitted by the Strategic Partner for consideration by Homes England as a Firm Scheme pursuant to the Profiling Process;

Purchase Point means the date upon which an Affordable Home Ownership Dwelling is sold to its first purchaser or in relation to a Rent to Buy Dwelling a date which is not earlier than five (5) years after the point at which such Rent to Buy Dwelling first becomes available for letting;

RCGF means the Recycled Capital Grant Fund maintained by the Delivery Partner in accordance with the Recovery Determination;

RCGF Dwelling means a dwelling delivered as rental accommodation to which proceeds of the RCGF are applied (in whole or in part) on or after 1 April 2021;

RCGF Proceeds means those proceeds of the RCGF utilised by the Delivery Partner in meeting in whole or in part any Development Expenditure or the acquisition costs of the AHP Dwellings;

RCGF-Only Dwelling means a dwelling delivered as rental accommodation with proceeds of the RCGF but to which, for the purposes of clause 4.8.1 (*Covenants by the Delivery Partner*), no Social Housing Assistance has been applied;

Recovery Determination means the Recovery of Capital Grants and Recycled Capital Grant Fund Determination 2017 (and any successor or amended determination);

Red Book means the "Red Book" (RICS Valuation – Global Standards), which is the code of practice and guidance for all members of the Royal Institution of Chartered Surveyors;

Register means the register maintained by the Regulator pursuant to Section 111 of the HRA 2008;

Regulator means the Regulator of Social Housing established pursuant to Chapter 2 of Part 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Regulatory Body means any government departments or regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Deed, the AHP Dwellings delivered pursuant to this Deed or any other affairs of Homes England;

Regulatory Downgrade means any regulatory judgment by the Regulator which results in a downgrade to either the governance or viability grade for the Delivery Partner under the Governance and Financial Viability Standard;

Relevant Event has the meaning ascribed to it in the Recovery Determination or URB Recovery Determination (as applicable);

Rent to Buy has the meaning set out in the Capital Funding Guide as at the date of this Deed;

Rent to Buy Dwelling means an AHP Dwelling let or to be let on Rent to Buy terms;

Rent Standard means any standard set by the Regulator (including any associated explanatory notes or guidance from time to time under the Section 194 of the HRA 2008 pursuant to any then applicable Direction);

Request for Information/RFI shall have the meaning set out in FOIA or any request for information under EIR which may relate to a Firm Scheme, this Deed or any activities or businesses of Homes England;

Required Standards means the requirements of the Delivery Agreement, the Capital Funding Guide (in so far as they are in force at the point at which each Firm Scheme achieved Start on Site) all Consents and Legislation;

Restructure means any merger or de-merger or consolidation or reconstruction or amalgamation or a transfer of the whole or any part of its undertaking or property to any person or the acceptance of any transfer of the whole or any part of the undertaking or property from any person (whether or not pursuant to section 900 Companies Act 2006) excluding any transfers on commercial arms' length terms and in the ordinary course of business of less than 10% of the transferor's assets or any other arrangement having an equivalent effect to these;

Right to Acquire has the meaning given in Section 180 of the HRA 2008;

Right to Shared Ownership means the right for a Tenant to purchase an Eligible Dwelling on Shared Ownership Lease terms as more particularly described in the RTSO Guidance and the Capital Funding Guide;

RTSO Guidance means the guidance entitled "Right to Shared Ownership: initial guidance for registered providers" at <https://www.gov.uk/government/publications/right-to-shared-ownership-initial-guidance-for-registered-providers/right-to-shared-ownership-initial-guidance-for-registered-providers> published by the Ministry of Housing, Communities and Local Government on 8 September 2020 (as the same may be supplemented, amended or updated from time to time);

Secure Legal Interest means with respect to each Firm Scheme :

- (a) a SLI (SO Accommodation) in relation to each Shared Ownership Dwelling or Rent to Buy Dwelling; and
- (b) a SLI (Rented Accommodation) in respect of each AHP Rent Dwelling;

provided that in each case, where the Delivery Partner possesses:

- (c) the freehold estate and one or more leasehold interests derived from the freehold estate; or
- (d) more than one leasehold interest in a chain of leases,

in any Firm Scheme, the interest which is the lowest leasehold interest owned by the Delivery Partner in the chain of leases must satisfy limb (a) or (b) above (as applicable);

Service of Public Economic Interest has the meaning given to it under the United Kingdom Competition Requirement;

Shared Ownership Dwelling means an AHP Dwelling to be disposed of on Shared Ownership Lease terms;

Shared Personal Data means Personal Data shared between Homes England and the Delivery Partner for Processing pursuant to this Deed which is currently anticipated to be limited to Personal Data relating to Homes England employees such as email addresses and contact names and/or data requested pursuant to clause 4.1.6 (*Covenants by the Delivery Partner*);

Site means the area of land, buildings or dwelling-houses comprised or to be comprised in a Firm Scheme;

SLI (Rented Accommodation) means the Delivery Partner has in respect of the Site;

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has a Minimum Unexpired Term; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has a Minimum Unexpired Term,and, in each case defective title indemnity insurance in favour of the Delivery Partner with a limit of indemnity to at least the Firm Scheme Grant attributed to a Firm Scheme;

SLI (SO Accommodation) means the Delivery Partner has in respect of the Site;

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the Purchase Point; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the Purchase Point,

and, in each case defective title indemnity insurance in favour of the Delivery Partner with a limit of indemnity to at least the Firm Scheme Grant attributed to a Firm Scheme;

Social Housing Assistance has the meaning given to it in Section 32(13) of the HRA 2008;

Social Rent means a rent calculated in accordance with the formula for calculating social rent set out in Legislation and (to the extent applicable) in the Rent Standard (or such other legislative or regulatory requirement or standard as may apply to the Delivery Partner from time to time);

Social Rent Dwelling means an AHP Dwelling to be let at a Social Rent;

SO Consultation Outcome means the document entitled New model for Shared Ownership: technical consultation - summary of responses published by The Ministry of Housing, Communities and Local Government on 1 April 2021 (as may be supplemented, amended or updated from time to time);

Specific Delivery Partner Default has the meaning given to it in clause 7.2 (*Delivery Partner Default*);

SPEI Entrustment means the assignment of the specific task of providing and operating the AHP Dwellings as social housing (within the meaning of Section 68 of the Housing and Regeneration Act 2008) under the terms of this Deed (including the tasks entrusted in clauses 4.1.1 and 4.1.12 (*Covenants by the Delivery Partner*)) and compensation for such by the Financial Assistance as a Service of Public Economic Interest under the United Kingdom Competition Requirement;

Subject Property has the meaning attributed to it in clause 9.1.1(b) (*DP Disposal Conditions*);

Subsidy means any direct or indirect financial assistance which:

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
 - i a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
 - ii the forgoing of revenue that is otherwise due;
 - iii the provision of goods or services, or the purchase of goods or services; or
 - iv a measure analogous to these,
- (b) confers an economic advantage on one or more economic actors;
- (c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other country or countries which the United Kingdom has entered into a trade

agreement with which has provisions in respect of public sector funding arrangements;

Tenancy Standard any standard set by the Regulator including any associated explanatory notes or guidance from time to time under Section 193 HRA 2008 pursuant to any then applicable Secretary of State direction (or such other legislative or regulatory requirement or standard as may apply to the Delivery Partner from time to time);

Tenant means a tenant of an Eligible Dwelling who satisfies the eligibility criteria identified in Section 3 of the RTSO Guidance;

Total Grant means the total of the aggregated Firm Scheme Grant paid with respect to each Firm Scheme as set out in the Firm Scheme Details from time to time;

United Kingdom Competition Requirement means as provided for in the provisions of Chapter 3 (Subsidy Control) of Title XI (Level Playing Field for Open and Fair Competition and Sustainable Development) of the EU-UK Trade and Cooperation Agreement (as incorporated into the laws of England and Wales, Scotland and Northern Ireland by Section 29 of the European Union (Future Relationship) Act 2020) and/or such other Legislation and/or regulations and/or guidance issued by the Secretary of State and/or approved by Parliament which is in force and/or applies in England which regulates Subsidy;

Unlawful Subsidy means Subsidy which is in contravention of or is an infringement of the United Kingdom Competition Requirement;

Unregistered Body means a body which is not entered on the Register;

Uplift Amount means an amount of the type described in the Recovery Determination or URB Recovery Determination (as applicable) and calculated in accordance with the methodology set out from time to time in the Capital Funding Guide;

URB Recovery Determination means the Recovery of Capital Grants from Unregistered Bodies General Determination 2017 and any successor determination or other instrument;

Valuation means a valuation report to be shared with Homes England presenting the Market Value of the Subject Property by the Valuer prepared on the basis of the most current guidance and statements of asset valuation practice and guidance notes issued by the Royal Institution of Chartered Surveyors;

Valuer means such reputable firm of surveyors as is a member of the Royal Institute of Chartered Surveyors; and

Waiver Condition means provision of satisfactory evidence by the Delivery Partner to Homes England that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Delivery Partner;
- (b) a subcontractor of any tier (or any employee of a subcontractor not acting independently of the subcontractor);
- (c) an employee of a subcontractor of any tier acting independently of such subcontractor; or

- (d) any person not specified in parts (a), (b) or (c),

and Homes England is satisfied that the Delivery Partner and/or the subcontractor (as applicable) has taken such action as is appropriate taking in to account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one or more of the board of management or senior management team of the Delivery Partner or relevant subcontractor.

1.2 Interpretation

- 1.2.1 Words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Deed to any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of this Deed.
- 1.2.4 Any reference to this Deed or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to this Deed such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Deed.
- 1.2.5 Any reference to any enactment, order, regulation determination, guidance or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination, guidance or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Deed.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 A paragraph in a Schedule or Appendix shall be construed as references to a paragraph in that particular Schedule or, as the case may be, Appendix.
- 1.2.11 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 Deed.
- 1.2.12 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Deed or such other person as may be specified by Homes England by notice in writing to the Delivery Partner.

- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 The term(s) Site and Firm Scheme includes each and every part of it.
- 1.2.16 When there are two or more persons affected by the obligations under this Deed such obligations are to bind each such person jointly and severally.
- 1.2.17 Save where a contrary intention is shown or where an express discretion is given by this Deed, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner and any reference to the exercise of a discretion by Homes England shall be construed as permitting Homes England to exercise its discretion freely and without constraint of any kind.
- 1.2.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Deed then the express terms shall prevail.
- 1.2.19 The Delivery Partner shall in relation to the delivery of its obligations under this Deed be responsible as against Homes England for the acts or omissions of any Delivery Partner Party as if they were the acts or omissions of the Delivery Partner.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Deed or agreed in writing by Homes England, relieve the Delivery Partner of any of its obligations under this Deed or of 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, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.21 Where this Deed refers to information set out in IMS, this Deed shall be construed as incorporating such information into its terms.
- 1.2.22 Any terms used in the definition of "Subsidy" shall, unless the context requires otherwise, be construed as having the meaning given to them in the United Kingdom Competition Requirement.
- 1.2.23 Any reference to a Section and/or a Chapter of the Capital Funding Guide in this Deed shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.
- 1.2.24 Any link to a website provided in this Deed or a reference in this Deed to a website shall refer to any successor or replacement to or for such link or website and to any update to either.

2 Acknowledgements

2.1 The parties acknowledge and agree that:

2.1.1 clauses 1 (*Definitions and interpretation*), 2 (*Acknowledgements*), 4.2 to 4.8 (*Covenants by the Delivery Partner*) (inclusive) and 5 (*Firm Scheme Additions*) to 27 (*Execution*) (inclusive) of this Deed will have effect from the date of this Deed; and

2.1.2 clauses 3 (*Representations by the Delivery Partner*), 4.1 and 4.9 (*Covenants by the Delivery Partner*) of this Deed will have effect with respect to each Firm Scheme (including the AHP Dwellings comprised in it) from the date that such Firm Scheme is accepted by Homes England on IMS pursuant to the Profiling Process.

2.2 The Delivery Partner:

2.2.1 represents and warrants to Homes England that it has received an executed copy of the Delivery Agreement (subject to such redactions Homes England may require) and represents further that it understands the obligations of the Strategic Partner pursuant to the terms of the Delivery Agreement including the obligations to secure the Delivery Partner's compliance with the Delivery Agreement (the **DP Obligations**);

2.2.2 will take all steps necessary to ensure that the Strategic Partner is placed in a position to secure the Delivery Partner's compliance with the DP Obligations and will not do or omit to do anything which would prejudice the Strategic Partner's ability to secure the Delivery Partner's compliance with the DP Obligations; and

2.2.3 must co-operate with and provide the Strategic Partner with such data and information as may be required in relation to any Payment Request made in connection with the Delivery Partner (**Payment Information**) and must:

(a) ensure such Payment Information is:

i complete, up to date and accurate in all respects;

ii provided by an officer of the Delivery Partner who has access to the information and knowledge needed accurately to give the information required;

(b) notify Homes England and the Strategic Partner if it becomes aware that any Payment Information provided is erroneous in any material respect.

2.3 The Delivery Partner acknowledges and agrees on the date of this Deed and on the date that each Firm Scheme becomes subject to the terms of this Deed pursuant to the Profiling Process that the AHP Dwellings which are comprised in such Firm Scheme will be or have been constructed with the benefit of financial assistance paid pursuant to Sections 19 and 31-34 of the HRA 2008 and that:

2.3.1 the Affordable Rent Dwellings and the Social Rent Dwellings will be or have been provided with public money for the purposes of Section 180 of the HRA 2008;

- 2.3.2 the Total Grant is subject to the provisions of the HRA 2008 and any determination made under such provisions and the provisions of clause 6 (*Repayment of Grant*) of this Deed represent the events and principles for recovery of such assistance determined by Homes England for the purposes of Sections 31-34 of the HRA 2008;
- 2.3.3 the provisions of this Deed and those of the Delivery Agreement represent the conditions upon which Homes England makes and made the Firm Scheme Grant available in relation to each Firm Scheme;
- 2.3.4 notwithstanding that any Firm Scheme Grant was paid to the Strategic Partner under the Delivery Agreement, the Delivery Partner will be deemed to:
- (a) have received social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008 (**HRA 2008**); and
 - (b) be subject to the provisions of the HRA 2008 and any applicable determinations or directions made under it in relation to each Firm Scheme.
- 2.3.5 all RCGF Proceeds used for the purposes of funding in whole or in part each Firm Scheme constitute social housing assistance for the purposes of Section 32 HRA 2008 and will be subject to the terms of clause 6 (*Repayment of Grant*);
- 2.3.6 any failure by the Delivery Partner to comply with the terms of this Deed constitutes a failure to comply with a condition attaching to the making of capital grant for the purpose of the Recovery Determination;
- 2.3.7 where the Total Grant (itself or if aggregated with other AHP 2021/26 Funds or funds made available under (i) any subsequent Homes England capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, the Delivery Partner must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Firm Schemes by such means as ensures that such details can be accessed by the general public;
- 2.3.8 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Deed, the Delivery Partner hereby consents for Homes England to publish such information as it considers appropriate in relation to the AHP 2021/26, including, but not limited to, details of the Programme, Development Expenditure, other costs and funding for each Firm Scheme, including from time to time agreed changes to this information;
- 2.3.9 the Delivery Partner will offer the Right to Shared Ownership in accordance with the requirements of this Deed, the Capital Funding Guide and the RTSO Guidance; and
- 2.3.10 the terms of the Capital Funding Guide and the Recovery Determination are incorporated within this Deed (*mutatis mutandis*).

2.4 The Delivery Partner acknowledges and agrees that Homes England may review whether the Delivery Partner continues to meet the requirements for Investment Partner status and

the Delivery Partner will co-operate with such review and will provide Homes England with such further information, evidence and/or explanation with respect to any such review as Homes England may request.

- 2.5 The Delivery Partner acknowledges that, pursuant to the programme requirements of the AHP 2021/26, where the Delivery Partner possesses or will possess a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease must be of the longest duration that the Delivery Partner can reasonably negotiate and the terms of such lease must comply with any applicable requirements of the Capital Funding Guide.

3 **Representations by the Delivery Partner**

- 3.1 The Delivery Partner represents and warrants to Homes England in relation to each Firm Scheme that it has received:

- 3.1.1 details of the Required Standards for each Firm Scheme from the Strategic Partner; and
- 3.1.2 written confirmation from an independent certifier or an employer's agent (in either case being a person who is entirely independent of the Delivery Partner) that the AHP Dwellings comprised in the Firm Scheme have been constructed to a standard which is no less than the Required Standards.

- 3.2 The Delivery Partner represents and warrants to Homes England in relation to each Firm Scheme that:

- 3.2.1 in delivering the AHP Dwellings comprised in the Firm Scheme the Delivery Partner observed and complied with Legislation, the Recovery Determination, the Consents and the applicable terms of the Capital Funding Guide and Delivery Agreement;
- 3.2.2 the Firm Scheme Grant paid in respect of the Firm Scheme does not exceed an amount equal to the Actual Development Expenditure incurred by the Delivery Partner in respect of the delivery of that Firm Scheme;
- 3.2.3 the Firm Scheme Grant for the Firm Scheme was not combined with funding from RTB Receipts or VRTB Receipts;
- 3.2.4 it possesses a Secure Legal Interest in the Site;
- 3.2.5 no member, employee, agent or consultant of the Delivery Partner or of any partner organisation of the Delivery Partner has any personal, proprietary or pecuniary interest in:
- (a) any person from whom the Delivery Partner is purchasing land or property for the purposes of or in connection with this Deed;
 - (b) the Strategic Partner engaged or to be engaged by the Delivery Partner in connection with this Deed; and
 - (c) any land or other property to be acquired or improved by the Delivery Partner for the purposes of or in connection with this Deed; and

- 3.2.6 no member, employee, agent or consultant of the Delivery Partner or any partner organisation of the Delivery Partner is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
- (a) access to land or properties developed, Rehabilitated or refurbished pursuant to the Delivery Agreement and/or this Deed; or
 - (b) the prices at which such properties are let or disposed of.

4 **Covenants by the Delivery Partner**

4.1 The Delivery Partner covenants with Homes England that in operating and administering each Firm Scheme it will:

- 4.1.1 not without Homes England's prior written consent use the AHP Dwellings:
- (a) for any purpose other than the Agreed Purposes (subject to the application of the Right to Shared Ownership); or
 - (b) with respect to any OPSO Dwelling, to accommodate individuals from outside of the OPSO Client Group;
- 4.1.2 comply with the Tenancy Standard and Rent Standard in respect of the AHP Rent Dwellings and Rent to Buy Dwellings (subject to any contrary requirement of Legislation);
- 4.1.3 not charge a higher initial rent in relation to an AHP Rent Dwelling or a Rent to Buy Dwelling than set out in the relevant Firm Scheme Details;
- 4.1.4 observe and comply with the requirements of the Capital Funding Guide (and where applicable, the SO Consultation Outcome and the RTSO Guidance) in relation to:
- (a) the operation of each Firm Scheme;
 - (b) any disposal of the Affordable Home Ownership Dwellings and ensure that such disposal takes effect only at arm's length and on market terms;
 - (c) the form and content of any Shared Ownership Lease granted by or to be granted by the Delivery Partner in relation to an AHP Dwelling;
 - (d) the purpose, client group, letting, rents, management or disposal of AHP Rent Dwellings and/or Rent to Buy Dwellings;
 - (e) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Deed;
 - (f) the operation of the Right to Shared Ownership; and
 - (g) the minimum and maximum amounts of equity which an Eligible Purchaser may acquire in a Shared Ownership Dwelling and the maximum amount of rent payable by the Eligible Purchaser in relation to

the unpurchased equity within such dwelling from time to time in respect of an AHP Dwelling that is an OPSO Dwelling;

- 4.1.5 participate in any evaluation of AHP 2021/26 that DLUHC or Homes England or its or their agents may require from time to time;
- 4.1.6 supply (subject always to its data protection obligations under clause 13 (*Data Protection*)) any information and data requested by DLUHC, Homes England or its or their agents in respect of any such evaluation, which may include information/data pertaining to any AHP Dwellings (including, inter alia, addresses and tenures of such dwellings);
- 4.1.7 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
- 4.1.8 participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity for the current shared owner);
- 4.1.9 in relation to each AHP Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds;
- 4.1.10 ensure that it participates in any Home Ownership Agency Arrangements where any Firm Scheme includes Shared Ownership Dwellings or Rent to Buy Dwellings;
- 4.1.11 not seek possession of any Affordable Home Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988;
- 4.1.12 actively market the AHP Dwellings with a view to ensuring (as far as practicable) the Disposal or letting of such dwellings to Eligible Purchasers (in the case of any OPSO Dwelling) or to individuals as AHP Housing as soon as reasonably possible;
- 4.1.13 provide Homes England with such information (and within such timescales) as Homes England may reasonably require to enable Homes England to monitor compliance by the Delivery Partner with its obligations under this Deed;
- 4.1.14 save as otherwise agreed with Homes England (and save in the circumstances contemplated by section 33(6A) of the HRA 2008), procure on any Disposal (other than a Permitted Disposal) a written acknowledgement from the disponent in favour of Homes England that the Firm Scheme Grant (or part thereof) in the property comprised in such Disposal is social housing assistance received by it for the purpose of Section 33(7) of the HRA 2008;
- 4.1.15 be bound by and observe the Agreed Principles;

- 4.1.16 hold For Profit Registered Provider status at the point at which any AHP Rent Dwelling or Rent to Buy Dwelling provided pursuant to the Delivery Agreement and this Deed is acquired and/or made available for rent;
- 4.1.17 ensure that all Rent to Buy Dwellings are made available as Rent to Buy Dwellings for a period of not less than five years from the point at which they first become available for letting and ensure that prior to any change to that purpose or to any Disposal they are offered for sale to the then current Rent to Buy Tenant;
- 4.1.18 as and when requested by Homes England, make available on an Open Book Basis and in a timely manner to Homes England where required in connection with this Deed a copy of each of:
- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Delivery Partner for the purposes of this Deed; and
 - (b) all such data, materials, documents and accounts created, acquired or brought into existence by the officers, employees, agents or consultants the Delivery Partner relating to each Firm Scheme and which have been supplied to the Delivery Partner for the purposes of this Deed;
- 4.1.19 keep on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to each Firm Scheme which identify items of revenue received and expenditure incurred in relation to the same;
- 4.1.20 ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Delivery Partner from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme;
- 4.1.21 attend Review Meetings where required to do so by the Strategic Partner or Homes England;
- 4.1.22 at Homes England's request, provide Homes England with a copy of a written agreement between the Delivery Partner and the Strategic Partner on the terms of any transfer of the AHP Dwellings to the Delivery Partner, including the level of rents at which the AHP Rent Dwellings are to be let, including (if applicable) Housing Benefit eligible service charges²;
- 4.1.23 with respect to any OPSO Dwelling, register with the Housing Learning and Improvement Network (HLIN) website to participate in knowledge and information exchange opportunities from time to time and to supply HLIN with details of the completed OPSO Dwellings;
- 4.1.24 comply or use its reasonable endeavours to procure compliance with any Legislation, regulations and guidance issued by any Regulatory Body which is in

² Delete is Delivery Partner already owns the Site

force and/or applies in England in relation to building safety in relation to the AHP Dwellings comprised within each Firm Scheme;

4.1.25 (subject to any contrary Legislation) offer and continue to offer the Right to Shared Ownership to the then current Tenant of each:

(a) AHP Rent Dwelling; and

(b) RCGF Dwelling,

which is not an Exempted Dwelling, in accordance with any applicable requirements of the RTSO Guidance, the SO Consultation Outcome and the Capital Funding Guide;

4.1.26 where the Delivery Partner possesses a Secure Legal Interest which is a leasehold interest:

(a) ensure that the terms of the relevant lease:

i are not inconsistent with the principles of the AHP 2021/26, the operation of the Right to Shared Ownership nor the Delivery Partner's obligations under this Deed; and

ii do not permit such lease to be terminated (save in the case of non payment of rent or breach of tenant covenants) prior to the expiry of the Minimum Unexpired Term or Minimum SO Lease Term (as applicable); and

(b) not vary the lease referred to in clause 4.1.26(a) (*Covenants by the Delivery Partner*) in a manner which could frustrate the operation of this Deed or the Right to Shared Ownership;

4.1.27 ensure that all certification required in respect of any AHP Dwelling (or any part thereof) is obtained (including certification that such AHP Dwelling has passed "Gateway 3" when implemented) under any building safety Legislation arising out of the Building Safety Bill 2021;

4.1.28 where any AHP Dwelling forms part of a building that is above either 18 metres or 7 storeys in height (whichever is the lower), register as a signatory to the Building a Safer Future Charter; and

4.1.29 provide Homes England with such information (and within such timescales) as Homes England may reasonably require to enable Homes England to monitor compliance by the Delivery Partner with its obligations under this Deed.

4.2 Save where:

4.2.1 the Delivery Partner or their holding company is a public limited company and is prohibited by listing rules from doing so; or

4.2.2 a Change in Control occurs automatically by operation of law and without the Delivery Partner being able to notify in advance,

the Delivery Partner will provide Homes England with a completed Constitutional Change Notification (in accordance with the requirements of clause 4.3 (*Covenants by the Delivery Partner*)) at least ten (10) Business Days prior to any Change in Control or Restructure. Where the circumstances contemplated in clauses 4.2.1 or 4.2.2 (*Covenants by the Delivery Partner*) apply the Delivery Partner will provide Homes England with a completed Constitutional Change Notification within ten (10) Business Days of the relevant Change in Control or Restructure occurring.

4.3 The Delivery Partner will:

- 4.3.1 ensure that Constitutional Change Notification, Onward Sale Notification, Disposal Notification or any other notifications or certificates from the Delivery Partner to Homes England pursuant to this Deed (the **Delivery Partner Notifications**) are provided by the Delivery Partner Senior Officer who has access to the information and knowledge needed accurately to give the information required; and
- 4.3.2 notify Homes England if it becomes aware that any Delivery Partner Notification is erroneous in any material respect;

4.4 The Delivery Partner must promptly notify the Homes England Senior Officer if:

- 4.4.1 any Know Your Customer Information is or has become inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request; or
- 4.4.2 it is subject to a Regulatory Downgrade.

4.5 The Delivery Partner must:

- 4.5.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
- 4.5.2 comply with the Modern Slavery Policy;
- 4.5.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- 4.5.4 include in its Contracts with its Contractor's anti-slavery and human trafficking provisions that are at least as onerous as those set out in this paragraph 4 (*Covenants by the Delivery Partner*) and require that each of Contractors comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

4.6 The Delivery Partner represents, warrants and undertakes that it and its Contractors conducts its business in a manner that is consistent with the Modern Slavery Policy.

4.7 The Delivery Partner must comply in all material respects with all relevant Legislation.

4.8 Where the Delivery Partner applies proceeds from its RCGF towards the delivery of any dwelling in any year of the Programme:

4.8.1 the terms of this Deed will be construed as applying to such RCGF proceeds (*mutatis mutandis*), except that clause 2.3.1 (*Acknowledgements*) does not apply to any RCGF-Only Dwelling; and

4.8.2 the Delivery Partner must comply with any applicable terms of the Capital Funding Guide with respect to such dwelling.

4.9 Where the Delivery Partner only has possessory title or good leasehold title of the land upon which a Firm Scheme is situated, the Delivery Partner covenants that it has defective title indemnity insurance with a limit of indemnity which is no less than the relevant Firm Scheme Grant.

5 Firm Scheme Additions

5.1 The parties acknowledge and agree that further Firm Schemes may be brought within the remit of this Deed with the agreement of Homes England and the Strategic Partner as a result of the application of the Profiling Process.

5.2 Where clause 5.1 (*Firm Scheme Additions*) applies the Delivery Partner acknowledges and agrees that:

5.2.1 the Delivery Partner must approve the relevant Proposed Firm Scheme Details in IMS prior to such details being submitted to Homes England in IMS in accordance with the Profiling Process;

5.2.2 the Delivery Partner will be notified via IMS (or such other means as Homes England may determine) of the Acceptance Date and with effect from such date:

(a) the Proposed Firm Scheme shall be deemed to be a Firm Scheme for the purposes of this Deed and immediately subject to its whole terms and conditions;

(b) the Proposed Firm Scheme Details which are approved by Homes England through IMS shall be deemed to be Firm Scheme Details for the new Firm Scheme for the purposes of this Deed; and

(c) the Delivery Partner must ensure that it complies with all of its obligations under this Deed as they apply to such new Firm Scheme.

5.3 In permitting the Strategic Partner to submit the Proposed Scheme Details in IMS for the Proposed Firm Scheme on its behalf and bring the Proposed Firm Scheme within the remit of this Deed, the Delivery Partner makes the representations and warranties in clause 3 (*Representations by the Delivery Partner*) in relation to the Proposed Firm Scheme and further represents and warrants to Homes England that:

5.3.1 the Proposed Firm Scheme Details submitted by the Strategic Partner on IMS in respect of the Proposed Firm Scheme are complete, accurate and up to date in all respects;

- 5.3.2 the representations and warranties made by the Strategic Partner on the Delivery Partner's behalf in paragraph 2 of Part 2 of Schedule 4 (*Profiling Conditions*) of the Delivery Agreement in respect of the Proposed Firm Scheme are true and accurate in all respects;
 - 5.3.3 no Delivery Partner Default subsists; and
 - 5.3.4 the contents of any Disposal Notification, Onward Sale Notification, Onward Disponee Acknowledgement and any other information or data provided by the Strategic Partner in relation to any Subject Property is true and accurate.
- 5.4 If Homes England accepts a Proposed Firm Scheme pursuant to the Profiling Process, the Total Grant will be deemed to be increased by the Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Firm Scheme.

6 Repayment of Grant

6.1 The parties acknowledge and agree that:

- 6.1.1 the Recovery Determination and the Capital Funding Guide have effect (*mutatis mutandis*) in respect of the Firm Scheme Grant in respect of each Firm Scheme and that each party has the respective rights and obligations described in such determination and under the Capital Funding Guide;
- 6.1.2 for the purposes of the Recovery Determination, the amount of "Capital Grant" referred to therein shall be determined by reference to the amount of Firm Scheme Grant attributed to and RCGF Proceeds applied to that Firm Scheme;
- 6.1.3 the Disposal or letting of a AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose (and in the case of any OPSO Scheme, to any person who does not fall within the relevant Agreed Client Group) and the Disposal of an AHP Dwelling pursuant to an Onward Sale to which Homes England has not provided prior written consent each constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination; and
- 6.1.4 the occurrence of a Delivery Partner Default shall constitute a failure to comply with a condition attached to the making of "Capital Grant" for the purposes of paragraph 7(e) of the Recovery Determination.

6.2 Without prejudice to any other term of this Deed, Homes England reserves the right to recover from the Delivery Partner:

- 6.2.1 the Total Grant in circumstances where a General Delivery Partner Default has occurred; and
- 6.2.2 the Firm Scheme Grant attributed on IMS to any affected Firm Scheme in circumstances where a Specific Delivery Partner Default has occurred.

6.3 The Delivery Partner shall pay any sum due to Homes England under this clause 6 (*Repayment of Grant*) within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc

such interest to run where the matter giving rise to the payment was a Relevant Event, from the date of the Relevant Event, and otherwise from the date upon which Homes England's demand was made in each case until the date upon which Homes England receives the demanded payment.

6.4 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Deed.

6.5 Save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Delivery Partner to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.

7 **Delivery Partner Default**

7.1 The following shall constitute a General Delivery Partner Default:

7.1.1 an Insolvency Event has occurred in relation to the Delivery Partner;

7.1.2 a Prohibited Act has occurred and the Delivery Partner has not satisfied the Waiver Condition in respect of such Prohibited Act;

7.1.3 the Delivery Partner ceases operating or trading;

7.1.4 the Delivery Partner's status as a For Profit Registered Provider or Investment Partner is lost, removed or relinquished; or

7.1.5 the Delivery Partner (either by its own actions or omissions, or those of its contractors or agents) harms Homes England's reputation or brings Homes England or the AHP 2021/26 into disrepute.

7.2 The following shall constitute a Specific Delivery Partner Default:

7.2.1 any of the representations or warranties given by the Delivery Partner pursuant to this Deed are found to be inaccurate; or

7.2.2 the Delivery Partner is in breach of any covenant or obligation contained in this Deed.

7.3 Where the Delivery Partner Default is:

7.3.1 a General Delivery Partner Default Homes England shall, without prejudice to its rights under clause 6 (*Repayment of Grant*) of this Deed be entitled forthwith and without any liability to the Delivery Partner terminate this Deed;

7.3.2 a Specific Delivery Partner Default, Homes England may serve notice on the Delivery Partner requiring the Delivery Partner to remedy the breach and if within a period of thirty (30) Business Days following service of such notice:

(a) the breach has not been remedied;

- (b) where so permitted by Homes England the Delivery Partner has not given an undertaking to remedy the breach on terms satisfactory to Homes England; or
- (c) if it becomes apparent that the Specific Delivery Partner Default is incapable of remedy either within such period or at all,

Homes England shall be entitled, without prejudice to its rights under clause 6 (*Repayment of Grant*) of this Deed on giving not less than (10) Business Days' notice and without any liability to the Delivery Partner to terminate this Deed.

7.4 Where Homes England purports to terminate this Deed in accordance with this clause 7 (*Delivery Partner Default*) and the Delivery Partner disputes its entitlement to do so the provisions of clause 14.1 (*Dispute Resolution*) shall apply.

8 Subsidy

8.1 The Delivery Partner acknowledges that Homes England provided Subsidy to the Strategic Partner under the Delivery Agreement by providing the Agreement Funding to deliver the AHP Dwellings as AHP Housing with the objective that it is lawful and complies with the requirements of the United Kingdom Competition Requirement.

8.2 The Delivery Partner will comply with the requirements of the United Kingdom Competition Requirement and:

8.2.1 will be deemed to have received any Firm Scheme Grant as a Subsidy for the operation of the AHP Dwellings as AHP Housing which is a Service of Public Economic Interest;

8.2.2 will comply with the provisions of the United Kingdom Competition Requirement regarding Service of Public Economic Interest; and

8.2.3 acknowledges and accepts the SPEI Entrustment.

8.3 If any Firm Scheme Grant gives rise to an SPEI Overpayment or otherwise constitutes Unlawful Subsidy and is incapable of remedy, then Homes England shall be entitled to recover from the Delivery Partner the amount of such SPEI Overpayment and/or Unlawful Subsidy together with such interest as it is required by Legislation or a Competent Authority (as the case may be) to recover and the Delivery Partner must pay such amount(s) within ten (10) Business Days of Homes England requesting repayment.

8.4 If, following the date of this Deed, Legislation requires Homes England to amend this Deed to comply with a United Kingdom Competition Requirement then Homes England may, acting reasonably, provide written notice to the Delivery Partner to vary this Deed to the extent necessary to comply with such change in Legislation.

8.5 The Delivery Partner shall:

8.5.1 prior to any Disposal (other than a Permitted Disposal) at Homes England's request provide Homes England with such information as may be necessary to permit Homes England to assess whether the Agreement Funding attributed or attributable to a Subject Property gives rise to an SPEI Overpayment or otherwise

is in excess of that permitted under the United Kingdom Competition Requirement; and

8.5.2 provide Homes England with such information as it may request in order to ascertain whether the Delivery Partner has complied with its obligations under clause 9 (*DP Disposal Conditions*).

9 DP Disposal Conditions

9.1 The Delivery Partner:

9.1.1 acknowledges the Strategic Partner's obligations in relation to Disposals and Onward Sales in Part 2 of Schedule 5 (*Disposal Conditions*) of the Delivery Agreement (the **Disposal Obligations**) and will:

- (a) notify the Strategic Partner immediately on forming an intention to pursue an Onward Sale;
- (b) provide Homes England and the Strategic Partner with any assistance, documents or information as may be required to facilitate the Strategic Partner's compliance with the Disposal Obligations in relation to any Site or AHP Dwelling which is or will be in the ownership of the Delivery Partner (**Subject Property**) in the timescales required by the Disposal Obligations; and

9.1.2 must not do or omit to do anything which would prejudice the Strategic Partner's ability to comply with the Disposal Obligations in relation to a Subject Property.

9.2 The Delivery Partner acknowledges that from the Acceptance Date it must comply with the obligations set out in clauses 9.3 to 9.10 (*DP Disposal Conditions*) (inclusive) in relation to each Firm Scheme (and the AHP Dwellings comprised in it).

9.3 The Delivery Partner must

9.3.1 provide Homes England with:

- (a) a Disposal Notification in respect of any Disposal (other than a Permitted Disposal, RTSO Disposal or Onward Sale) and where such Disposal occurs or is projected to occur prior to 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) as the date by which all AHP Dwellings to be developed on the relevant Site must have achieved Practical Completion as set out in IMS) the Delivery Partner must contemporaneously provide the Homes England Senior Officer with a copy of the Disposal Notification and append to such copy details of:
 - i the price at which the Subject Property was acquired by the Delivery Partner; and
 - ii the sale price of the Subject Property (or the relevant part thereof forming the subject of the Disposal);

at least ten (10) Business Days prior to such Disposal taking place;

- (b) an Onward Sale Notification in respect of any Onward Sale in accordance with the requirements of clause 9.6 (*DP Disposal Conditions*); and
- (c) such information as Homes England may require to be provided from time to time in respect of RTSO Disposals, such information to be provided within such timescales as Homes England may direct

in each case in accordance with the requirements of clause 4.3 (*Covenants by the Delivery Partner*); and

- 9.3.2 ensure that the disposal documentation relating to any Disposal other than a Permitted Disposal or RTSO Disposal, contains a provision requiring the disponent to procure and provide Homes England with a Valuation (being not more than three months old) prior to any future Disposal by it of the Subject Property and the Delivery Partner must enforce such obligation if required to do so by Homes England.

9.4 The Delivery Partner must:

- 9.4.1 supply to Homes England at the same time as any Disposal Notification a copy of a Valuation (which is not more than three months old) obtained from an independent Valuer for the Subject Property promptly upon obtaining it together with details of any agreed sale price; and

- 9.4.2 supply Homes England with a copy of a Valuation obtained from an independent Valuer for the Subject Property in respect of any Onward Sale together with details of any agreed sale price such Valuation and agreed sale price details to be provided:

- (a) simultaneously with any Onward Sale Notification; and
- (b) no earlier than three months prior to the Disposal pursuant to an Onward Sale (where the Onward Sale Notification is provided prior to that three month period).

9.5 The Delivery Partner must not:

- 9.5.1 Dispose of any AHP Dwelling pursuant to an Onward Sale without:

- (a) the Valuation referred to in paragraph 9.4.2 (*DP Disposal Conditions*) having been provided to Homes England;
- (b) the Onward Disponent Acknowledgement having been provided to Homes England within the timeframes set out in clause 9.7 (*DP Disposal Conditions*);
- (c) written confirmation from Homes England of the amount of Firm Scheme Grant attributed in IMS to the Subject Property comprised in the relevant Onward Sale (the **Attributed Grant**) having been received;
- (d) any repayment of any Firm Scheme Grant required pursuant to clause 9.8 (*DP Disposal Conditions*) having been made;

- (e) the prior written consent of Homes England to the Onward Sale having been received; and
- (f) the requirements of clauses 9.6 and 9.7 (*DP Disposal Conditions*) having been complied with.

9.6 The Delivery Partner must:

9.6.1 unless it has already been supplied by the Strategic Partner, provide Homes England with an Onward Sale Notification (setting out the then current details of the Onward Sale) immediately where it identifies a prospective Onward Sale;

9.6.2 provide Homes England with:

- (a) a revised Onward Sale Notification as soon as reasonably practicable after becoming aware that any of the information set out in any previous Onward Sale Notification (whether supplied by the Strategic Partner or the Delivery Partner) relating to a Subject Property is inaccurate (including any change to the sale price); and
- (b) an updated Onward Sale Notification (or a confirmation that there has been no change to the information set out in the immediately preceding Onward Sale Notification) at least twenty (20) Business Days prior to the proposed date of exchange of any contract for sale between the Delivery Partner and the Onward Disponee (**Exchange**) in relation to the Subject Property and, if later, the date upon which any revision is made to the sale price for the Onward Sale.

9.7 The Delivery Partner must, no earlier than ten (10) Business Days prior to (but not including) the projected date of Exchange in respect of the Subject Property, provide Homes England with a written acknowledgement from the Onward Disponee (in such form as Homes England may require from time to time) (**Onward Disponee Acknowledgement**):

9.7.1 confirming that the information in the most recently issued Onward Sale Notification is true and accurate;

9.7.2 confirming that the Attributed Grant (being the amount confirmed in IMS by Homes England) in the Subject Property (the **Funded Property**) is social housing assistance received by it for the purpose of Section 33(7) of the HRA 2008; and

9.7.3 confirming that any change in the sale price for the Onward Sale will be notified to Homes England promptly;

9.7.4 confirming its understanding that a future disposal by the Onward Disponee of the Funded Property (in whole or in part) will be subject to the terms of the Recovery Determination or URB Recovery Determination (as applicable) and will:

- (a) where the Onward Disponee is an Unregistered Body, oblige the Onward Disponee to pay the Attributed Grant and Uplift Amount to Homes England together with any interest thereon within ten (10) Business Days of the occurrence of such Relevant Event; or

- (b) where the Onward Disponee is a For Profit Registered Provider, oblige the Onward Disponee to pay the Attributed Grant and Uplift Amount to Homes England together with any interest thereon (or to recycle the same) in accordance with terms of the Recovery Determination and of any direction from Homes England in that regard;
- 9.7.5 confirming that it will procure a Valuation is supplied to Homes England obtained from an independent Valuer in respect of any future Disposals (other than a Permitted Disposal) of the Subject Property together with details of any agreed sale price such Valuation and agreed sale price detail to be provided no earlier than three months prior to such Disposal; and
- 9.7.6 acknowledging that Homes England is relying on the information provided in the Onward Disponee Acknowledgement and if it becomes apparent that any information provided in such Onward Disponee Acknowledgement is misleading, untrue or inaccurate, Homes England will be entitled to seek recovery of the Attributed Grant from the Onward Disponee following completion of the Onward Sale.
- 9.8 Having regard to the information provided in any Onward Sale Notification, any Onward Disponee Written Acknowledgement, any notification provided as a result of the requirement under clause 9.7.3 (*DP Disposal Conditions*) or any evidence provided pursuant to clause 9.9 (*DP Disposal Conditions*), Homes England may require the Delivery Partner to repay such amount of Agreement Funding as is determined by Homes England to be in excess of that permitted under the United Kingdom Competition Requirement pursuant to clause 8.3 (*Subsidy*).
- 9.9 Within ten (10) Business Days of completion of the Onward Sale the Delivery Partner must provide Homes England with evidence satisfactory to Homes England (having regard to any requirements of the Capital Funding Guide relating to Onward Sales) of the price at which the Funded Property was disposed of.
- 9.10 The Delivery Partner may not make a Disposal of an AHP Rent Dwelling or a Rent to Buy Dwelling to an Unregistered Body.
- 9.11 The Delivery Partner must provide Homes England or any Regulatory Body with such information as may be requested to demonstrate compliance with the Delivery Partner's obligations under this clause 9 (*DP Disposal Conditions*).
- 10 **Anti-bribery and anti-corruption**
- 10.1 The Delivery Partner must:
- 10.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
- 10.1.2 not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

- 10.1.3 comply with Homes England's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <https://www.gov.uk/government/collections/homes-england-ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**);
- 10.1.4 have and maintain in place throughout the duration of this Deed its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and clause 10.1.3 (*Anti-bribery and anti-corruption*), and will enforce them where appropriate;
- 10.1.5 if required by Homes England, produce a written certificate to it signed by an officer of the Delivery Partner, confirming compliance with this clause 10 (*Anti-bribery and anti-corruption*) by the Landlord and all persons associated with it under clause 10.1.6 (*Anti-bribery and anti-corruption*). The Delivery Partner shall provide such supporting evidence of compliance as Homes England may reasonably request;
- 10.1.6 ensure that any person associated with the Delivery Partner who is performing services or providing goods in connection with this Deed does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Delivery Partner in this clause 10 (*Anti-bribery and anti-corruption*) (**Relevant Terms**). The Delivery Partner shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms;
- 10.1.7 immediately report to Homes England's Head of Financial Crime Compliance and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the Landlord in connection with the performance of this Deed; and

for the purpose of this clause 10 (*Anti-bribery and anti-corruption*), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act), Sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively. For the purposes of this clause 10 (*Anti-bribery and anti-corruption*) a person associated with the Landlord includes any subcontractor of the Delivery Partner.

- 10.2 Where the Delivery Partner is aware that it is in breach of an obligation under this clause 10 (*Anti-bribery and anti-corruption*) it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

11 Confidentiality and freedom of information

11.1 Confidentiality

- 11.1.1 Each party recognises that under this Deed it may receive Confidential Information belonging to the other.

- 11.1.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of this Deed to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Deed.
- 11.1.3 The obligations of confidence referred to in this clause 11.1 (*Confidentiality*) 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 Deed or of any other duty of confidentiality relating to that information;
 - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - (c) is lawfully in the possession of the other party before the date of this Deed 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 other party.
- 11.1.4 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 Deed or any loan agreement or proposed loan agreement or funding documentation with a commercial lender;
 - (b) by any applicable Legislation or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA or EIR and the Delivery Partner acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information;
 - (c) by any Regulatory Body (including any investment exchange and the Regulator) 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.
- 11.1.5 The Delivery Partner shall ensure that all Confidential Information obtained from Homes England under or in connection with this Deed:

- (a) is given only to its employees, professional advisors, or consultants engaged to advise it in connection with this Deed as is strictly necessary for the performance of this Deed and only to the extent necessary for the performance of this Deed;
- (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by such staff or professional advisors or consultants otherwise than for the purposes of this Deed; and
- (c) where it is considered necessary in the opinion of Homes England the Delivery Partner shall ensure that such staff, professional advisors, or consultants sign a confidentiality undertaking before commencing work in connection with this Deed.

11.1.6 Nothing in this clause 11.1 (*Confidentiality*) shall prevent Homes England from:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
- (b) disclosing any Confidential Information obtained from the Delivery Partner:
 - i to any other department, office or agency of the Crown;
 - ii to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Deed; or
 - iv to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Deed or any person conducting an Office of Government Commerce gateway review (or any equivalent review by any successor body or agency carrying out the same or similar functions in whole or in part),

provided that in disclosing information under any of clauses 11.1.6(b)i, to 11.1.6(b)iv (*Confidentiality*) of this Deed, Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

11.1.7 Nothing in this clause 11 (*Confidentiality and freedom of information*) shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Deed 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.

11.1.8 Nothing in this clause 11 (Confidentiality and freedom of information) shall prevent Homes England from publishing information relating to the Total Housing Output Costs, the Development Expenditure, or the Housing Outputs.

11.1.9 The Delivery Partner must ensure that each of its employees, professional advisors, or consultants is bound by equivalent obligations to those set out in this clause 11 (Confidentiality and freedom of information).

11.2 Freedom of information

11.2.1 The Delivery Partner on behalf of itself, employees, professional advisors, and consultants acknowledges that Homes England is subject to legal duties which may require the release of information under FOIA and/or EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.

11.2.2 Homes England 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 the Delivery Partner respond directly to or permit any employees, professional advisors, and consultants to respond directly to a Request for Information to which Homes England is required to respond, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England unless otherwise expressly authorised to do so by Homes England.

11.2.3 Notwithstanding any other provision of this Deed but subject to clause 11.2.4 (*Freedom of information*) below, the Delivery Partner on behalf of itself, any staff, professional advisors, and consultants acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:

(a) without consulting it or any of them; or

(b) following consultation with it or any of them and having taken (or not taken, as the case may be) its or their views into account.

11.2.4 Without in any way limiting clause 11.2.2 or clause 11.2.3 (*Freedom of information*), in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Delivery Partner.

- 11.2.5 The Delivery Partner will assist and co-operate with Homes England as requested by Homes England to enable Homes England 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 Request for Information received by the Delivery Partner to Homes England as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
 - (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England;
 - (c) provide Homes England with any Information already in its possession or power in the form that Homes England requires within five (5) Business Days (or such other period as Homes England may specify) of Homes England requesting that Information; and
 - (d) permit Homes England to inspect such data or Information in its possession as requested from time to time.
- 11.2.6 Nothing in this Deed will prevent Homes England 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.
- 11.2.7 The obligations in this clause 11 (*Confidentiality and freedom of information*) will survive the expiry or termination of this Deed for a period of two (2) 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 Deed or of any other duty of confidentiality relating to that information.
- 11.2.8 The Delivery Partner must regularly review its security arrangements in relation to its access to IMS and in particular the Delivery Partner must:
- (a) notify Homes England immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Delivery Partner or if such person leaves the Delivery Partner's employment or relinquishes that role;
 - (b) maintain a list of those of its employees and consultants authorised to access IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
 - (c) ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
 - (d) ensure that systems are in place to prevent any person accessing IMS under a 'User ID' other than their own.

11.2.9 The Delivery Partner on behalf of itself, any staff, professional advisors, and consultants acknowledges and agrees that Homes England may in its absolute discretion redact all or part of the Information within a Request for Information prior to its publication. In so doing and in its absolute discretion Homes England may take account of any EIR Exceptions and FOIA Exemptions. Homes England may in its absolute discretion consult with the Delivery Partner regarding any redactions to the Information to be published pursuant to this clause 11 (*Confidentiality and freedom of information*). Homes England will make the final decision regarding publication and/or redaction of the Information.

11.3 **Publication of information before Parliament**

The Delivery Partner acknowledges that the National Audit Office has the right to publish details of this Deed in its relevant reports to Parliament.

12 **Intellectual Property**

12.1 Subject to clause 12.5 (*Intellectual Property*) the Delivery Partner shall, to the extent that it is able to do so without incurring material cost, grant to Homes England a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Landlord or which are or become owned by the Delivery Partner and which relate to a Firm Scheme, for any purpose relating to this Deed.

12.2 To the extent that any of the data, materials and documents referred to in clause 12.1 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, the Delivery Partner shall if requested by Homes England use its reasonable endeavours (without having to incur material cost) procure for the benefit of Homes England for the duration of this Deed at the cost of the Delivery Partner the grant of a licence or sub-licence and supply any relevant software and/or database to enable Homes England making such request to access and otherwise use such data for the purposes referred to in clause 12.1 (*Intellectual Property*).

12.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Deed.

12.4 The Delivery Partner shall fully indemnify Homes England within five (5) Business Days of demand under this clause 12.4 (*Intellectual Property*) against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 12 (*Intellectual Property*), any breach by the Delivery Partner of this clause 12 (*Intellectual Property*) and against all costs and damages of any kind which Homes England may incur in connection with any actual or threatened proceedings before any court or adjudication body.

12.5 The Delivery Partner shall only be entitled to revoke the licence granted to Homes England under clause 12.1 (*Intellectual Property*) upon on the termination of the whole of this Deed in circumstances where no Firm Scheme has been accepted by Homes England pursuant to the Profiling Process

13 **Data Protection**

- 13.1 In so far that Shared Personal Data is Processed under this Deed it is understood that the parties will each act in the capacity of an independent Data Controller.
- 13.2 The Delivery Partner (including its employees agents or officers) shall at all times during the period of this Deed comply with the provisions and obligations imposed by this clause 13 (*Data Protection*) and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Deed.
- 13.3 The Delivery Partner warrants and represents that it and/or any of its employees each have in place appropriate technical and organisational measures to protect the Shared Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 13.4 The Delivery Partner shall notify Homes England without undue delay on becoming aware of any breach of the applicable Data Protection Legislation in relation to the Shared Personal Data.
- 13.5 Whilst each party shall be responsible for responding to any complaint in relation to the Shared Personal Data Processed pursuant to this Deed, or any request by individuals to exercise the Data Subject's rights, if necessary the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with the Shared Personal Data Processed under this Deed.
- 13.6 The provision of this clause 13 (*Data Protection*) shall apply during the continuance of this Deed and indefinitely after its termination.
- 13.7 The Delivery Partner shall indemnify against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by Homes England as a result of the Delivery Partner's destruction of and/or damage to any of the Shared Personal Data processed by the Delivery Partner, its employees, agents, or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this clause 13 (*Data Protection*) by the Delivery Partner, its employees, professional advisors and consultants.
- 13.8 The Delivery Partner shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning each Delivery Partner's Processing of the Shared Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner.
- 13.9 The Delivery Partner undertakes to include obligations no less onerous than those set out in this clause 13 (*Data Protection*), in all contractual arrangements with staff, professional advisors, and consultants engaged by the Delivery Partner in performing its obligations under this Deed to Homes England and to enforce all such obligations on Homes England's request.

13.10 Homes England may, at any time on not less than thirty (30) Business Days' notice, revise this clause 13 (*Data Protection*) by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Deed).

14 **Dispute Resolution**

14.1 All disputes and differences arising out of or in connection with this Deed including in relation to any non-contractual obligation (a **Dispute**) shall be resolved pursuant to the terms of this clause 14 (*Dispute Resolution*).

14.2 **Negotiation**

14.2.1 In the event that a party considers that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the Delivery Partner's Senior Officer and Homes England Senior Officer (**Senior Officers**) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 14.2 (*Negotiation*).

14.2.2 If there has been no resolution of the dispute within thirty (30) days of the referral to Senior Officers, the Dispute shall be referred to directors of the Delivery Partner and the chief executive officer of Homes England (together, the **Chief Executives**).

14.2.3 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

14.3 **Referral to Expert**

14.3.1 If there has been no resolution of the Dispute within twenty (20) days of the referral to Chief Executives either party may give to the other written notice referring the dispute to a suitably qualified independent Expert for determination in accordance with this clause 14.3 (*Referral to Expert*).

14.3.2 The Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the parties within a maximum of three (3) months of the matter being referred to the Expert.

14.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 14.3 (*Referral to Expert*) then:

(a) either party may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and

(b) this clause 14.3 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.

- 14.3.4 All matters under this clause 14.3 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.
- 14.3.5 The parties shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 14.3.6 To the extent not provided for by this clause 14.3 (*Referral to Expert*), the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their determination.
- 14.3.7 Each party shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other party reasonably requires to make a submission under this clause 14.3 (*Referral to Expert*).
- 14.3.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute (which may include any issue involving the interpretation of any provision of this Deed, their jurisdiction to determine the matters and issues referred to them or their terms of reference). The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.
- 14.3.9 Each party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the parties equally or in such other proportions as the Expert shall direct.

14.4 **Submission to Courts**

Notwithstanding the foregoing, at any time Homes England, at its sole discretion, may choose to submit any Dispute to the courts of England. If a process pursuant to either clause 14.2 (*Negotiation*) and/or 14.3 (*Referral to Expert*) has been initiated, at the time that Homes England chooses to submit the matter to the courts of England and Wales, then it is agreed that such process is to be immediately discontinued without any binding determination being made. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England.

14.5 **Continued Performance**

No reference of any dispute to an Expert pursuant to this clause 14 (*Dispute Resolution*) shall relieve any party from any liability for the due and punctual performance of its obligations under this Deed.

15 **Notices**

15.1 Any notice to be given hereunder shall be in writing addressed to Homes England Senior Officer (in the case of notices to be given to Homes England) or to the Delivery Partner Senior Officer (in the case of notices to be given to the Delivery Partner) and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by recorded delivery and addressed in the case of either party to the other party's registered office as set out at the beginning of this Deed or to such other addresses as either party may from time to time notify to the other in writing provided that such other address is within England and Wales.

15.2 Any notice shall be deemed to be given by the sender and received by the recipient:

15.2.1 if delivered by hand, when delivered to the recipient; or

15.2.2 if delivered by recorded delivery, three (3) Business Days after and including the date of postage,

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm it is to be regarded as received at 9.00 am on the following Business Day.

16 **No fetter on statutory functions**

Notwithstanding anything apparently or impliedly to the contrary in this Deed or any of the deeds and documents referred to herein and no consents given by Homes England, in carrying out its statutory duties or functions the discretion of Homes England shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Deed or any such other deed or document.

17 **No agency**

17.1 Nothing in this Deed or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties for any purpose whatsoever.

17.2 The Delivery Partner shall at all times be independent and nothing in this Deed shall be construed as creating the relationship of employer and employee between Homes England and the Delivery Partner. Neither the Delivery Partner nor any of its employees shall at any time hold itself or themselves out to be an employee of Homes England.

18 **Assignment and sub-contracting**

18.1 Homes England will be entitled to transfer or assign or novate all or part of this Deed at any time without the consent of the Delivery Partner.

18.2 The Delivery Partner will not be entitled to transfer or assign or novate all or part of this Deed.

19 **Severability**

19.1 If any term, condition or provision contained in this Deed shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be

omitted from this Deed and shall not affect the validity, legality or enforceability of the remaining parts of this Deed.

19.2 If it is held that the Recovery Determination does not have effect the parties acknowledge and agree that on the occurrence of a Relevant Event the Delivery Partner must recycle or repay (as applicable) the relevant Firm Scheme Grant on the same basis as it would be so required with respect to Capital Grant under the Recovery Determination.

20 **Cumulative rights and enforcement**

20.1 Any rights and remedies provided for in this Deed whether in favour of Homes England or the Delivery Partner are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties whether under this Deed or otherwise.

20.2 The parties acknowledge that money damages alone may not properly compensate Homes England for any breach of the Delivery Partner's obligations hereunder and the parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies Homes England may have in law, in equity or otherwise Homes England shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

21 **Waiver**

21.1 Neither the failure of any party at any one time to enforce any provision of this Deed in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent or continuing breach of any provision or be a waiver of the provision itself.

21.2 Where in this Deed any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.

21.3 Any waiver or release of any right or remedy of either party must be specifically granted in writing signed by that party and shall:

21.3.1 be confined to the specific circumstances in which it is given;

21.3.2 not affect any other enforcement of the same or any other right; and

21.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

22 **Survival of this Deed**

22.1 Insofar as any of the rights and powers of Homes England provided for in this Deed shall or may be exercised or exercisable after the termination or expiry of this Deed the provisions of this Deed conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

22.2 Insofar as any of the obligations of the Delivery Partner provided for in this Deed remain to be discharged after the termination or expiry of this Deed the provisions of this Deed shall survive and remain in full force and effect notwithstanding such termination or expiry.

23 **Further Assurance**

23.1 The parties shall do all such acts and things as shall be necessary to give effect to this Deed and to the terms of the Delivery Agreement (to the extent relevant to the subject matter of this Deed).

23.2 At any time upon the written request of Homes England the Delivery Partner:

23.2.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for Homes England the full benefit of this Deed and of the rights and powers herein granted and the Delivery Partner hereby irrevocably appoints Homes England as its attorney solely for that purpose; and

23.2.2 shall perform and use its reasonable endeavours to procure that any third party performs such acts as may be reasonably required for the purposes of giving full effect to this Deed.

24 **Governing Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of clause 14 (*Dispute Resolution*) the parties irrevocably submit themselves to the exclusive jurisdiction of the courts of England and Wales.

25 **Exclusion of third party rights**

Except as otherwise expressly provided no person who is not a party to this Deed shall be entitled to enforce any terms of this Deed solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

26 **Entire Agreement**

26.1 This Deed and the clauses herein contained together with the Schedules, documents, instruments and websites contained or referred to in it (and to the extent necessary for the interpretation of this Deed, the Delivery Agreement) constitute the entire agreement between the parties in relation to the subject matter of this Deed and this Deed may only be varied or modified in writing by deed.

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

27 **Execution**

27.1 This Deed may be executed:

27.1.1 by the electronic application of a party's authorised signatory's signature and provision of an electronic copy of the same; and

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

EXECUTION PAGE TO THE DELIVERY PARTNER DEED – REGISTERED PROVIDER

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Homes and Communities Agency (trading as Homes England)

THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of:)

Authorised signatory:

Print name:

[Delivery Partner]

Executed as a deed by **[COMPANY NAME]**)
acting by a Director and)
a Director or Secretary)

.....
Director

Print Name:

.....
Director or Secretary

Print Name:

EXECUTION PAGE TO THE GRANT AGREEMENT

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Homes and Communities Agency (trading as Homes England)

THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of:)

Authorised Signatory:

Print Name:

[Grant Recipient]

Executed as a deed by **[COMPANY NAME]**)
acting by a Director and)
a Director or Secretary)

.....
Director

Print Name:

.....
Director or Secretary

Print Name: