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Homes and Communities Agency (trading as Homes England)

and

[Developer]

Grant Agreement (URB Agreed Transfer Model)

in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement

Homes England
Housing.Contracts@homesengland.gov.uk

URBATAHP2126002

OFFICIAL

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Grant Agreement

Date

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) [] (company number []) whose registered office is at [] (the **Developer**).

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) The Developer has submitted a bid to Homes England for grant funding to assist the Developer in the delivery of affordable housing.
- (C) Homes England has agreed in response to the Developer's bid to advance grant funding to the Developer pursuant to Homes England's Affordable Homes Programme 2021-2026 (**AHP 2021/26**) in an initial amount of £[] to facilitate the delivery of certain affordable housing schemes subject to and in accordance with the terms of this Agreement. Further grant funding may be made available to the Developer pursuant to the AHP 2021/26 to facilitate the delivery of further affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (D) All grant funding paid by Homes England to the Developer pursuant to this Agreement is Social Housing Assistance.
- (E) Grant paid by Homes England under this Agreement in respect of a Firm Scheme may be paid in multiple tranches where the Conditions Precedent have been satisfied. Where the Conditions Precedent are not satisfied or where the Firm Scheme is a Single Claim Scheme, Firm Scheme Grant may only be claimed once Practical Completion has been achieved (and any associated conditions of payment are satisfied).
- (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 Developer must comply with the applicable requirements of the Capital Funding Guide, the URB Recovery Determination and the information submitted and approved on IMS.
- (H) This Agreement entrusts a public service obligation and assigns the task of providing social housing in England to the Developer to provide suitable accommodation for families and residents who are failed by the housing market.

1 Definitions and interpretations

1.1 Definitions

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

2005 Regulations means the Income Tax (Construction Industry Scheme) Regulations 2005 SI No 2045;

Acceptance Date means the date upon which Homes England accepts a scheme for the Delivery of AHP Housing in IMS pursuant to Clause 7.1 (*Firm Schemes – Submission Procedures*), Clause 9.4 (*Additional Schemes*) and/or Clause 10.17 (*Changes to Firm Schemes*) (as applicable);

Acquisition Date means the date identified in IMS on which the Developer is forecast to possess (and does possess) a Completed Interest;

Acquisition Stage means where the Developer possesses a Completed Interest;

Acquisition Tranche Grant means subject to Clause 7.5 (*Firm Schemes – Submission Procedures*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of the Acquisition Stage with respect to the relevant Firm Scheme;

Actual Development Costs means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Developer in Delivering that Firm Scheme as such amount is warranted and certified by the Developer pursuant to Clauses 11.3.3 (*Grant Claim Procedures*), 11.5.1 (*Grant Claim Procedures*) and Clause 11.8.3 (*Grant Claim Procedures*);

Additional Scheme means a scheme for the Delivery of AHP Housing proposed by the Developer in addition to the Original Schemes;

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;

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

Agreed Transfer means a transfer of the Site to an RP Landlord or, where applicable, a URB Landlord free from mortgages or charges and from onerous encumbrances that could have any material adverse effect on the use of the AHP Dwellings for the Agreed Purposes and which will entitle the RP Landlord or URB Landlord (as applicable) to be registered at the Land Registry as proprietor of the Site with a Completed Interest;

Agreement means this grant agreement (including its Schedules and Annexures);

Agreement Funding means any funding given to the Developer by Homes England 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 is to be developed with the benefit of grant payable 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 Developer 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 Capital Grant means the maximum amount of capital grant payable by Homes England to the Developer in respect of the Approved Capital Bid and identified in IMS as the total "funding requested" within the "Profiles" (as the same may be amended from time to time in accordance with the terms of this Agreement);

Allocation Change Notice means a notification submitted by Homes England under Clause 3.3 (*Review, Monitoring and Reporting*);

Alternative Security means such Security as Homes England may in its absolute discretion require (excluding a Payment Guarantee), to be provided in a form satisfactory to Homes England (in its absolute discretion);

Approved Capital Bid means the aggregate of the Firm Schemes accepted by Homes England in IMS and identified from time to time on IMS as the approved "Offer Lines" (as the same may be amended, added to, supplemented, substituted or varied in accordance with the terms of this Agreement);

Associate has the meaning given in section 448 of the Corporation Tax Act 2010 (and includes an "associated company" as such term is defined in section 449 of the Corporation Tax Act 2010);

Balancing Sum means such sum as represents the amount by which Public Sector Funding in respect of a Firm Scheme exceeds the Actual Development Costs incurred by the Developer in relation to that Firm Scheme;

Building a Safer Future Charter means the charter entitled “Building a Safer Future Charter” which sets out a list of build environment safety values for homebuilders to comply with ahead of all other building priorities 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 Developer and a Building Contractor relating to the construction, repair, refurbishment, conversion, development and/or Rehabilitation (as applicable) of a Firm Scheme;

Building Contractor means any building contractor or developer appointed or to be appointed by the Developer in respect of a Firm Scheme;

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;

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

Capital Grant Recoverable means such amount of Capital Grant and, where applicable, Uplift Amount and interest thereon as Homes England is entitled to Recover under the URB Recovery Determination;

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

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means a change in control, which 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 50% of the issued share capital, membership rights or voting rights in that corporate body; or
- (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;

CIPFA means the Chartered Institute of Public Finance and Accountancy;

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;

Completed Interest means a Secure Legal Interest which:

- (a) is a SLI (Excused); or
- (b) meets the description in limbs (a), (b) or (c) of the definitions of SLI (SO Accommodation) or SLI (Rented Accommodation);

Compliance Audit means the procedure (in a form advised by Homes England from time to time) by which an auditor independent of the Developer, the URB Landlord or the RP Landlord certifies (at the applicable Developer, URB Landlord or the RP Landlord's cost) whether the Firm Schemes Delivered pursuant to this Agreement satisfy Homes England's procedural compliance requirements (as described in the Capital Funding Guide);

Conditions Precedent means the Security Condition and, save where a Guarantor is an LA Provider, the Corporate Authorisation Condition;

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 in respect of which the Developer becomes aware in its capacity as a party to this Agreement or which is received by the Developer 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 Developer means such specific information as the Developer shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any Relevant Authority;

Constitutional Change Notification means a written notification addressed to grant_notifications@homesengland.gov.uk 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;

Continuing Firm Scheme means a Firm Scheme approved by Homes England on IMS and in respect of which Start on Site has or will have occurred at the date of the expiry of the notice period referred to in Clause 5.4.2 (*Default Events*);

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) whether by means of:

- (a) in the case of a company or registered society:
 - i being the beneficial owner of more than 50% of the issued share capital of or of the voting rights in that company or society;
 - ii having the right to appoint or remove all or a majority of the directors; or
 - iii otherwise controlling the votes at board meetings of that company or society by virtue of any powers conferred by:
 - A the articles of association or rules (as applicable);
 - B any shareholders' agreement including a joint venture agreement; or
 - C any other document regulating the affairs of that company or registered society;
- (b) in the case of a partnership:
 - i being the beneficial owner of more than 50% of the capital of that partnership; or
 - ii having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by:
 - A the partnership agreement; or
 - B any other document regulating the affairs of that partnership;
- (c) in the case of a limited liability partnership (**LLP**):
 - i being the beneficial owner of more than 50% of the capital of that LLP; or
 - ii having the right to control the composition of or the votes to the majority of the management of that LLP by virtue of any powers conferred by:
 - A the members' agreement; or
 - B any other document regulating the affairs of that LLP; or

in the case of an individual being a connected person (as defined in section 839 Income and Corporation Taxes Act 1988) to that individual;

Controller means (as the context requires) the individual or body which Controls the Developer, Guarantor or the holding company of the Developer or Guarantor;

CORE means the national information source "Continuous Recording" that records information on new occupiers of affordable housing and the properties they rent or buy;

Corporate Authorisation Condition means receipt by Homes England of:

- (a) a certified copy of a resolution of the board of each Guarantor and/or each provider of Alternative Security (where such Alternative Security is in the form of a fixed charge), in the form set out in Schedule 15 (*Security Board Minutes*); or
- (b) a certified copy of a resolution of the board of each provider of Alternative Security (where such Alternative Security is not in the form of a fixed charge) substantially in the form of the resolution set out in Schedule 15 (*Security Board Minutes*), subject to such amendments as may be required and approved by Homes England (in its absolute discretion) to take account of the nature of the Alternative Security being provided,

such resolution (in each case) being dated prior to the date of the Payment Guarantee or prior to the date upon which the Alternative Security is put in place; and

- (c) an officer's certificate in the form set out in Schedule 16 (*Security Officer's Certificate*) given by a director of the Guarantor or provider of Alternative Security (as applicable), subject to such amendments as may be required and approved by Homes England (in its absolute discretion) to take account of the nature of the Alternative Security being provided, such officer's certificate being dated on the date of the Payment Guarantee or on the date upon which the Alternative Security is put in place;

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;

Default Event has the meaning given to it in Clause 5.1 (*Default Events*);

Delivery means:

- (a) the acquisition, development, conversion, refurbishment, repair and/or Rehabilitation (as applicable) of the Site and/or the Firm Scheme and/or AHP Housing (as the context requires); and

- (b) the completion of an Agreed Transfer where the RP Landlord or URB Landlord (where permitted) does not own a Completed Interest in the relevant Site; and
- (c) the completion of RP Deed of Adherence with an RP Landlord or URB Deed of Adherence with a URB Landlord (where permitted),

and **Delivered** and/or **Delivering** shall be construed accordingly;

Developer Affiliate means a third party whose relationship with the Developer falls within limb (b) of the definition of Developer Party;

Developer Board Minutes means a certified copy of a signed resolution of the board of the Developer dated prior to the date of this Agreement in the form set out in Schedule 11 (*Developer Board Minutes*) together with an officer's certificate in the form set out in Schedule 12 (*Developer's Officer's Certificate*) and dated on the date of this Agreement;

Developer Party means:

- (a) the Developer, the Building Contractor, any member of the Professional Team, agent, employee or Subcontractor of the Developer and the Developer's Representative; and/or
- (b) any subsidiary or holding company of the Developer or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;

Developer's Representative means the Developer's Development Director or such other member of the Developer's executive management team agreed by Homes England to act as the Developer's representative from time to time for the purposes of this Agreement;

Development Costs means the costs relating to Site acquisition and/or Works in relation to a Firm Scheme incurred or to be incurred in respect of such Firm Scheme by the Developer in respect of the heads of expenditure set out in Part 1 to Schedule 10 (*Development Costs*) or such other heads of expenditure as Homes England may in its absolute discretion agree in respect of any Firm Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 10 (*Costs which are not Development Costs*) shall not be capable of being treated as Development Costs;

Disposal means, other than a Permitted Disposal, a transaction the effect of which is that the legal or beneficial interest in any AHP Dwelling or property comprised in a Firm Scheme on which any AHP Dwellings have been or are to be developed (as the case may be) transfers 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;

EU-UK Trade and Cooperation Agreement means the Trade and Cooperation Agreement Between The European Union And The European Atomic Energy Community, Of The One Part, And The United Kingdom Of Great Britain And Northern Ireland, Of The Other Part, Command Paper 426 (Treaty Series No. 8 (2021)), any modifications or supplements to it on or after it came into force, and any statutory instruments made in exercise of the powers conferred by it;

Excused Scheme means a Firm Scheme comprised of dwellings in respect of which the Capital Funding Guide authorises the Developer to hold a variant legal interest to that contemplated in this Agreement and such variant legal interest has been approved by Homes England in its absolute discretion on IMS;

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 from 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 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;

Financial Year means from the date of this Agreement to the next 31 March and thereafter from 1 April to 31 March in each year;

Firm Scheme means each scheme for the development of AHP Dwellings as has been fully detailed in the "Offer Lines" of IMS and accepted by Homes England through IMS as an approved "Offer Line" either:

- (a) in accordance with Clause 7.1 (*Firm Schemes - Submission Procedure*);
or
- (b) in accordance with Clause 10.17 (*Changes to Firm Schemes*) or Clause 9.4 (*Additional Schemes*);

Firm Scheme Completion means Practical Completion has been achieved and the Firm Scheme has been Delivered;

Firm Scheme Completion Date means the date of Firm Scheme Completion in respect of the relevant Firm Scheme set out in the Firm Scheme Delivery Timetable;

Firm Scheme Delivery Timetable means the timetable for the Delivery of each Firm Scheme as agreed by Homes England through IMS;

Firm Scheme Details means the descriptive and other details in respect of each Firm Scheme accepted by Homes England through IMS (as the same may be varied from time to time in accordance with the terms of this Agreement);

Firm Scheme Grant means the amount of grant payable by Homes England to the Developer in respect of the relevant Firm Scheme as agreed in accordance with Clause 7 (*Firm Schemes – Submission Procedures*) and as subsequently approved on IMS;

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;

Group Company means any company which is:

- (a) a subsidiary or holding company of the Developer; or
- (b) a subsidiary of the Developer's holding company

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

Guarantor means:

- (a) the Developer's parent company; or

- (b) any other entity as may be agreed between the Developer and Homes England,

in each case which is not a Prohibited Person;

HMRC means HM Revenue & Customs;

Homes England's Representative means such person or persons as Homes England may nominate to act as its representative from time to time for the purposes of this Agreement;

Homes England Senior Officer means the Director of Affordable Housing Grants;

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;

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;

Incomplete Scheme means a Firm Scheme in respect of which Practical Completion Tranche Grant remains to be paid;

Incomplete Scheme Aggregation Sum means such sum as represents the aggregate amount of Firm Scheme Grant paid to the Developer in respect of the Incomplete Schemes;

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 Developer (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 Developer (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 either the Developer, the URB Landlord or the RP Landlord (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 assets of the Developer; or
 - 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 asset or assets of the Developer which has a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme;

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;

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 Developer, Guarantor, URB Landlord or RP Landlord's (as applicable) "Directors, Decision Makers or equivalent" or any other "know your customer" or comparable information identified by Homes England in connection with:

- (a) the Developer (including in connection with the Developer's Investment Partner application);
- (b) a Guarantor;
- (c) the RP Landlord or URB Landlord (as applicable); or
- (d) as otherwise required under this Agreement;

LA Provider means an English local authority entered on the Register pursuant to paragraph 3 of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010;

Legal Opinion means a legal opinion in the form set out in Schedule 14 (*Legal Opinion*) given by the proposed Guarantor's solicitor and dated on or prior to the date of this Agreement;

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 the Firm Scheme is situated;

Local Housing Authority means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils exercising the functions of a local housing authority in whose administrative area the relevant Firm Scheme is being delivered by the Developer;

Material Adverse Effect means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Developer to deliver the Approved Capital Bid or any Firm Scheme (as the context requires) on the basis agreed under this Agreement and/or within the time limits (if any) for doing so;

Milestone means each stage in the Delivery of the Firm Scheme agreed by the parties in IMS (including (as applicable) the Acquisition Stage, Start on Site and Practical Completion);

Milestone Date means the date agreed by Homes England through IMS by which the relevant Milestone must have been achieved (as the same may be varied by Homes England pursuant to Clause 10.11 (*Changes to Firm Schemes*));

Milestone Extension Event means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Developer has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the construction Works necessary to the Delivery of the Firm Scheme by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the Developer from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such Works;
- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute,generally affecting the house building industry or a significant sector of it;
- (k) the appointment of the Building Contractor under the Building Contract has been terminated or the Building Contract has been terminated (where applicable); or
- (l) any material failure by the Building Contractor under the terms of the Building Contract (where applicable) which has the direct result of delaying the Developer's compliance with a Milestone Date and which did

not result from the Developer's failure effectively to manage the Building Contract; or

- (m) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any default, whether by act or omission, of the Developer;

unless:

- A any of the events arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Developer or, save in respect of the event referred to in (k) above, any of its Subcontractors of any tier; or
- B in respect of the event referred to in (f) above, such event arises as a result of any failure by the Developer (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Developer to complete the Firm Scheme by the Firm Scheme Completion Date;

Milestone Failure means a failure by the Developer fully to achieve any Milestone by the relevant Milestone Date;

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 (having regard to the acknowledgment set out in Clause 2.3.10 (*The Approved Capital Bid*)) at least one hundred and twenty five (125) years;

MMC Scheme means a Firm Scheme comprised of dwellings constructed using one of the Modern Methods of Construction;

MMC Stage means each such stage in the delivery of a MMC Scheme which the parties agree must be achieved pursuant to Clause 11.10 (*Grant Claim Procedures*) before the Developer may submit a claim for Firm Scheme Grant;

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";

NHBC means the National House-Building Council;

Non Compliance Notification Date means the date on which Homes England notifies the Developer that it has become aware that a Firm Scheme in respect of which it has paid Firm Scheme Grant does not meet the Firm Scheme Details;

Notification means a notification by HMRC to Homes England under Regulation 6(6) of the 2005 Regulations;

Notification Failure means in relation to each of Clauses 10.5.1 (*Changes to Firm Schemes*) and 10.5.3 (*Changes to Firm Schemes*) a failure by the Developer to advise

Homes England within the period specified in the relevant Clause as to whether it wishes to proceed with a Firm Scheme or to withdraw it from the Agreement;

Older People's Shared Ownership Lease has the meaning attributed to it in Schedule 2 (*OPSO Schemes*);

Open Book Basis means the full and transparent disclosure and declaration of all information which the Developer or a Developer 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;

Open Book Obligations mean the obligations set out in Clause 18 (*Open Book Obligations*);

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 2 (*OPSO Schemes*);

Original Allocated Capital Grant means £[] being the amount of capital grant agreed by Homes England prior to the date of this Agreement as payable to the Developer in respect of the Original Approved Capital Bid;

Original Approved Capital Bid means the aggregate of the Original Bid Schemes accepted by Homes England in IMS via the "Offer " screen of IMS prior to the date of this Agreement;

Original Bid Scheme means a named scheme for the Delivery of AHP Housing which forms part of the Original Approved Capital Bid;

Original Scheme means:

- (a) an Original Bid Scheme; or
- (b) a named scheme for the Delivery of AHP Housing agreed by Homes England in IMS in the period between the date of its acceptance of the Original Approved Capital Bid and the date of this Agreement;

Payment Guarantee means a payment guarantee in the form set out in Schedule 13 (*Payment Guarantee*) duly completed and dated prior to the date of the Developer's first claim for any Tranche (save in respect of a Single Claim Scheme) and given by a Guarantor (subject always to Homes England's satisfaction as to the Guarantor's financial or commercial standing and the Guarantor not being a Prohibited Person);

Permitted Disposal means any of the following:

- (a) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to the Site;
- (b) a disposal pursuant to or required by a planning obligation within the meaning of Section 106 or Section 299A of the Town and Country Planning Act 1990 in connection with the Firm Scheme;
- (c) a disposal to a highway authority for the purposes of or in connection with the adoption of roads, footpaths or cycleways on the Site;
- (d) the grant of any mortgage or charge in favour of a commercial or institutional lender;
- (e) the grant of an easement which does not materially prejudice the use or amenity of the AHP Dwellings comprised in the relevant Firm Scheme; or
- (f) any other disposal which Homes England agrees from time to time in writing will be a Permitted Disposal;

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 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 Firm Scheme where the development of AHP Housing is a Planning Requirement and where the AHP Housing is part of a wider non AHP Housing scheme;

Practical Completion means that stage in the execution of a Firm Scheme 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 AHP Dwellings comprised within the Firm Scheme

are fit for beneficial occupation as a residential development in accordance with applicable NHBC or equivalent requirements current at the date of any required 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 Firm Scheme and which would be reasonable to include in a snagging list, and **Practically Complete** shall be construed accordingly;

Practical Completion Date means the date set out in the Firm Scheme Delivery Timetable by which Practical Completion must have been (and has been) achieved;

Practical Completion Tranche Grant means either:

- (a) subject to Clause 7.5 (*Firm Schemes – Submission Procedures*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of the Practical Completion Tranche Stage with respect to the relevant Firm Scheme; or
- (b) in respect of a Single Claim Scheme, such sum as is equivalent to one hundred per centum (100%) of the Firm Scheme Grant;

Practical Completion Tranche Stage means the stage where Practical Completion has been achieved in respect of the Firm Scheme;

Pre-Final Claim Change means a change to a Firm Scheme (other than a Single Claim Scheme) proposed by Developer pursuant to Clause 10.1 (*Changes to Firm Schemes*) in the period after the payment of the first Tranche but before the payment of the final Tranche in relation to that Firm Scheme;

Pre-First Claim Change means a change to a Firm Scheme proposed by Developer pursuant to Clause 10.1 (*Changes to Firm Schemes*) in the period prior to the payment of the first Tranche in relation to that Firm Scheme;

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 Developer in connection with a Firm Scheme;

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 Developer 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;

Prohibited Person means a person (or a person who is an Associate of a person) who:

- (a) uses funds that are derived from illegal or illegitimate activities; or
- (b) is of disreputable character, or has been convicted of a criminal offence in the last six (6) years which was punished by:
 - i imprisonment of one (1) year or more; and/or
 - ii payment of a fine or penalty of the greater of at least fifty thousand pounds sterling (£50,000) (or the equivalent thereof in another currency),

provided always that a body corporate shall not be deemed to be a Prohibited Person under this sub-paragraph (b) as a result of any conviction in respect of technical or regulatory breaches; or

- (c)
 - i is under investigation by any governmental authority for, or has been charged with or convicted of or (in Homes England's opinion) is reasonably suspected of, money laundering, drug trafficking, terrorist-related activities, modern slavery crimes, financial crimes or other money

- laundering crimes or a violation of any bank secrecy laws or regulations;
or
- ii has been assessed to be liable for civil penalties under these or related laws; or
 - iii has had funds or other assets seized or forfeited in an action under these or related laws; or
- (d) is named on the Consolidated List of Terrorists maintained by the Bank of England pursuant to any authorising statute, statutory instrument, regulation or guideline; or
 - (e) is, or professes to be, a national of a nation state which at the relevant time is not recognised by the Government of the United Kingdom; or
 - (f) is a “Designated Person” which is a person or entity that is listed on, or owned or controlled by a person or entity listed on the Consolidated List of Financial Sanctions Targets issued by Her Majesty’s Treasury, the “Specially Designated Nationals and Blocked Persons” list issued by Office of Foreign Assets Controls of the US Department of Treasury or any similar list, including any list of persons or entities with which dealings are restricted under any applicable any anti-terrorism legislation, issued or maintained or made public by the United Nations, the United Kingdom Government, the United States Government or the European Union; or
 - (g) is otherwise prohibited from making the proposed investment pursuant to any applicable law or requirements of any country or governmental authority (including any exchange control regulations applicable thereto); or
 - (h) has a material interest in the production, distribution or sale of tobacco products, arms or other military products, unregulated gambling (or gambling activities), alcoholic drinks and/or pornography;
 - (i) has funding and/or equity sourced from alternative lending providers such as peer to peer, peer to business or crowd sourcing or crowd funding;
 - (j) has in issue any bearer shares, or its articles of association (or relevant constitutional documents) allow it to issue bearer shares;
 - (k) resides, is incorporated in or operating in Homes England’s list of prohibited countries;
 - (l) is subject to sanctions, embargoes or similar measures issued by the UK, United Nations, European Union or United States; or
 - (m) is a shell bank (as such term is defined in regulation 34(4)(b) of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017);

Public Sector Funding means all funding in relation to a Firm Scheme in money or money's worth (including the Firm Scheme Grant) received or receivable by the Developer 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;

Quarter means the period between each Quarter Date;

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

RCGF means the Recycled Capital Grant Fund maintained (where applicable) by each RP Landlord in accordance with the Recovery Determination;

Recover has the meaning set out in the URB Recovery Determination;

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

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

Registered Provider means (as appropriate) an LA Provider or a body entered on the Register as a profit making and/or a non-profit organisation (as such terms are 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;

Rehabilitated or Rehabilitation or Rehabilitating shall have the meaning ascribed in Section 3.3 (*Rehabilitation Requirements and Scheme Types*) in the Chapter 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 Firm Scheme or perform the Developer'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 Event has the meaning attributed to it in the URB Recovery Determination;

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 fulfils the following criteria:

- (a) is at the time of letting in employment and has demonstrated an intention to buy his/her own home; and
- (b) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling a first time buyer; or
- (c) 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;

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

Restructure means any merger or de-merger or consolidation or reconstruction or amalgamation or a transfer of its engagements to any person or the acceptance of any transfer of engagements from any person or any other arrangement having an equivalent effect to these;

Review Meeting means a meeting held pursuant to Clause 3.6 (*Review, Monitoring and Reporting*) and/or Clause 3.7 (*Review, Monitoring and Reporting*);

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

RP Deed of Adherence means the deed in substantially the form set out in Schedule 8 (*RP Deed of Adherence*) to be issued in respect of each Firm Scheme by Homes England to the RP Landlord for execution as may be amended or supplemented by Homes England from time to time;

RP Landlord means the 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 "RP Landlords" shall be construed accordingly;

Section 15 Direction means a direction made by the Secretary of State under Section 15 of the Local Government Act 1999;

Section 114 Report means a report made under Section 114(3) or Section 114A of the Local Government Finance Act 1988;

Secured Amount means a sum equivalent to the aggregate of:

- (a) the maximum liability of the Guarantor (or where there is more than one Guarantor, the Guarantors) under all Payment Guarantees; and
- (b) such amount as may be required by Homes England to be secured by means of an Alternative Security, if any;

Secure Legal Interest means a:

- (a) SLI (SO Accommodation) with respect to each Firm Scheme (other than an Excused Scheme) which comprises one or more Shared Ownership Dwellings or Rent to Buy Dwellings;
- (b) SLI (Rented Accommodation) with respect to each Firm Scheme (other than an Excused Scheme) which comprises one or more AHP Rent Dwellings; or
- (c) SLI (Excused) with respect to each Excused Scheme,

provided that in each case, where the Developer, Group Company, RP Landlord or URB Landlord (as applicable) possesses:

- (d) the freehold estate and one or more leasehold interests derived from the freehold estate; or
- (e) 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 Developer, RP Landlord, URB Landlord or Group Company (as applicable) in the chain of leases must satisfy limb (a), (b) or (c) above (as applicable);

Security means a mortgage charge pledge lien or other security interest (including a guarantee or bond) securing any obligation of any person or any other agreement or arrangement having a similar effect (such as a sale or lease and leaseback, a blocked account set off or similar arrangement);

Security Condition means receipt by Homes England of:

- (a) a Payment Guarantee; and
- (b) Know Your Customer Information in respect of each Guarantor, satisfactory to Homes England (in its absolute discretion); and/or

- (c) Alternative Security;

Selected Party has the meaning ascribed to it in Clause 12.5.2(a) (*Payment of Grant*);

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
- (b) meets any applicable requirements of the Capital Funding Guide;

Shared Personal Data means Personal Data shared between Homes England and the Developer 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 3.18.2 (*Review, Monitoring and Reporting*);

Single Claim Scheme means a Firm Scheme in respect of which:

- (a) the Developer is either:
- i unable to satisfy (or procure the satisfaction of) the Conditions Precedent and may only make a claim for Practical Completion Tranche Grant in accordance with Clause 11.6 (*Grant Claim Procedures*); or
- ii has requested that it be paid one hundred per centum (100%) of the Firm Scheme Grant at Practical Completion Tranche Stage; or
- (b) Homes England has exercised its rights under Clause 4.7 (*Guarantor*) and such Firm Scheme has been converted into a Single Claim Scheme;

Site means the site identified to Homes England as being the area of land, buildings or dwelling-houses comprised or to be comprised in a Firm Scheme and/or the AHP Dwellings and common areas developed as part of such Firm Scheme;

SLI (Excused) means the Developer, RP Landlord or Group Company (as applicable) has in respect of any Excused Scheme, a legal interest of the length permitted under the Capital Funding Guide and approved by Homes England (in its absolute discretion) on IMS;

SLI (Rented Accommodation) means the Developer, RP Landlord or a Group Company (as applicable) 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 Developer, RP Landlord or Group Company (as applicable) with a limit of indemnity to at least the Firm Scheme Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire one of the interests 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 Developer, RP Landlord or Group Company (as applicable);

SLI (SO Accommodation) means the Developer, URB Landlord, RP Landlord or Group Company (as applicable) 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 Developer, URB Landlord, RP Landlord or Group Company (as applicable) with a limit of indemnity to at least the Firm Scheme Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to acquire one of the interests 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 Developer, Landlord or Group Company (as applicable);

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 rents set out in the Rent Standard (subject to any contrary Legislation);

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 Developer in providing the AHP Housing as specified in the 'Scheme Costs' tab of the relevant 'Offer Line Sub Product' screen on IMS (calculated using generally acceptable accounting principles) as follows:

- (a) the Development Costs;
- (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 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 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 Unlawful Subsidy 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 Firm Scheme Grant) which the Developer or a Developer 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 to determine whether an SPEI Overpayment has arisen in relation to any Firm Scheme;

Start on Site means with respect to the relevant Firm Scheme:

- (a) where applicable, the Developer and/or Building Contractor have entered into the Building Contract;
- (b) the Building Contractor or the Developer has taken possession of the Site; and
- (c) the Start on Site Works to the Site have commenced;

Start on Site Date means the date identified in IMS on which Start on Site is forecast to be achieved;

Start on Site Tranche Grant means subject to Clause 7.5 (*Firm Schemes – Submission Procedures*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of the Start on Site Tranche Stage with respect to the relevant Firm Scheme;

Start on Site Tranche Stage means the Developer has achieved Start on Site;

Start on Site Works means:

- (a) in respect of any Firm Scheme which comprises Rehabilitation, the commencement of the physical Works to the Site; and
- (b) in respect of any Firm Scheme which is not identified in the above limb (a):
 - i excavation for strip or trench foundations or for pad footings;
 - ii digging out and preparation of ground for raft foundations;
 - iii vibrofloatation, piling, boring for piles or pile driving;
 - iv drainage works specific for the buildings forming part of the Firm Scheme; or
 - v such works of demolition or service diversion as are expressly and strictly contemplated in Section 3 (Grant Claims and payments) in the Chapter of the Capital Funding Guide entitled "Finance";

Strategic Objectives means the strategic objectives (including, inter alia, the use of Modern Methods of Construction and of small to medium-sized enterprise (SME) contractors) applicable to each Firm Scheme as identified in the relevant "Offer Line Sub Product – screen for capture" in IMS;

Subcontractor means any subcontractor appointed by the Developer to undertake all or part of the Works;

Submitted Standards means:

- (a) in respect of each Firm Scheme the standards submitted by the Developer and referenced in the Firm Scheme Details in IMS in respect of each Firm Scheme; and
- (b) in respect of any OPSO Scheme, the applicable OPSO Standard;

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;

Substitute Scheme has the meaning ascribed to it in Clause 10.14 (*Changes to Firm Schemes*);

Substitute Scheme Acceptance Date means the date upon which Homes England confirms acceptance of a Substitute Scheme pursuant to Clause 10.17 (*Changes to Firm Schemes*);

Tranche means:

- (a) where the Conditions Precedent have been satisfied, any of the Acquisition Tranche Grant, the Start on Site Tranche Grant or the Practical Completion Tranche Grant; or
- (b) for a Single Claim Scheme, Practical Completion Tranche Grant only;

Transparency Obligations means the obligations set out in Clause 19 (*Transparency Obligations*);

Undeliverable Scheme means a Firm Scheme in respect of which there is a material risk of a Milestone Failure arising otherwise than as a result of the occurrence of a Milestone Extension Event;

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;

Unsatisfactory Guarantor has the meaning ascribed to it in Clause 4.6.1 (*The Guarantor and Alternative Security*);

Uplift Amount means an amount of the type described in the URB Recovery Determination and calculated for the purposes of Clause 15.8 (*Repayment of Grant*) in accordance with the methodology set out from time to time in the Capital Funding Guide;

URB means a body not entered on the Register;

URB Deed of Adherence has the meaning ascribed to it in Clause 2.6 (*The Approved Capital Bid*);

URB Landlord means the URB approved by Homes England (in its absolute discretion) that will be the landlord of the lessees of the Shared Ownership Dwellings comprised in the relevant Firm Scheme;

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

URB Selected Party has the meaning ascribed to it in Clause 12.5.3(a) (*Payment of Grant*);

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

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

- (a) an employee acting independently of the Developer; or
- (b) a subcontractor of any tier (or any employee of a subcontractor not acting independently of the subcontractor); or
- (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 Developer and/or the subcontractor or other person (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 Developer or relevant subcontractor;

Withdrawn Scheme means a Firm Scheme withdrawn by the Developer pursuant to Clause 10.3.1 (*Changes to Firm Schemes*);

Works means in relation to each Firm Scheme all of the works (including the Start on Site Works, the design, infrastructure works and all other works necessary for obtaining access to the AHP Dwellings) (if any) to be undertaken in order to ensure that the AHP Dwellings meet the Submitted Standards and Strategic Objectives and are constructed, developed repaired, converted, refurbished and/or Rehabilitated (as applicable) in accordance with the Firm Scheme Details.

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 Agreement to any Clause, sub-clause, paragraph, schedule or section heading is, except where it is expressly stated to the contrary, a reference to such Clause, sub-clause, paragraph, schedule 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 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 Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 Where any discretion is granted by this Agreement to any party, that party shall be entitled to exercise that discretion freely and without fetter (implied or otherwise)
- 1.2.11 A paragraph in a Schedule shall be construed as reference to a paragraph in that particular Schedule.
- 1.2.12 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.
- 1.2.13 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 Agreement or such other person as may be specified by Homes England by notice in writing to the Developer.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.

- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 The terms "Site" and "Firm Scheme" include each and every part of it.
- 1.2.17 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.
- 1.2.18 Save where a contrary intention is shown, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner 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.
- 1.2.19 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 The Developer shall in relation to the delivery of its obligations under this Agreement be responsible as against Homes England for the acts or omissions of any Developer Party as if they were the acts or omissions of the Developer.
- 1.2.21 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 Developer 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.
- 1.2.22 In the event of any conflict between the Original Allocated Capital Grant figure set out in IMS (and accepted by Homes England through IMS) and the Original Allocated Capital Grant figure set out in the definition of Original Allocated Capital Grant in this Agreement, the Original Allocated Capital Grant figure set out in IMS shall prevail.
- 1.2.23 Where this Agreement refers to information set out in IMS, this Agreement shall be construed as incorporating such information into its terms.
- 1.2.24 The terms "Allocated Capital Grant" "Original Allocated Capital Grant" and "Firm Scheme Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.
- 1.2.25 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.

- 1.2.26 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.
- 1.2.27 Where the Developer is directly delivering a Firm Scheme itself and without the use of any Building Contractor, any Subcontractor or a Professional Team, any reference or provision in this Agreement relating to any such person or team shall be disregarded insofar as it relates to that Firm Scheme.

2 The Approved Capital Bid

2.1 Without prejudice to any other term of this Agreement:

- 2.1.1 the parties acknowledge for the purposes of the record that Homes England agreed in response to the Developer's initial bid under the AHP 2021/26 to advance grant funding to the Developer in an initial amount equal to the Original Allocated Capital Grant to facilitate the delivery of the Original Approved Capital Bid;
- 2.1.2 the Developer represents and warrants to Homes England on the date hereof and on each day during the currency of this Agreement in the terms set out in Schedule 1 (*Acknowledgements, Representations and Warranties*);
- 2.1.3 the Developer 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; and
- 2.1.4 Homes England's obligations under this Agreement are subject to the condition precedent that it has received the Developer Board Minutes.

2.2 Homes England has agreed to make the Allocated Capital Grant available to the Developer to develop the AHP Dwellings subject to and in accordance with the terms and conditions of this Agreement.

2.3 The Developer acknowledges and agrees that:

- 2.3.1 the Allocated Capital Grant is being made available by Homes England on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of the dwellings to be let or sold as AHP Housing;
- 2.3.2 the Public Sector Funding in respect of a Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Developer in respect of the Delivery of that Firm Scheme nor may the Public Sector Funding in respect of the Approved Capital Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Capital Bid;

- 2.3.3 all funding under this Agreement is subject to the provisions of the HRA 2008 and any determinations made under such provisions and the provisions of Clause 15 (*Repayment of Grant*) represent the events and principles determined by Homes England for the purposes of Sections 31-34 of the HRA 2008;
- 2.3.4 the AHP Rent Dwellings shall be deemed to have been provided with public money for the purposes of Section 180 of the HRA 2008;
- 2.3.5 the provisions of this Agreement represent the conditions upon which Homes England makes the Allocated Capital Grant available to the Developer for the purposes of Sections 19 and 31 HRA 2008;
- 2.3.6 the terms of the Capital Funding Guide and URB Recovery Determination are incorporated within this Agreement (*mutatis mutandis*);
- 2.3.7 any failure by the Developer to comply with the terms of this Agreement or the occurrence of a Default Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 6(e) of the URB Recovery Determination;
- 2.3.8 an RP Landlord must hold Registered Provider status at the point which any AHP Housing comprised within each Firm Scheme is made available for rent and (where applicable) on completion of an Agreed Transfer to it;
- 2.3.9 all Firm Scheme Grant paid under this Agreement is:
- (a) Social Housing Assistance; and
 - (b) subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions; and
- 2.3.10 pursuant to the programme requirements of the AHP 2021/26:
- (a) where the Developer 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 Developer can reasonably negotiate and the lease shall comply with any applicable requirements of the Capital Funding Guide;
 - (b) where the Developer will grant the RP Landlord a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease must be of the longest duration that the Developer can reasonably grant and shall comply with any applicable requirements of the Capital Funding Guide;

2.4 Not used

2.5 The Developer shall comply with the Open Book Obligations and the Transparency Obligations.

2.6 Homes England may in its absolute discretion permit an Agreed Transfer relating only to Shared Ownership Dwellings to a URB on the condition that, prior to or contemporaneously with the date of the Agreed Transfer the proposed disponee has entered into a deed of adherence with Homes England in such form as Homes England requires (in its absolute discretion) (**URB Deed of Adherence**).

2.7 Notwithstanding any other term of this Agreement, where Homes England has agreed that any Shared Ownership Dwelling may be transferred to a URB Landlord, Homes England will not be obliged to make any payment of Firm Scheme Grant to the Developer in respect of the relevant Firm Scheme where:

2.7.1 the URB Landlord has ceased to trade or operate;

2.7.2 there has been a material and adverse change in relation to the URB Landlord's financial or commercial standing; or

2.7.3 an Insolvency Event has occurred in relation to the URB Landlord.

2.8 Notwithstanding any terms of this Agreement to the contrary, the Developer acknowledges and agrees that acceptance of a Firm Scheme on IMS which includes information as to a proposed URB Landlord is not deemed acceptance by Homes England of that URB Landlord.

3 **Review, Monitoring and Reporting**

3.1 The Developer shall comply fully with the contract management and reporting obligations set out in this Agreement.

3.2 The Developer acknowledges the high importance to Homes England of it being promptly advised when any circumstance occurs which may:

3.2.1 impact on the Developer's ability to Deliver any Firm Scheme in accordance with the terms of this Agreement;

3.2.2 prejudice the ability for the URB Landlord or RP Landlord to take a transfer or be granted an interest in an AHP Dwelling that is a Completed Interest;

3.2.3 indicate that Homes England is making available more grant than is required to Deliver the Approved Capital Bid or Firm Scheme;

3.2.4 constitute a breach of Clause 8 (*Firm Scheme Obligations*); or

3.2.5 constitute a Default Event,

(collectively the **Contract Monitoring Outputs**).

3.3 Where Homes England becomes aware either via the Contract Monitoring Outputs or through other monitoring, that delivery of the Approved Capital Bid has not been secured in accordance with the requirements of this Agreement or is unlikely to be so secured (a **Delivery Failure**), Homes England may in order to address such Delivery Failure issue an Allocation Change Notice requiring:

- 3.3.1 a reduction, increase or other change to the number of AHP Dwellings to be delivered; and/or
- 3.3.2 a reduction or other adjustment to the Allocated Capital Grant or to any Firm Scheme Grant; and/or
- 3.3.3 any other change to the Approved Capital Bid that Homes England deems reasonably necessary,

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

- 3.4 Nothing in Clause 3.3 (*Review, Monitoring and Reporting*) shall preclude the parties from agreeing an alternative means of dealing with the Delivery Failure 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 then current Financial Year, the change required by Homes England in the Allocation Change Notice shall take effect on the next following 1 April 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.
- 3.5 The Developer shall submit such other information in relation to this Agreement, the Approved Capital Bid and/or its Delivery of the Firm Schemes as may be requested on reasonable notice by Homes England from time to time.
- 3.6 The Developer's Representative (or, where agreed with Homes England in advance, such other member of the Developer's executive management team) shall attend a review meeting when requested to do so by Homes England with reasonable prior written notice.
- 3.7 Homes England shall attend a review meeting reasonably requested by the Developer provided that:
 - 3.7.1 the date of such meeting is agreed by Homes England; and
 - 3.7.2 the Developer provides an agenda for such meeting at the time of request.
- 3.8 At each Review Meeting Homes England and the Developer shall discuss or review (without limitation):
 - 3.8.1 all changes made to any Firm Scheme or to the Approved Capital Bid in the period since the immediately preceding Review Meeting (or since the date of this Agreement where no Review Meeting has been held) and any changes anticipated by the Developer to be requested during the current Financial Year;
 - 3.8.2 the capacity of the Developer to bring forward additional housing supply under AHP 2021/26;
 - 3.8.3 the Developer's performance in delivering the Approved Capital Bid;
 - 3.8.4 progress in relation to each Firm Scheme including delivery forecasts, lettings and sales forecasts and progress against previous such forecasts;

- 3.8.5 details of the proposed RP Landlord or URB Landlord (as applicable);
 - 3.8.6 the financial covenant strength of a Guarantor;
 - 3.8.7 the Contract Monitoring Outputs;
 - 3.8.8 the position on agreeing nomination arrangements in respect of AHP Rent Dwellings and Shared Ownership Dwellings with relevant Local Housing Authorities (where applicable);
 - 3.8.9 any Change in Control or Restructure which is anticipated in the then current or upcoming Financial Year in respect of the Developer;
 - 3.8.10 the Developer's performance in meeting the Strategic Objectives; and
 - 3.8.11 such other matters in relation to the performance or subject matter 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 Review Meeting.
- 3.9 The parties agree that the Regulator shall also be entitled to send a representative to attend any Review Meeting which involves an RP Landlord.
- 3.10 Save as otherwise agreed between the parties, any meeting under this Clause 3 (*Review, Monitoring and Reporting*) shall be minuted by the Developer and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England and any other attendee.
- 3.11 The Developer shall:
- 3.11.1 provide Homes England with written notification (appending a certified copy of the transfer document which effected an Agreed Transfer) within ten (10) Business Days of completion of an Agreed Transfer;
 - 3.11.2 provide Homes England with such information as Homes England shall reasonably require to support or facilitate the discussions and monitoring referred to in this Agreement; and
 - 3.11.3 take all reasonable steps to ensure that any information provided to Homes England pursuant to this Clause 3 (*Review, Monitoring and Reporting*) is accurate in all material aspects.
- 3.12 On termination of this Agreement, the Developer shall if requested to do so deliver up to Homes England or procure the delivery to Homes England of all the data, materials, documents and accounts referred to in this Clause 3 (*Review, Monitoring and Reporting*).
- 3.13 The Developer agrees that Homes England's auditors (including the Comptroller and Auditor General) shall have unrestricted rights of access to any and all information to which Homes England is entitled under this Agreement or to which Homes England's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.

- 3.14 The Developer shall promptly and fully co-operate with any request for information or evidence from time to time of:
- 3.14.1 any auditor (whether internal or external) of Homes England; and/or
 - 3.14.2 Homes England, to the extent such request relates to this Agreement (or any matter associated with it) and which Homes England is required by any Competent Authority or by Legislation to provide to any third party.
- 3.15 The Developer shall ensure that for each Firm Scheme it and each Developer Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the AHP Housing which identify items of SPEI Revenue, the Firm Scheme Grant and SPEI Allowable Costs and such other items required under this Clause 3 (*Review, Monitoring and Reporting*).
- 3.16 The Developer shall upon Homes England's written request:
- 3.16.1 make available upon reasonable notice for Homes England's inspection (and that of any person referred to in this Clause 3 (*Review, Monitoring and Reporting*) or in Schedule 5 (*Information and Confidentiality*) or any person appointed pursuant to Clause 29 (*Dispute resolution*)) the books of account referred to in this Clause 3 (*Review, Monitoring and Reporting*) (together with, if specified, such supporting correspondence, agreements, orders, invoices, receipts and other documents) and shall submit a report in relation to the same to Homes England (or such other persons as are referred to in this Clause 3 (*Review, Monitoring and Reporting*)) as and when requested to do so; and
 - 3.16.2 procure that a representative of Homes England (or any of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Clause 3 (*Review, Monitoring and Reporting*) are held or maintained and examine such records or information.
- 3.17 The Developer shall ensure that it and any Developer Affiliate (at its or their cost) co-operates 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.
- 3.18 The Developer shall promptly:
- 3.18.1 participate in any evaluation of AHP 2021/26 that DLUHC or Homes England or its or their agents may require from time to time;
 - 3.18.2 supply (subject always to its data protection obligations under Schedule 6 (*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

3.18.3 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; and

3.18.4 notify Homes England if any Know Your Customer Information provided becomes inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request.

3.19 The parties acknowledge and agree that Homes England may review whether the Developer continues to meet the requirements for Investment Partner status and the Developer will cooperate 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.

4 **The Guarantor and Alternative Security**

4.1 Where the Guarantor is a LA Provider, the Developer must procure that such Guarantor provides a Legal Opinion (along with supporting documentation reasonably required by Homes England) prior to entry into the Payment Guarantee.

4.2 Where a Guarantor is providing a Payment Guarantee, the Developer must provide the Guarantor with a copy of this Agreement prior to the Guarantor's entry into the Payment Guarantee.

4.3 Unless the Approved Capital Bid comprises only of Single Claim Schemes, the Developer must ensure that the Conditions Precedent are satisfied prior to any claim under Clause 11 (*Grant Claim Procedures*) and the provisions of Clauses 4.4 to 4.11 (inclusive) (*The Guarantor and Alternative Security*) shall apply.

4.4 The Developer shall notify Homes England as soon as it becomes aware:

4.4.1 that the Guarantor, or the Guarantor's Controller is or is likely to become a Prohibited Person;

4.4.2 of any circumstance which would prejudice:

(a) the operation of a Payment Guarantee; or

(b) the ability of a Guarantor to comply with the terms of its Payment Guarantee (including a material reduction in the Guarantor's financial covenant strength); or

(c) the operation of any Alternative Security agreed by Homes England; and/or

4.4.3 where the Guarantor is a LA Provider:

(a) when a Section 114 Report is made in respect of it or the Guarantor becomes aware of any circumstances which would give rise to the making of a Section 114 Report; or

(b) such Guarantor becomes subject to a Section 15 Direction.

4.5 Homes England may from time to time carry out a review of a Guarantor, a Payment Guarantee or any Alternative Security to determine (as applicable) whether in the opinion of Homes England in its absolute discretion:

4.5.1 a Guarantor's financial covenant strength enables it to meet its liabilities under its Payment Guarantee;

4.5.2 a Section 114 Report or Section 15 Direction (where the Guarantor is an LA Provider) will or is likely to prejudice the ability of the Guarantor to comply with the terms of its Payment Guarantee;

4.5.3 the value of any Alternative Security and/or the financial covenant strength of the provider of any Alternative Security is sufficient to cover an amount equal to the sum required by Homes England to be secured by Alternative Security; or

4.5.4 the Incomplete Scheme Aggregation Sum equals to or exceeds the Secured Amount.

4.6 If as a result of the review carried out under Clause 4.5 (*The Guarantor and Alternative Security*) or otherwise:

4.6.1 Homes England is not satisfied with a Guarantor's financial covenant strength, its ability to meet its liabilities under any Payment Guarantee (including as a result of a Section 114 Report or Section 15 Direction in respect of a Guarantor that is an LA Provider) (**Unsatisfactory Guarantor**) or, where applicable, the Alternative Security (in each case to be determined in Homes England's absolute discretion) then:

(a) Homes England may withhold any further payments of Firm Scheme Grant under this Agreement until such time as the Developer has satisfied its obligation under Clause 4.6.1(c) (*The Guarantor and Alternative Security*); and/or

(b) Homes England may give notice to the Developer for it to procure that:

i an additional or new Payment Guarantee is provided to Homes England to cover the extent of the Guarantor's payment obligations in respect of this Agreement; or

ii an additional or new Alternative Security is put in place,

in each case on terms and with one or more Guarantors or security providers (as applicable) satisfactory to Homes England (in its absolute discretion); and

(c) promptly after receipt of such notice provided under Clause 4.6.1(b) (*The Guarantor and Alternative Security*), the Developer must procure such form of additional or new Security is put in place unless Homes England is satisfied (in its absolute discretion) that the Unsatisfactory Guarantor

has taken action such that its financial covenant strength is sufficient to cover its obligations under the relevant Payment Guarantee;

4.6.2 the Incomplete Scheme Aggregation Sum equals or exceeds the Secured Amount then:

- (a) Homes England may withhold any further payments of Acquisition Tranche Grant and Start on Site Tranche Grant under this Agreement until such time as the Incomplete Scheme Aggregation Sum is less than the Secured Amount; and/or
- (b) Homes England may give notice to the Developer for it to procure that an additional or new form of Security (satisfactory to Homes England in its absolute discretion) is put in place to increase the level of the Secured Amount to an amount satisfactory to Homes England (in its absolute discretion); and
- (c) promptly after receipt of such notice provided under Clause 4.6.2(b) (*The Guarantor and Alternative Security*), the Developer must procure that such form of Security is put in place unless the Developer provides evidence (satisfactory to Homes England, in its absolute discretion) that Incomplete Schemes will be Delivered within the next following 6 month period and the continued withholding of Acquisition Tranche Grant and Start on Site Tranche Grant will not prejudice the Developer's ability to Deliver any Firm Schemes in accordance with the its Firm Scheme Delivery Timetable.

4.7 If the Guarantor commits a Prohibited Act, or the Developer fails to comply with Clause 4.6.1(c) (*The Guarantor and Alternative Security*) or fails to comply or provide satisfactory evidence to Homes England pursuant to Clause 4.6.2(c) (*The Guarantor and Alternative Security*) within 20 Business Days from the date of the notice provided by Homes England pursuant to Clause 4.6.1(b) (*The Guarantor and Alternative Security*) or Clause 4.6.2(b) (*The Guarantor and Alternative Security*) (as applicable):

- 4.7.1 Homes England shall be entitled to recover the Firm Scheme Grant paid in respect of all Incomplete Schemes pursuant to its rights under 15.2.9 (*Repayment of Grant*);
- 4.7.2 all Incomplete Schemes shall be converted into Single Claim Schemes for the purposes of this Agreement; and
- 4.7.3 the Developer shall only, unless otherwise agreed by Homes England in its absolute discretion, be entitled to claim Practical Completion Tranche Grant in respect of such Incomplete Schemes.

4.8 If the Developer fails to procure the provision of the Legal Opinion in accordance with Clause 4.1 (*The Guarantor and Alternative Security*), or a Payment Guarantee or Alternative Security is held to be ineffective, Homes England shall be entitled to exercise its rights under Clause 4.7.1 (*The Guarantor and Alternative Security*) and Clause 4.7.2 (*The Guarantor and Alternative Security*) and the terms of Clause 4.7.3 (*The Guarantor and Alternative Security*) shall apply.

- 4.9 The Developer must provide (and must procure that a Guarantor provides) Homes England with such information (and within such timescales) as Homes England may reasonably require to assist Homes England with any review it undertakes under this Clause 4 (*The Guarantor and Alternative Security*).
- 4.10 The parties acknowledge and agree that during the currency of this Agreement the level of the Secured Amount should never be less than the level of the Incomplete Scheme Aggregation Sum. Once a Practical Completion Tranche Grant has been paid in respect of a Firm Scheme and such Firm Scheme has been Delivered, it will not be categorised as an Incomplete Scheme for the purposes of the review carried out by Homes England pursuant to this Clause 4 (*The Guarantor and Alternative Security*).
- 4.11 Where Homes England requires the provision of any new or additional Payment Guarantee or Alternative Security pursuant to this Clause 4 (*The Guarantor and Alternative Security*), the Developer must procure that, save where a Guarantor is an LA Provider, the Corporate Authorisation Condition in respect of such Payment Guarantee or Alternative Security (as applicable) is satisfied having regard to the timeframes outlined in Clause 4.7 (*The Guarantor and Alternative Security*).

5 **Default Events**

5.1 The following circumstances shall constitute a Default Event:

- 5.1.1 an Insolvency Event has occurred in relation to the Developer;
- 5.1.2 a Prohibited Act has been committed by or on behalf of the Developer (in respect of which the Waiver Condition has not been satisfied);
- 5.1.3 the Developer ceases operating/trading;
- 5.1.4 the Developer's Investment Partner status is lost or removed;
- 5.1.5 the Developer (either by its own actions or omissions, or those of its contractors or agents) harms Homes England's or the AHP 2021/26's reputation or brings Homes England or the AHP 2021/26 into disrepute;
- 5.1.6 failure by the Developer to comply with its obligations in Clause 3 (*Review, Monitoring and Reporting*), Schedule 4 (*Anti-Bribery and Anti-Corruption*), Clause 8.4 (*Firm Scheme Obligations*) and Clause 17.1 (*Open Book Obligations*) and/or any information supplied in connection with its obligations in Clause 3 (*Review, Monitoring and Reporting*), Clause 8.4 (*Firm Scheme Obligations*) and Clause 17.1 (*Open Book Obligations*) is materially deficient, misleading or inaccurate;
- 5.1.7 failure by the Developer to comply with Clause 16 (*Change in Control*);
- 5.1.8 the Developer is unable to make the representations and give the warranties set out in this Agreement (in any case in whole or in part) or is in breach of any representation or warranty set out in this Agreement and there is or is likely to be a resulting Material Adverse Effect in relation to:

- (a) the Approved Capital Bid; or

- (b) a Firm Scheme;
 - 5.1.9 a breach of the Transparency Obligations;
 - 5.1.10 Homes England determines (acting reasonably) that proper and sufficient progress against the Developer's projections in the Approved Capital Bid has not been made by the Developer in delivering the Approved Capital Bid;
 - 5.1.11 a breach of the Developer's obligations under Clause 8 (*Firm Scheme Obligations*);
 - 5.1.12 any other material breach of this Agreement;
 - 5.1.13 the occurrence of an event which has a Material Adverse Effect;
 - 5.1.14 the occurrence of the circumstance referred to in Clause 15.3.3(d) (*Repayment of Grant*);
 - 5.1.15 a failure or inability by the Developer to comply with:
 - (a) the requirements of Clauses 11.1 (*Grant Claim Procedures*) to 11.9 (*Grant Claim Procedures*) (as applicable);
 - (b) any obligation to pay or repay any amounts due under this Agreement;
 - 5.1.16 an occurrence of the circumstance referred to in Clause 2.7 (*The Approved Capital Bid*);
 - 5.1.17 the exercise by Homes England of its rights under Clause 13.1.2 (*Adjustments to Practical Completion Tranche Grant*) or a failure by the Developer to agree any adjustment proposed by Homes England to the Firm Scheme Grant pursuant to Clause 13.2 (*Adjustments to Practical Completion Tranche Grant*); and
 - 5.1.18 Start on Site is not achieved by the Start on Site Date and following discussions with the Developer Homes England (acting reasonably) considers that the Firm Scheme is unlikely to reach Firm Scheme Completion by 31 March 2026;
 - 5.1.19 the Developer fails to Deliver a Firm Scheme by 31 March 2026; or
 - 5.1.20 any Consent necessary to deliver a Firm Scheme or the Approved Capital Bid (as applicable) is revoked or withdrawn.
- 5.2 The Developer must notify Homes England immediately in writing on the occurrence of a Default Event.
- 5.3 Without prejudice to Clause 5.4 (*Default Events*), in the event of the occurrence of a Default Event and for so long as that Default Event subsists (or another Default Event has occurred and is continuing) or where an Allocation Change Notice has been issued but not yet agreed

by the parties, Homes England shall be entitled to reject the submission of any Firm Scheme, Substitute Scheme or Additional Scheme on IMS.

5.4 Where the Default Event is:

- 5.4.1 an occurrence specified in Clauses 5.1.1 to 5.1.7 (*Default Events*) (inclusive) Homes England shall be entitled forthwith and without any liability to the Developer to terminate the Agreement;
- 5.4.2 an occurrence specified in Clauses 5.1.8 (*Default Events*) to 5.1.20 (*Default Events*) (inclusive) Homes England may serve notice on the Developer requiring the Developer 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; or
 - (b) where so permitted by Homes England the Developer has not given an undertaking to remedy the breach on terms satisfactory to Homes England; or
 - (c) if it becomes apparent that the Default Event is incapable of remedy either within such period or at all;

Homes England shall be entitled on giving not less than ten (10) Business Days' notice, without any liability to the Developer, to exercise the termination rights in Clause 5.5 (*Default Events*).

5.5 Where Clause 5.4.2 (*Default Events*) applies and:

- 5.5.1 there are no other Continuing Firm Schemes, Homes England may terminate this Agreement in its entirety such termination to take effect at the end of the notice period referred to in Clause 5.4.2 (*Default Events*);
- 5.5.2 there are other Continuing Firm Schemes Homes England may terminate this Agreement other than in relation to such other Continuing Firm Schemes such termination to take effect at the end of the notice period referred to in Clause 5.4.2 (*Default Events*).

5.6 Where Homes England purports to terminate this Agreement in accordance with this Clause 5 (*Default Events*) and the Developer disputes its entitlement to do so the provisions of Clause 29 (*Dispute resolution*) shall apply.

5.7 Clause 5.5.2 (*Default Events*) shall not apply in the circumstances contemplated in 5.1.12 (*Default Events*) and in that case the provisions of Clause 5.5.1 (*Default Events*) shall be deemed to apply in place of those of Clause 5.5.2 (*Default Events*).

6 OPSO Schemes

Where the Developer is Delivering or will Deliver one or more OPSO Schemes as part of the Approved Capital Bid, the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations specified in Schedule 2 (*OPSO Schemes*) with respect to each such OPSO Scheme.

7 Firm Schemes – Submission Procedures

7.1 The Developer must not less than ten (10) Business Days (or such other period agreed by Homes England in its absolute discretion) prior to the Acquisition Date or within ten (10) Business Days from the date of this Agreement (whichever is the later) ensure that such details of each Original Scheme as are required by Homes England have been accurately uploaded onto IMS and where an Original Scheme is accepted by Homes England through IMS, it will become a Firm Scheme for the purposes of this Agreement from the Acceptance Date.

7.2 The Developer represents and warrants to Homes England in relation to each Firm Scheme (on each day during the currency of this Agreement) that:

7.2.1 the Firm Scheme:

- (a) is consistent with the Approved Capital Bid;
- (b) is in its opinion (acting reasonably) deliverable in accordance with the Firm Scheme Delivery Timetable and is consistent with the Submitted Standards and Strategic Objectives; and
- (c) comprises no Public Sector Funding beyond that identified in the Firm Scheme Details;

7.2.1 it, a Group Company or the RP Landlord (as applicable) possesses a Secure Legal Interest in the Site or a URB Landlord (where permitted pursuant to Clause 2.6 (*The Approved Capital Bid*)) possesses an SLI (SO Accommodation) in the Site; and

7.2.2 it, a Group Company, the RP Landlord (as applicable) or a URB Landlord (where permitted pursuant to Clause 2.6 (*The Approved Capital Bid*)) has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted Standards as are then required; and

7.2.3 it or a Group Company is, where the RP Landlord does not have a Completed Interest in the Site, under contract with the RP Landlord for the acquisition of the AHP Dwellings comprised in the Firm Scheme and:

- (a) the RP Landlord has confirmed in writing to the Developer:
 - i the initial rents payable in respect of those AHP Dwellings which are to be made available at an Affordable Rent, Social Rent and Rent to Buy (as applicable) and the projected income from the initial sales of those AHP Dwellings to be disposed of on Shared Ownership Lease terms;
 - ii that the interest to be purchased by the RP Landlord allows the RP Landlord to hold a Completed Interest from completion of the Agreed Transfer and is compliant with the terms of the RP Deed of Adherence;
 - iii the extent of the RP Landlord's RCGF proceeds to be applied in respect of the Firm Scheme;

- iv the acquisition price for the AHP Dwellings comprised in the Firm Scheme; and
- v that such RP Landlord (where it is an LA Provider) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued and none of its officers have made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report; and
- vi that no Insolvency Event has occurred in relation to the RP Landlord (that is not an LA Provider);

(collectively the **RP Landlord's Information**); and

- (b) that the RP Landlord's Information is on IMS and remains accurate and correct in all material respects;

7.2.4 where a URB Landlord has been permitted by Homes England pursuant to Clause 2.6 (*The Approved Capital Bid*), it is under contract with the URB Landlord for the acquisition of only the Shared Ownership Dwellings comprised in the Firm Scheme and:

- (a) the URB Landlord has confirmed in writing to the Developer:
 - i the projected income from the initial sales of those AHP Dwellings to be disposed of on Shared Ownership Lease terms;
 - ii the interest to be purchased by the URB Landlord will allow the URB Landlord to hold a Completed Interest from completion of the Agreed Transfer; and
 - iii the acquisition price for the Shared Ownership Dwellings comprised in the Firm Scheme;

(collectively the **URB Landlord's Information**);

- (b) that no Insolvency Event has occurred in relation to the URB Landlord; and
- (c) that the URB Landlord's Information is on IMS and remains accurate and correct in all material respects.

7.3 Homes England has no obligation to make any payment of grant to the Developer in relation to anything other than a Firm Scheme.

7.4 Under no circumstances shall Homes England be obliged to accept any scheme as a Firm Scheme if Homes England (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under the AHP 2021/26) to provide Firm Scheme Grant in relation to the relevant scheme.

7.5 Homes England may at its absolute discretion vary the percentages attributed to the Acquisition Tranche Grant, the Start on Site Tranche Grant and/or Practical Completion Tranche Grant (save in respect of a Single Claim Scheme) from time to time save that no such variation will take effect in relation to any Tranche which has already been paid.

8 Firm Scheme Obligations

8.1 The Developer must carry out the acquisition, design construction and completion of the Firm Scheme so that:

8.1.1 the Firm Scheme is (subject to Clause 10.10 (*Changes to Firm Schemes*)) Delivered in accordance with the Firm Scheme Delivery Timetable;

8.1.2 when Delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standards and the Strategic Objectives; and

8.1.3 any applicable requirements of the Procurement Law are complied with and all Consents are satisfied,

8.2 In delivering the Firm Scheme and Practical Completion, the Developer must:

8.2.1 observe and comply with Legislation and all applicable provisions of the Capital Funding Guide;

8.2.2 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 Developer with its obligations under this Agreement.

8.3 The Developer shall procure that Homes England's Representative (or any person nominated by him) shall have at all reasonable times and upon giving reasonable notice the right to enter onto the Site and to take such action as he considers appropriate to inspect the progress of the Firm Scheme and to monitor compliance by the Developer with its obligations under this Agreement.

8.4 The Developer must notify Homes England in writing (save in respect of Clause 8.4.1 (*Firm Scheme Obligations*)), where notification is required to be given through IMS):

8.4.1 immediately once Start on Site has occurred;

8.4.2 immediately, in the event of the receipt by it of any other Public Sector Funding or guarantees of it, or the offer of same, in respect of the Firm Scheme (or any part of it) beyond any amount of Public Sector Funding notified to Homes England by the Developer pursuant to Clause 7.1 (*Firm Schemes - Submission Procedures*), Clause 9.2 (*Changes to Firm Schemes*) or Clause 10.15 (*Changes to Firm Schemes*);

8.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect in relation to the Delivery of a Firm Scheme; and

- 8.4.4 any increase to the acquisition price provided under Clauses 7.2.3(a)iv (*Firm Schemes – Submission Procedures*) and Clauses 7.2.4(a)iii (*Firm Schemes – Submission Procedures*)
- 8.4.5 immediately upon becoming aware of any event or circumstance which would give rise to the making of a Section 114 Report or the issue of a Section 15 Direction in respect of an RP Landlord that is an LA Provider;
- 8.4.6 of any 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.
- 8.5 The Developer shall comply with any reasonable request made in connection with a Compliance Audit.
- 8.6 The Developer 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 Developer from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 8.7 In discharging its obligations under this Agreement, the Developer must act at all times with the utmost good faith, with the intent to deliver the Approved Capital Bid and with proper regard to the need for efficiency in the use of public funds.
- 8.8 Where the Developer is aware that it is in breach of an obligation under this Agreement it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach
- 8.9 The Developer shall when requested by Homes England and in any event no less than thirty (30) Business Days prior to Practical Completion of a Firm Scheme:
- 8.9.1 notify Homes England (in writing) of the proposed date of Practical Completion, such notification to be accompanied with the Know Your Customer Information in respect of the RP Landlord or URB Landlord (as applicable) which will be purchasing the AHP Dwellings comprised within that Firm Scheme; and
- 8.9.2 ensure that all details set out on IMS in respect of that Firm Scheme (including the number of AHP Dwellings and tenure type) are accurate and up to date to enable Homes England to issue the RP Deed of Adherence or URB Deed of Adherence required to be executed by the RP Landlord or URB Landlord (as applicable).
- 8.10 The Developer must ensure that the interest in any AHP Dwelling granted or transferred pursuant to an Agreed Transfer to (as applicable):
- (a) an RP Landlord shall be such that it allows the RP Landlord to hold a Completed Interest; or
- (b) a URB Landlord, shall be such that it allows the URB Landlord to hold an interest that meets the description in limbs (a), (b) or (c) of the definitions of SLI (SO Accommodation),

and, in each case, shall be granted or transferred on terms which are not inconsistent with the terms of this Agreement.

8.11 Until a Firm Scheme has been Delivered, and save in respect of a Disposal resulting from an Agreed Transfer in respect of such Firm Scheme, the Developer must provide Homes England with a completed Disposal Notification (in accordance with any applicable requirements of the Capital Funding Guide and the requirements of Clause 8.12 (*Firm Scheme Obligations*)) no less than ten (10) Business Days prior to a Disposal taking place.

8.12 The Developer will:

8.12.1 ensure that that any Disposal Notification, Constitutional Change Notification or any other notifications or certificates from the Developer to Homes England (the **Developer Notifications**) are provided by the Developer's Representative and must further ensure that such Developer Representative has access to the information and knowledge needed accurately to give the information required; and

8.12.2 notify Homes England if it becomes aware that any Developer Notification is erroneous in any material respect.

8.13 The Developer must:

8.13.1 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;

8.13.2 procure that prior to any AHP Dwelling comprised in the Firm Scheme being occupied, all certification required in respect of the Firm Scheme (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; and

8.13.3 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 in so far as the obligations relate to the AHP Dwellings comprised within a Firm Scheme.

8.14 The Developer must procure that a valuation of each 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).

9 **Additional Schemes**

9.1 The parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Capital Bid.

9.2 Where Clause 9.1 (*Additional Projects*) applies, the Developer shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In submitting such details, the Developer makes the same representations and

warranties in relation to the proposed Additional Scheme as it makes to Homes England pursuant to Clause 7.1 (*Firm Schemes – Submission Procedures*).

9.3 Homes England shall consider the Additional Scheme and if Homes England is satisfied that:

- 9.3.1 the Additional Scheme offers value for money;
- 9.3.2 the Developer's performance in respect of other Firm Schemes comprised within the Approved Capital Bid has been of an acceptable standard and has satisfied the terms of this Agreement;
- 9.3.3 Start on Site for the Additional Scheme will occur on or before 30 September 2025 (or such other date as Homes England may in its absolute discretion agree) and the Additional Scheme can be fully Delivered by 31 March 2026;
- 9.3.4 no Default Event subsists; and
- 9.3.5 the Submitted Standards and the Strategic Objectives submitted in respect of such scheme by the Developer are satisfactory,

Homes England shall be entitled (but not obliged) to accept the Additional Scheme into the Approved Capital Bid.

9.4 Where Homes England accepts an Additional Scheme into the Approved Capital Bid pursuant to Clause 9.3 (*Additional Projects*) it shall confirm such acceptance to the Developer through IMS.

9.5 With effect from the date of Home's England's confirmation under Clause 9.4 (*Additional Schemes*):

- 9.5.1 the Additional Scheme shall be deemed to be a Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;
- 9.5.2 the details set out by the Developer in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and
- 9.5.3 the Developer must ensure that it complies with all of its obligations under this Agreement as they apply to such new Firm Scheme.

9.6 If Homes England agrees to make available any grant funding in relation to a Substitute Scheme or Additional Scheme, the Allocated Capital Grant will (subject to Clause 10.19 (*Changes to Firm Schemes*)) be deemed to be increased or decreased (as appropriate) by the Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Firm Scheme.

10 Changes to Firm Schemes

- 10.1 The Developer may propose changes to any Firm Scheme at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Tranche already received by the Developer.
- 10.2 Where a Pre-First Claim Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the process set out in Clause 10.3 (*Changes to Firm Schemes*) unless Homes England agrees that the relevant change may be agreed by some other means.
- 10.3 If Homes England:
- 10.3.1 accepts a Pre-First Claim Change in principle, it shall be entitled to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Firm Scheme Grant figure than that set out in the Firm Scheme Details, Homes England will notify the Developer and the Developer will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Firm Scheme from this Agreement or proceed with it on the basis of the recalculated Firm Scheme Grant figure or to withdraw the proposed a Pre-First Claim Change. If:
- (a) the Firm Scheme is withdrawn by the Developer, Homes England will (subject to any invocation by the Developer of Clause 10.14 (*Changes to Firm Schemes*) and any resulting operation of Clause 10 (*Changes to Firm Schemes*)) withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately;
 - (b) the proposed Pre-First Claim Change is withdrawn by the Developer, the Developer shall reinstate in IMS the Firm Scheme Details ante the date of the proposed Pre-First Claim Change and, following Homes England's approval of such reinstated details in IMS, the Firm Scheme shall proceed on the basis of those reinstated Firm Scheme Details;
 - (c) the Developer wishes to proceed with the Firm Scheme, it must immediately amend the Firm Scheme Details in IMS to reflect the Pre-First Claim Change and the recalculated Firm Scheme Grant figure. The amended Firm Scheme Details (together with any adjustments to the sum and, save in respect of a Single Claim Scheme, percentages of any subsequent Tranche due resulting from the recalculated Firm Scheme Grant figure being lower than the original Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); or
 - (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Developer to withdraw the Firm Scheme from this Agreement.

10.3.2 accepts a Pre-First Claim Change (including any change to the Firm Scheme Grant figure) as proposed by the Developer, it will accept the change through IMS and the relevant Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

10.3.3 rejects a Pre-First Claim Change, Homes England will notify the Developer and the Developer will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether it wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:

- (a) the Firm Scheme is withdrawn by the Developer, Homes England will permanently withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Developer to withdraw the Firm Scheme from this Agreement and Clause 10.3.3(a) (*Changes to Firm Schemes*) shall apply.

10.4 Where a Pre-Final Claim Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the process set out in Clause 10.5 (*Changes to Firm Schemes*) unless Homes England agrees that the relevant change may be agreed by some other means.

10.5 If Homes England:

10.5.1 accepts the Pre-Final Claim Change in principle, it shall be entitled to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Firm Scheme Grant figure than that set out in the Firm Scheme Details, Homes England will notify the Developer and the Developer will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Firm Scheme from this Agreement, proceed with the Firm Scheme on the basis of the recalculated Firm Scheme Grant figure or to retract the Pre-Final Claim Change. If:

- (a) the Developer wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Developer must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it (if any), such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (b) the Developer wishes to proceed with the Firm Scheme, it must immediately amend the Firm Scheme Details in IMS to reflect both the Pre-Final Claim Change and the recalculated Firm Scheme Grant figure and the amended Firm Scheme Details will be deemed to be effective

from the date of their acceptance by Homes England (through IMS). The remaining Tranches due to be paid to the Developer in respect of the Firm Scheme (each a **Remaining Tranche**) will be adjusted downwards to take account of the recalculated Firm Scheme Grant figure in such proportions as Homes England shall determine. If such adjustment would result in any Remaining Tranches being a negative figure (and being therefore an overpayment of Firm Scheme Grant), the Developer must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative figure and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same;

- (c) the Developer wishes to retract the Pre-Final Claim Change, it must do so immediately via IMS and the Firm Scheme will proceed as contemplated ante the Developer's submission of the Pre-Final Claim Change; or
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Developer to withdraw the Firm Scheme from this Agreement and Clause 10.5.1(a) (*Changes to Firm Schemes*) shall apply.

10.5.2 accepts the Pre-Final Claim Change (including any change to the Firm Scheme Grant figure) as proposed by the Developer, it will accept the change through IMS and the relevant Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

10.5.3 rejects the Pre-Final Claim Change, Homes England will notify the Developer and the Developer will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether it wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:

- (a) the Developer wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Developer must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Developer to withdraw the Firm Scheme from this Agreement and Clause 10.5.3(a) (*Changes to Firm Schemes*) shall apply.

10.6 A Pre-Final Claim Change may not be proposed by the Developer in respect of any Single Claim Schemes.

10.7 Homes England will not be obliged to pay any Tranche to the Developer in relation to any Firm Scheme unless any extant changes required to be made to the Firm Scheme Details

by Clause 10.3 (*Changes to Firm Schemes*) or Clause 10.5 (*Changes to Firm Schemes*) have been made and have been accepted by Homes England in IMS.

- 10.8 Under no circumstances will Homes England be required to accept any Pre-First Claim Change or Pre-Final Claim Change which would have the result of increasing the amount of the Allocated Capital Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme.
- 10.9 Where pursuant to Clause 10.5.1(b) (*Changes to Firm Schemes*) any Tranche must be adjusted downwards to take account of the recalculated Firm Scheme Grant figure, nothing shall preclude the parties from agreeing the proportion of such adjustment but in default of agreement the proportion determined by Homes England shall prevail.
- 10.10 Any change to the Firm Scheme Details and/or the Approved Capital Bid resulting from the application of this Clause 10 (*Changes to Firm Schemes*) shall be implemented by the Developer amending the Firm Scheme Details in IMS and confirmed by Homes England's acceptance of that amendment through IMS and in default of agreement the parties will be bound by the Firm Scheme Details as they existed prior to the change proposed.
- 10.11 Where a Milestone Failure occurs or is in the opinion of Homes England reasonably likely to occur (having regard to the information supplied pursuant to Clause 3 (*Review, Monitoring and Reporting*) or to Clause 8.4 (*Firm Scheme Obligations*)) and such failure is directly caused by a Milestone Extension Event, Homes England shall subject always to Clauses 10.12 (*Changes to Firm Schemes*) and 10.13 (*Changes to Firm Schemes*) extend the relevant Milestone Date and associated Firm Scheme Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.
- 10.12 Homes England shall not be obliged to extend a Milestone Date:
- 10.12.1 unless a Milestone Extension Event exists; or
 - 10.12.2 in circumstances where such extension would (when taken individually or together with other extensions in relation to the Developer) in Homes England's reasonable opinion materially and adversely affect the delivery of the Approved Capital Bid or (when taken individually or together with other extensions in relation to the Developer or other grant recipients of the AHP 2021/26) materially and adversely affect Homes England's projected expenditure profile in relation to any year of the AHP 2021/26 and in particular (but without limitation) such expenditure profile in relation to the last Quarter of the relevant Financial Year.
- 10.13 Homes England shall not under any circumstances be required or obliged to extend a Firm Scheme Completion Date beyond 31 March 2026 but may at its sole discretion elect to do so and any decision to grant such an extension shall be subject to sufficient financial resources being available to Homes England at the relevant time.
- 10.14 The Developer may, where it considers (acting reasonably) that a Firm Scheme constitutes an Undeliverable Scheme or Withdrawn Scheme, request Homes England to accept the substitution of a different scheme (a **Substitute Scheme**) in place of the Undeliverable Scheme or a Withdrawn Scheme.

10.15 If the Developer wishes to submit a Substitute Scheme, it must submit to Homes England through IMS such details of the relevant Substitute Scheme as Homes England may require. In submitting the details of the Substitute Scheme, the Developer is deemed to make and give the same representations and warranties set out in Clause 7.1 (*Firm Schemes – Submission Procedures*) in relation to the Substitute Scheme:

10.16 Homes England shall consider the submitted details and if Homes England is satisfied:

- 10.16.1 with the information provided;
- 10.16.2 with the level of grant funding requested;
- 10.16.3 with the frequency of grant payment requested;
- 10.16.4 with the Substitute Scheme offers value for money;
- 10.16.5 that the Substitute Scheme is consistent with the Approved Capital Bid (including the scheme cost information and information in relation to the level of the Developer's contribution);
- 10.16.6 that the Developer's performance in respect of other Firm Schemes has satisfied the terms of this Agreement;
- 10.16.7 that Start on Site for the Substitute Scheme will occur on or before 30 September 2025 (or such other date agreed by Homes England (in its absolute discretion) in IMS) and the Substitute Scheme can be fully Delivered by 31 March 2026;
- 10.16.8 that no Default Event subsists; and
- 10.16.9 that the Submitted Standards and the Strategic Objectives submitted in respect of such scheme by the Developer are satisfactory; and

Homes England shall be entitled (but not obliged) to accept the Substitute Scheme as a Firm Scheme.

10.17 Where Homes England accepts a Substitute Scheme into the Approved Capital Bid pursuant to Clause 10.16 (*Changes to Firm Schemes*) it will confirm its acceptance of such scheme to the Developer through IMS.

10.18 With effect from the date of Home's England's confirmation under Clause 10.17 (*Changes to Firm Schemes*):

- 10.18.1 the Substitute Scheme shall constitute a Firm Scheme and shall be immediately subject to the whole terms and conditions of this Agreement;
- 10.18.2 the details set out by the Developer in respect of the Substitute Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and
- 10.18.3 the Developer must ensure that it complies with all of its obligations under this Agreement as they apply to such Firm Scheme.

10.19 It is agreed by the parties that any Firm Scheme Grant received by the Developer in relation to the Undeliverable Scheme shall be deemed to have been received by the Developer in relation to the Substitute Scheme on the basis recorded in IMS.

10.20 The Developer acknowledges and agrees that an Undeliverable Scheme constitutes a "project" for the purposes of and falls within paragraph 6(e) of the URB Recovery Determination.

11 **Grant Claim Procedures**

11.1 In respect of a Single Claim Scheme, the Developer may only make an application for Firm Scheme Grant pursuant to Clause 11.6 (*Grant Claim Procedures*).

11.2 Subject to Clause 11.1 (*Grant Claim Procedures*), the Acceptance Date having passed and Homes England being satisfied that the Conditions Precedent have been satisfied, the Developer may apply to Homes England for the Acquisition Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Developer must make its application through IMS and in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

11.3 In submitting an application pursuant to Clause 11.2 (*Grant Claim Procedures*) the Developer is deemed to repeat the representations and warranties set out in Clause 7.2 (*Firm Schemes – Submission Procedures*) (other than Clause 7.2.2 (*Firm Schemes – Submission Procedures*)) and further represent to Homes England that:

11.3.1 the Developer possesses a Completed Interest in the Site;

11.3.2 prior to submitting its application, the Developer has incurred capital expenditure in acquiring the Site at least to the value of the Acquisition Tranche Grant claimed;

11.3.3 all confirmations and certifications made or to be made by the Developer in IMS in relation to the Firm Scheme have been, are or will be correct in all material respects;

11.3.4 the Developer retains its status as an Investment Partner;

11.3.5 no Default Event has occurred or arisen;

11.3.6 it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 8.12 (*Firm Scheme Obligations*) in respect of any Disposal of the relevant Site;

11.3.7 Start on Site is scheduled to occur on or before 30 September 2025 or such later date as Homes England may in its absolute discretion agree on IMS;

11.3.8 it has procured a valuation of the relevant Site in accordance with Clause 8.14 (*Firm Scheme Obligations*) (where applicable);

11.3.9 all information provided to Homes England pursuant to Clause 3 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of

the delivery of the Approved Capital Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;

11.3.10 any Change in Control or Restructure which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 16.6 (*Change in Control*); and

11.3.11 Practical Completion is scheduled to occur on or before 31 March 2026.

11.4 Subject to Clause 11.1 (*Grant Claim Procedures*), a Firm Scheme having reached Start on Site by the Start on Site Date and Homes England being satisfied that the Conditions Precedent have been satisfied, the Developer may apply to Homes England for the Start on Site Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Developer must make its application through IMS and in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

11.5 In submitting an application pursuant to Clause 11.4 (*Grant Claim Procedures*), the Developer is deemed to repeat the representations and warranties set out in Clause 7.2 (*Firm Schemes – Submission Procedures*), Clause 11.3.3 (*Grant Claim Procedures*) to 11.3.11 (*Grant Claim Procedures*) (inclusive) and is further deemed to represent and warrant to Homes England that:

11.5.1 Start on Site has been reached and that such date is no later than the Start on Site Date submitted in IMS and accepted by Homes England (in its absolute discretion);

11.5.2 the Developer retains its status as an Investment Partner;

11.5.3 it, a Group Company, the URB Landlord or the RP Landlord (as applicable), has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted Standards as are then required or to the extent that they are not obtained that the Developer, Group Company, the URB Landlord or the RP Landlord (as applicable) has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued; and

11.5.4 none of the circumstances set out in Clause 5.1 (*Default Events*), 12.4 (*Payment of Grant*), or 14.1 (*Withholding of Firm Scheme Grant*) have occurred or arisen;

11.6 Subject to a Firm Scheme having reached Practical Completion by the Firm Scheme Completion Date, the Developer may apply to Homes England for the Practical Completion Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Developer must make its application through IMS and in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

11.7 Not used.

- 11.8 In submitting an application pursuant to Clause 11.6 (*Grant Claim Procedures*), the Developer is deemed to represent and warrant to Homes England that:
- 11.8.1 the Firm Scheme has been procured, designed, constructed and Delivered in accordance with the requirements of this Agreement;
 - 11.8.2 the Firm Scheme has reached Practical Completion;
 - 11.8.3 all confirmations and certifications made or to be made by the Developer in IMS in relation to the Firm Scheme have been are or will be correct in all material respects;
 - 11.8.4 the RP Landlord (if applicable) is a Registered Provider, the Developer retains its status as an Investment Partner and the Know Your Customer Information provided pursuant to Clause 8.9 (*Firm Scheme Obligations*) or 3.18.4 (*Review, Monitoring and Reporting*) in respect of the RP Landlord or URB Landlord (as applicable) has not been updated since its provision to Homes England and is satisfactory to Homes England;
 - 11.8.5 the Firm Scheme Details on IMS are fully up to date having regard to Clause 8.9 (*Firm Scheme Obligations*);
 - 11.8.6 it, a Group Company, the URB Landlord or the RP Landlord (as applicable), has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted Standards as are then required or to the extent that they are not obtained that the Developer, Group Company, the URB Landlord or the RP Landlord (as applicable) has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;
 - 11.8.7 save where the Site is already in the ownership of the RP Landlord or URB Landlord (as applicable), an Agreed Transfer as contemplated in the Firm Scheme Details has been executed and delivered in escrow conditional only on payment of the Firm Scheme Grant and payment of the stipulated consideration by the applicable RP Landlord or URB Landlord (if any) and the conveyancers for the disponee have verified the identity of the parties to the Agreed Transfer deed (or any other document connected with the Agreed Transfer) in accordance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
 - 11.8.8 all the AHP Dwellings comprised in the Firm Scheme meet the standards and requirements of a buildings standards indemnity scheme currently approved by the Council of Mortgage Lenders and those dwellings (if any) which have been developed from former commercial buildings will qualify for mortgages;
 - 11.8.9 all information provided to Homes England pursuant to Clause 3 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of

the delivery of the Approved Capital Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;

11.8.10 any Change in Control or Restructure which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 16.6 (*Change in Control*);

11.8.11 the Firm Scheme has been delivered in accordance with the Submitted Standards, the Strategic Objectives, the Firm Scheme Details and the requirements of this Agreement; and

11.8.12 none of the circumstances set out in Clause 5.1 (*Default Events*) or Clause 14.1 (*Withholding of Firm Scheme Grant*) has occurred or arisen.

11.9 The application pursuant to Clause 11.6 (*Grant Claim Procedures*) must be accompanied with a RP Deed of Adherence executed by the RP Landlord or, in the case of URB Landlord, a URB Deed of Adherence executed by the URB Landlord together with irrevocable authority from the RP Landlord or URB Landlord (as applicable) for Homes England to complete the RP Deed of Adherence or URB Deed of Adherence following its execution by Homes England.

11.10 Where any Firm Scheme is identified on IMS as being an MMC Scheme, the parties may agree alternative claim arrangements and/or Milestones (which better reflect the nature and characteristics of Modern Methods of Construction) in IMS or in such other medium as Homes England may specify and where this Clause 11.10 (*Grant Claim Procedures*) applies Homes England reserves the right to require that the Developer makes additional representations and warranties as a condition of any claim for Firm Scheme Grant.

11.11 For the purposes of Clause 11.2 (*Grant Claim Procedures*), Clause 11.4 (*Grant Claim Procedures*) and Clause 12.1.3 (*Payment of Grant*), Homes England's entry into all required Payment Guarantee(s) and/or any other document required to give effect to any Alternative Security (in such form as Homes England reasonably requires) shall, subject always to Clause 4.6 (*The Guarantor and Alternative Security*) and Clause 4.7 (*The Guarantor and Alternative Security*), indicate Homes England's then current agreement that limbs (a) and (c) in the definition of Security Condition have been satisfied but to the extent that any Alternative Security does not require entry by Homes England into any such documentation then the Developer shall seek Homes England's written confirmation of its satisfaction with such Alternative Security.

12 **Payment of Grant**

12.1 Subject to:

12.1.1 Homes England (acting reasonably) being satisfied with the Developer's application for payment including the information warranted pursuant to Clauses 11.3 (*Grant Claim Procedures*) and 11.5 (*Grant Claim Procedures*); and

12.1.2 Clause 12.3 (*Payment of Grant*), 12.4 (*Payment of Grant*) and 14.1 (*Withholding of Firm Scheme Grant*);

- 12.1.3 the Conditions Precedent having been satisfied where the Developer's application is for Acquisition Tranche Grant or Start on Site Tranche Grant;
- 12.1.4 payment of Acquisition Tranche Grant or Start on Site Tranche Grant claimed would not result in the Incomplete Scheme Aggregation Sum being equal to or exceeding the Secured Amount;
- 12.1.5 on the Developer's application for Practical Completion Tranche Grant, Homes England (acting reasonably) being satisfied with the RP Deed of Adherence and/or such other document provided in accordance with Clause 11.9 (*Grant Claim Procedures*),

Homes England shall (resources permitting) pay the Acquisition Tranche Grant, Start on Site Tranche Grant or the Practical Completion Tranche Grant (as applicable) to the Developer within fifteen (15) Business Days of receipt of a relevant satisfactory application.

12.2 If Homes England is not satisfied with the Developer's application for payment, it must notify the Developer in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. Homes England must allow the Developer a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Clause 11 (*Grant Claim Procedures*) and this Clause 12 (*Payment of Grant*) (as applicable) will be reapplied to the Developer's resubmitted or amended application for payment.

12.3 Homes England shall not be obliged to pay the Developer in respect of a Firm Scheme any:

- 12.3.1 Acquisition Tranche Grant before the Acquisition Date (as confirmed by Homes England through IMS) or in respect of any Single Claim Scheme;
- 12.3.2 Start on Site Tranche Grant where Start on Site has not occurred on or before the Start on Site Date (as confirmed by Homes England through IMS) or in respect of any Single Claim Scheme;
- 12.3.3 Practical Completion Tranche Grant before the Practical Completion Date (as confirmed by Homes England through IMS);
- 12.3.4 Tranche if the Firm Scheme has not been accepted by Homes England through IMS.

12.4 Homes England shall not be obliged to make payment by way of Acquisition Tranche Grant, Start on Site Tranche Grant or Practical Completion Tranche Grant (as applicable) or otherwise to the Developer in respect of any Firm Scheme where:

- 12.4.1 the RP Landlord's status as a Registered Provider is lost or removed;
- 12.4.2 the RP Landlord (where it is an LA Provider):
 - (a) is subject to any Section 15 Direction or any circumstances exist which would permit such a direction to be issued; or

- (b) has or any of its officers have made a Section 114 Report or Homes England is made aware of any circumstances which would give rise to the making of a Section 114 Report;
 - 12.4.3 the Regulator directs Homes England not to give financial assistance to the RP Landlord of that Firm Scheme or formally recommends to it that it should not do so or where the Landlord is insolvent;
 - 12.4.4 the URB Landlord or RP Landlord (as applicable) has ceased to operate;
 - 12.4.5 an Insolvency Event has occurred in relation to the RP Landlord (that is not an LA Provider) or URB Landlord (as applicable);
 - 12.4.6 there has been a material and adverse change in relation to the URB Landlord's financial or commercial standing;
 - 12.4.7 the RP Landlord or URB Landlord (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;
 - 12.4.8 payment of such Tranche would be inconsistent with the terms of the Capital Funding Guide; or
 - 12.4.9 the Firm Scheme has not reached Start on Site by the Start on Site Date (with the exception of Acquisition Tranche Grant);
 - 12.4.10 the Firm Scheme has not reached Practical Completion by 31 March 2026;
- 12.5 Where a circumstance of the type specified in Clause 12.4 (*Payment of Grant*) occurs (a **12.4 Occurrence**):
- 12.5.1 the Developer shall as soon as reasonably practicable give written notice to Homes England of the 12.4 Occurrence; and
 - 12.5.2 where the 12.4 Occurrence is in respect of Clauses 12.4.1 (*Payment of Grant*) to 12.4.5 (*Payment of Grant*) and the proposed landlord of the Firm Scheme is a Registered Provider or Clause 12.4.1 (*Payment of Grant*) applies:
 - (a) Homes England shall use its reasonable endeavours to procure from the Regulator, within thirty (30) Business Days from the date upon which notice of the same is given to the Developer, the identity of a person approved in writing by the Regulator that may accept a transfer of the Site and the Developer shall within such period as may be agreed with Homes England (not exceeding forty (40) Business Days) use all reasonable endeavours to (a) where the Developer has the Secure Legal Interest enter into a binding contract to transfer the Site to such party (**RP Selected Party**) or (b) where a Group Company or the RP Landlord has the Secure Legal Interest procure that the Group Company or the RP Landlord (as applicable) enters into a binding contract to transfer the Site to the RP Selected Party provided always that the Developer or the Group Company (as applicable) shall not be obliged to agree a price for the Site

which is less than had been agreed with the RP Landlord (as identified in the relevant Firm Scheme Details);

- (b) if the Regulator fails to respond within the timescale identified in Clause 12.5.2(a) (*Payment of Grant*) or it does not identify a prospective replacement for the RP Landlord pursuant to Clause 12.5.2(a) (*Payment of Grant*) or if the Developer fails to enter into a binding contract with the RP Selected Party within forty (40) Business Days of the date of the identification of the RP Selected Party under Clause 12.5.2(a) (*Payment of Grant*) Homes England or the Developer may determine (acting reasonably) that the Firm Scheme is to be withdrawn from the Approved Capital Bid and notify the other in writing of such withdrawal;

12.5.3 where the 12.4 Occurrence is in respect of Clauses 12.4.4 (*Payment of Grant*) to 12.4.7 (*Payment of Grant*) and the proposed landlord is a URB:

- (a) the Developer shall within thirty (30) Business Days from the date upon which notice of the same is given to the Developer, provide Homes England the identity of a substitute landlord that may accept a transfer of the Site and the Developer shall within such period as may be agreed with Homes England (not exceeding forty (40) Business Days) use all reasonable endeavours to (a) where the Developer has the Secure Legal Interest enter into a binding contract to transfer the Site to such party (**URB Selected Party**) or (b) where a Group Company or the URB Landlord has the Secure Legal Interest procure that the Group Company or the URB Landlord (as applicable) enters into a binding contract to transfer the Site to the URB Selected Party provided always that the Developer or the Group Company (as applicable) shall not be obliged to agree a price for the Site which is less than had been agreed with the URB Landlord (as identified in the relevant Firm Scheme Details);

- (b) if the Developer fails to respond within the timescale identified in Clause 12.5.3(a) (*Payment of Grant*) or it does not identify a prospective replacement for the URB Landlord pursuant to Clause 12.5.3(a) (*Payment of Grant*) satisfactory to Homes England or if the Developer fails to enter into a binding contract with the URB Selected Party within forty (40) Business Days of the date of the identification of the URB Selected Party under Clause 12.5.3(a) (*Payment of Grant*) Homes England or the Developer may determine (acting reasonably) that the Firm Scheme is to be withdrawn from the Approved Capital Bid and notify the other in writing of such withdrawal;

12.5.4 where the 12.4 Occurrence is in respect of Clauses 12.4.7 (*Payment of Grant*) and the proposed landlord of the Firm Scheme is a Registered Provider:

- (a) the Developer shall within thirty (30) Business Days from the date upon which notice of the same is given to the Developer, provide Homes England the identity of a substitute landlord that may accept a transfer of the Site and the Developer shall within such period as may be agreed with Homes England (not exceeding forty (40) Business Days) use all

reasonable endeavours to (a) where the Developer has the Secure Legal Interest enter into a binding contract to transfer the Site to such party (**Selected Party**) or (b) where a Group Company or the RP Landlord has the Secure Legal Interest procure that the Group Company or RP Landlord (as applicable) enters into a binding contract to transfer the Site to the Selected Party provided always that the Developer or the Group Company (as applicable) shall not be obliged to agree a price for the Site which is less than had been agreed with the RP Landlord (as identified in the relevant Firm Scheme Details);

- (b) if the Developer fails to respond within the timescale identified in Clause 12.5.4(a) (*Payment of Grant*) or it does not identify a prospective replacement for the RP Landlord pursuant to Clause 12.5.4(b) (*Payment of Grant*) satisfactory to Homes England or if the Developer fails to enter into a binding contract with the Selected Party within forty (40) Business Days of the date of the identification of the Selected Party under Clause 12.5.4(a) (*Payment of Grant*) Homes England or the Developer may determine (acting reasonably) that the Firm Scheme is to be withdrawn from the Approved Capital Bid and notify the other in writing of such withdrawal.

12.6 Where the provisions of Clause 12.5.2 (*Payment of Grant*), Clause 12.5.3 (*Payment of Grant*) or Clause 12.5.4 (*Payment of Grant*) apply and a Selected Party, URB Selected Party or RP Selected Party (as applicable) is identified, the Developer shall amend the Firm Scheme Details on IMS accordingly.

12.7 The procedure in Clauses 12.4 (*Payment of Grant*) and 12.5 (*Payment of Grant*) may be repeated.

12.8 Where Homes England pays Firm Scheme Grant to the Developer, the Allocated Capital Grant shall be reduced by a commensurate amount.

13 **Adjustments to Practical Completion Tranche Grant**

13.1 If Homes England becomes aware (whether prior to or following receipt of the Developer's application for payment of Practical Completion Tranche Grant) that the Developer has failed to Deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details (including the Submitted Standards and the Strategic Objectives), Homes England shall be entitled (at its discretion) either:

13.1.1 to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the Firm Scheme that has actually been Delivered; or

13.1.2 to:

- (a) withhold and cancel the Practical Completion Tranche Grant payment due in relation to the relevant Firm Scheme;
- (b) reallocate or redirect an amount equivalent to such Practical Completion Tranche Grant due to such other person or purpose as Homes England in its discretion considers appropriate; and

- (c) save in respect of a Single Claim Scheme, recover from the Developer a sum equivalent to any Firm Scheme Grant already paid to it in relation to the relevant Firm Scheme.

13.2 If Homes England exercises its right under Clause 13.1.1 (*Adjustments to Practical Completion Tranche Grant*), Homes England will notify the Developer and the Developer will have ten (10) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Firm Scheme from this Agreement or to proceed with the Firm Scheme on the basis of the recalculated Firm Scheme Grant figure. If:

13.2.1 the Developer wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the Practical Completion Tranche Grant allocated to such scheme and the Developer must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it, if any, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;

13.2.2 the Developer wishes to proceed with the Firm Scheme:

- (a) it must immediately amend the Firm Scheme Details in IMS to reflect the recalculated Firm Scheme Grant figure and any Tranche already received. The amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and
- (b) the Practical Completion Tranche Grant figure will be adjusted to take account of the recalculated Firm Scheme Grant figure and of any change to the sum and percentage amount necessitated by the recalculated Firm Scheme Grant figure being lower than the original Firm Scheme Grant figure. If such adjustment would result in the Practical Completion Tranche Grant being a negative amount (and being therefore an overpayment of Firm Scheme Grant), the Developer must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative amount and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same; and
- (c) Homes England will (resources permitting) pay the adjusted Practical Completion Tranche Grant (subject to it being a positive amount) to the Developer within fifteen (15) Business Days of the date of Homes England's acceptance of the Developer's amendments to the Firm Scheme Details referred to in Clause 13.2.2(a) (*Adjustments to Practical Completion Tranche Grant*);

13.3 If the Developer fails to provide a definitive response to Homes England within the period prescribed in Clause 13.2 (*Adjustments to Practical Completion Tranche Grant*), Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Developer to withdraw the Firm Scheme from this Agreement and the provisions of Clause 13.2.1 (*Adjustments to Practical Completion Tranche Grant*) shall take effect.

- 13.4 Under no circumstances will Homes England be required to accept or implement any recalculation pursuant to Clause 13.2 (*Adjustments to Practical Completion Tranche Grant*) which would have the result of increasing the amount of the Allocated Capital Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme as reflected in the Firm Scheme Details ante the amendments referred to in Clause 13.2.2(a).
- 13.5 If Homes England exercises its rights under Clause 13.1.2 (*Adjustments to Practical Completion Tranche Grant*), the Developer must repay Homes England all sums due thereunder in accordance with the provisions of Clause 15.5 (*Repayment of Grant*).

14 **Withholding of Firm Scheme Grant**

- 14.1 Notwithstanding any other term of this Agreement Homes England shall not be obliged to make any payment to the Developer whether by way of Firm Scheme Grant or otherwise where:
- 14.1.1 the Firm Scheme has not been Delivered in accordance with the Firm Scheme Details (including the Submitted Standards and the Strategic Objectives) or in accordance with the Firm Scheme Delivery Timetable (in circumstances where Homes England was unable to agree revised Milestone Dates);
 - 14.1.2 the Developer is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in under this Agreement;
 - 14.1.3 a Prohibited Act has been committed by or on behalf of the Developer and the Developer has not satisfied the Waiver Condition in respect of such Prohibited Act;
 - 14.1.4 an Insolvency Event has occurred in relation to the Developer;
 - 14.1.5 the Developer ceases to operate or trade;
 - 14.1.6 the Developer's Investment Partner status is removed or withdrawn;
 - 14.1.7 where the Developer is in material breach of any obligation in this Agreement and it has not taken steps to remedy it to Homes England's satisfaction (acting reasonably);
 - 14.1.8 in Homes England's opinion, the Developer (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;
 - 14.1.9 subject to Clause 4 (*The Guarantor and Alternative Security*), the Incomplete Scheme Aggregation Sum is equal to or exceeds the Secured Amount;
 - 14.1.10 Homes England has exercised its rights under Clause 4.6.1(a) (*The Guarantor and Alternative Security*) or Clause 4.6.2(a) (*The Guarantor and Alternative Security*) and the Developer has failed to or has yet to comply

with the provisions of Clause 4.6.1(c) (*The Guarantor and Alternative Security*) and Clause 4.6.2(c) (*The Guarantor and Alternative Security*);

14.1.11 the Developer has failed to comply with Clause 16 (*Change in Control*); or

14.1.12 any Consent necessary to Deliver a Firm Scheme or the Approved Capital Bid (as applicable) is revoked or withdrawn.

14.2 In the circumstances contemplated in Clauses 14.1.1 (*Withholding of Firm Scheme Grant*) and 14.1.2 (*Withholding of Firm Scheme Grant*) Homes England (acting reasonably) shall be entitled (but not obliged) to elect between (i) withholding the Firm Scheme Grant as permitted by Clause 14.1 (*Withholding of Firm Scheme Grant*) and (ii) agreeing a revised Firm Scheme Grant figure for the Firm Scheme and in either case shall be entitled to notify the Developer in writing of such election to take account of any change required to the Approved Capital Bid.

14.3 Where a change to the Firm Scheme Grant and the Approved Capital Bid is agreed between the parties pursuant to the provisions of Clause 14.2 (*Withholding of Firm Scheme Grant*) and confirmed by Homes England through IMS, Homes England shall (to the extent consistent with the change to the Approved Capital Bid) pay the Firm Scheme Grant (*mutatis mutandis*), or relevant Tranche thereof, to the Developer within fifteen (15) Business Days of the date of it making its confirmation in IMS. In default of agreement, Homes England shall be entitled to withhold the Firm Scheme Grant.

14.4 Without prejudice to any other term of this Agreement, where Homes England determines (acting reasonably) that proper progress against the Developer's delivery projections in the Approved Capital Bid has not been made by the Developer in delivering the Approved Capital Bid, Homes England shall be entitled (acting reasonably) and without any liability to the Developer permanently to withhold any Firm Scheme Grant and to reallocate it to a third party **provided that** Homes England shall not be entitled to withhold grant under this Clause 14.4 (*Withholding of Firm Scheme Grant*) from a Firm Scheme in relation to which Start on Site has occurred by the Start on Site Date. Nothing in this Clause 14.4 (*Withholding of Firm Scheme Grant*) shall preclude Homes England from withholding the relevant Firm Scheme Grant on any other ground.

15 **Repayment of Grant**

15.1 The parties acknowledge and agree that notwithstanding any other term of this Agreement:

15.1.1 the URB Recovery Determination has effect (*mutatis mutandis*) in respect of grant paid to the Developer under this Agreement and that each party has the respective rights and obligations described in such determination;

15.1.2 for the purposes of the URB Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and

15.1.3 on the occurrence of a Relevant Event the Developer must repay the Capital Grant Recoverable in each case in accordance with the terms of the URB Recovery Determination.

15.2 Without prejudice to any other term of this Agreement, Homes England reserves the right whether following termination of this Agreement or otherwise (which right the Developer expressly acknowledges and agrees) at its discretion to recover from the Developer the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Clause 15.3 (*Repayment of Grant*) (the **Recoverable Amount**) in circumstances where:

- 15.2.1 a Prohibited Act has occurred and the Developer has not satisfied the Waiver Condition in respect of such Prohibited Act;
- 15.2.2 the relevant Tranche has been paid to the Developer on the basis of a misrepresentation made by or on behalf of the Developer other than in the circumstances specified in Clause 15.2.5 (*Repayment of Grant*);
- 15.2.3 Homes England has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Developer;
- 15.2.4 a Balancing Sum has arisen;
- 15.2.5 the relevant Tranche has been paid to the Developer but Homes England becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Developer has failed to Deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;
- 15.2.6 the Developer (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;
- 15.2.7 a Default Event has occurred and Homes England is entitled to terminate this Agreement pursuant to Clauses 5.4.1 (*Default Events*) or 5.4.2 (*Default Events*);
- 15.2.8 the Start on Site (including the actions contemplated thereby) for the relevant Firm Scheme has not been achieved by 30 September 2025 or such later date as Homes England may in its absolute discretion agree in IMS;
- 15.2.9 the Developer has failed to comply with Clause 4.6.1(c) (*The Guarantor and Alternative Security*) or Clause 4.6.2(c) (*The Guarantor and Alternative Security*) within 20 Business Days from the notice provided by Homes England pursuant to Clause 4.6.1(b) (*The Guarantor and Alternative Security*) or Clause 4.6.2(b) (*The Guarantor and Alternative Security*) (as applicable); or
- 15.2.10 a Firm Scheme is withdrawn pursuant to Clause 12.5.2(b) (*Payment of Grant*) or Clause 12.5.3(b) (*Payment of Grant*).

15.3 In the circumstances set out in:

- 15.3.1 Clauses 15.2.1 (*Repayment of Grant*) or 15.2.2 (*Repayment of Grant*) or 15.2.6 (*Repayment of Grant*), 15.2.7 (*Repayment of Grant*) or 15.2.10 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent

to the Firm Scheme Grant paid with respect to any Firm Scheme deemed by Homes England (acting reasonably) to have been affected;

15.3.2 Clauses 15.2.3 (*Repayment of Grant*) and 15.2.4 (*Repayment of Grant*), 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;

15.3.3 Clause 15.2.5 (*Repayment of Grant*), subject always to Clause 15.4 (*Repayment of Grant*), the Recoverable Amount shall be determined in accordance with the following procedure:

- (a) the parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure for the Firm Scheme Grant figure reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;
- (b) where a revised figure for Firm Scheme Grant is agreed, the Recoverable Amount shall be the difference between the amount which is the revised figure for the Firm Scheme Grant and the amount paid to the Developer by way of Firm Scheme Grant for that Firm Scheme;
- (c) the Developer shall amend the relevant information on IMS in respect of the relevant Firm Scheme to reflect the agreement made pursuant to Clause 15.3.3(a) (*Repayment of Grant*);
- (d) where the parties are unable to agree a revised Firm Scheme Grant figure in accordance with Clause 15.3.3(a) (*Repayment of Grant*) Homes England shall be entitled to exercise its termination rights under Clause 5 (*Default Events*) and the Recoverable Amount shall be an amount equal to the Firm Scheme Grant paid pursuant to Clause 12.1 (*Payment of Grant*) in respect of the relevant Firm Scheme;

15.3.4 Clause 15.2.8 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to any Acquisition Tranche Grant paid; and

15.3.5 Clause 15.2.9 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to the Incomplete Scheme Aggregation Sum.

15.4 Where Homes England (acting reasonably) considers that the Developer acted fraudulently or dishonestly in claiming any Tranche for the relevant Firm Scheme, Homes England shall be entitled to treat such claim as a Prohibited Act for the purposes of Clause 15.2.1 (*Repayment of Grant*) and will not be bound by the terms of Clause 15.3.3 (*Repayment of Grant*).

15.5 The Developer must pay the Recoverable Amount to Homes England 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, such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof) overpayment or payment in error (as applicable) was paid to the Developer until the date upon which Homes England receives the repayment required from the Developer under this Clause 15 (*Repayment of Grant*).

15.6 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.

15.7 Notwithstanding any other term of this Clause 15 (*Repayment of Grant*), where a payment has been made following an administrative error by Homes England (for which the Developer was not responsible), the Developer shall not be liable for interest on the amount repayable under Clause 15.5 (*Repayment of Grant*).

15.8 Save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Developer to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.

16 **Change in Control**

16.1 Save in respect of a Change in Control of a company whose shares are listed on a recognised investment exchange as such expression is defined in the Financial Services and Markets Act 2000, during the period prior to and including the date upon which the Practical Completion Tranche Grant is paid in respect of a Firm Scheme, the Developer will not without the prior written consent of Homes England allow any Change in Control of either or both of:

16.1.1 the Developer; or

16.1.2 the holding company of the Developer (if any).

16.2 The consent of Homes England under Clause 16.1 (*Change in Control*) will not be unreasonably withheld or delayed **provided that** Homes England is notified about any proposed Change in Control and receives all the information required under Clause 16.4 (*Change in Control*) at least twenty-five (25) Business Days prior to the Change in Control being effected Homes England hereby records its intention (but without fettering its rights hereunder) to look favourably on applications for consent to Change in Control or which will not adversely affect the delivery of any Firm Scheme or Firm Schemes.

16.3 Without prejudice to the generality of Clause 16.2 (*Change in Control*), it shall be reasonable for Homes England to withhold its consent either at the date when application for consent to Change in Control is made to Homes England or after that date but before Homes England's consent is given if the proposed Controller:

16.3.1 does not have sufficient

(a) financial standing;

(b) organisational standing and capacity; or

(c) reputation,

for it to be reasonable for Homes England to assume that it will ensure that the Developer complies with this Agreement, or

16.3.2 is a Prohibited Person.

16.4 The application for consent to Change in Control must be accompanied by:

- 16.4.1 full written details setting out all the terms and conditions of the Change in Control reasonably necessary for Homes England to assess whether the delivery of the Firm Schemes might be affected and/or whether the proposed Controller has sufficient financial standing, organisational standing and capacity and reputation for it to be reasonable for Homes England to assume the proposed Controller will be able to comply with this Agreement;
- 16.4.2 where the proposed Controller is an incorporated body certified copies of the proposed Controller's audited accounts for each of the two (2) financial years immediately preceding the date of the application for consent to the Change in Control, the latest audited accounts being to a date not more than ten (10) months before the date of the application insofar as available for recently incorporated bodies;
- 16.4.3 references from the proposed Controller's bankers confirming that the proposed Controller is considered good for the obligations of the Developer under this Agreement;
- 16.4.4 an undertaking from the Developer's solicitors requesting consent to Change in Control or for the proposed Controller to pay the reasonable costs disbursements and any VAT on them which may properly be incurred by Homes England in:
- (a) considering the application (whether or not consent is granted); and
 - (b) granting consent (if it is granted).
- 16.5 If at any time before the proposed Change in Control has been effected any of the reasons for withholding consent specified in Clause 16.3 (*Change in Control*) apply Homes England may revoke its consent to such proposed Change in Control by written notice to the Developer.
- 16.6 Save where:
- 16.6.1 the Developer or its holding company is a public limited company and is prohibited by listing rules from doing so; or
 - 16.6.2 a Change in Control occurs automatically by operation of law and without the Developer being able to notify in advance,

the Developer shall provide Homes England with a completed Constitutional Change Notification (in accordance with the requirements of Clause 8.12 (*Operational Obligations*)) at least ten (10) Business Days prior to any Change in Control or Restructure. Where the circumstances contemplated in Clause 16.6.1 (*Operational Obligations*) or Clause 16.6.2 (*Operational Obligations*) apply the Developer shall provide Homes England with a completed Constitutional Change Notification within ten (10) Business Days of the relevant Change in Control or Restructure occurring.

17 **VAT**

17.1 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 Developer.

17.2 The Developer 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 Developer 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.

17.3 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 Developer shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of any VAT upon the earlier of:

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

17.3.2 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.

17.4 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.

18 **Open Book Obligations**

18.1 The Developer shall on an Open Book Basis:

18.1.1 at all times maintain a full record of particulars of all the income (including Public Sector Funding) received and Development Costs incurred by the Developer in respect of each Firm Scheme;

18.1.2 at all times when reasonably required to do so by Homes England, provide a summary of any of the income and Development Costs referred to in Clause 18.1.1 (*Open Book Obligations*) as Homes England may reasonably require to enable it to monitor the performance by the Developer of its obligations under this Agreement; and

18.1.3 at all times provide such access or facilities as Homes England may reasonably require for its representatives to visit any place where the

records are held and examine the records maintained under this Clause 18 (*Open Book Obligations*).

18.2 Compliance with the above shall require the Developer to keep (and where appropriate to procure that any Subcontractor shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Developer or Subcontractor and which do not directly relate to any Firm Scheme) in accordance with good accountancy practice with respect to all Firm Schemes showing in detail:

- 18.2.1 income (including Public Sector Funding and receipts);
- 18.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;
- 18.2.3 payments made to Subcontractors;
- 18.2.4 capital and revenue expenditure;
- 18.2.5 VAT incurred on all items of expenditure where the Developer has received grant under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the Developer of such VAT as input tax from HM Revenue & Customs or other competent authority;
- 18.2.6 such other item as Homes England may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement; and
- 18.2.7 items of SPEI Revenue, the Firm Scheme Grant and SPEI Allowable Costs,

and the Developer shall have (and procure that to the extent expressly agreed the Subcontractors shall have) the books of account evidencing the items listed in this Clause available for inspection by Homes England (and any person appointed pursuant to the dispute resolution provisions at Clause 29 (*Dispute resolution*)) to determine a dispute or otherwise authorised by Homes England) upon reasonable notice, and shall submit a report of these to Homes England as and when requested.

19 **Transparency Obligations**

19.1 The Developer acknowledges that:

- 19.1.1 where the Allocated Capital Grant (itself or if aggregated with other AHP 2021/26 Funds or funds made available to it under (i) any subsequent Homes England capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, the Developer 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; and

19.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, its consent is hereby given to 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 Approved Capital Bid, Development Costs, other costs and funding for Firm Schemes, including from time to time agreed changes to this information.

19.2 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:

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

19.2.2 without consulting the Developer.

19.3 The Developer shall assist and cooperate with Homes England to enable Homes England to publish the information referred to in Clause 19.1.2 (*Transparency Obligations*).

20 **Subsidy**

20.1 This Agreement is drafted with the intention that it is lawful and complies with the requirements of the United Kingdom Competition Requirement.

20.2 The Developer acknowledges and accepts the SPEI Entrustment. If the Agreement Funding gives rise to an SPEI Overpayment or otherwise constitutes Unlawful Subsidy then Homes England shall be entitled to recover from the Developer the amount of such SPEI Overpayment and/or Unlawful Subsidy together with such interest as it is required by law to recover and the Developer must pay such amount(s) within ten (10) Business Days of Homes England requesting repayment.

20.3 The Developer 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.

20.4 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 Developer to vary this Agreement to the extent necessary to comply with such change in Legislation.

21 **Anti-Bribery and Anti-Corruption**

The Developer must comply with the terms of Schedule 4 (*Anti-Bribery and Anti-Corruption*).

22 **Information and Confidentiality**

The Developer must comply with the terms of Schedule 5 (*Information and Confidentiality*).

23 **Data Protection**

The Developer must comply with the terms of Schedule 6 (*Data Protection*).

24 **Intellectual Property**

The Developer must comply with the terms of Schedule 7 (*Intellectual Property*).

25 **Developer's records and accounting**

25.1 The Developer shall, as and when requested by Homes England whether before or after the date of payment of the Firm Scheme Grant, make available in a timely manner to Homes England where required in connection with this Agreement or the Approved Capital Bid hard and/or electronic copies of each of:

25.1.1 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 Developer for the purposes of this Agreement;

25.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Developer's officers, employees, agents or consultants relating to the Firm Schemes and which have been supplied to the Developer for the purposes of this Agreement; and

25.1.3 the elemental breakdown of the construction costs in relation to each Firm Scheme.

25.2 On the expiry of this Agreement or (if earlier) upon termination thereof, the Developer shall if requested to do so deliver up or procure the delivery to Homes England all the data, materials, documents and accounts referred to in this Clause 25 (*Developer's records and accounting*).

25.3 The Developer must for a period of ten (10) years from the date upon which it receives the Firm Scheme Grant retain all of the data, documents, materials and accounts referred to in this Clause 25 (*Developer's records and accounting*) and the Developer may retain such data, documents, materials and accounts in electronic form only.

25.4 The Developer acknowledges its obligations under Clause 3 (*Review, Monitoring and Reporting*).

26 **Health and Safety and compliance**

26.1 The Developer will:

26.1.1 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, minimum and living wages and other relevant employment matters;

26.1.2 comply with all applicable anti-slavery and human trafficking Legislation from time to time in force including but not limited to the Modern Slavery Act 2015; and

26.1.3 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 will use reasonable endeavours to procure that all Developer Parties engaged in the delivery of the Approved Capital Bid do likewise.

- 26.2 The Developer confirms that it 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 will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.
- 26.3 The Developer 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.
- 26.4 To the extent that Homes England is a 'client' for the purposes of the CDM Regulations:
- 26.4.1 where the Developer is engaging consultants and a contractor or contractors as Subcontractors to Deliver the Firm Scheme the Developer elects to be the only client in relation to such Firm Scheme; or
 - 26.4.2 where the Developer is contracting with a developer as a Subcontractor to Deliver a Firm Scheme the Developer shall procure that such developer shall elect to be the only client in relation to the Firm Scheme on or before the date that such scheme becomes a Firm Scheme,
- and Homes England hereby agrees to such election.
- 26.5 The Developer shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Clause 26.4.1 (*Health and Safety and compliance*) or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to Clause 26.4.1 (*Health and Safety and compliance*) without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.
- 26.6 The Developer shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.
- 26.7 The Developer shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 26.8 The Developer shall at all times maintain and procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme in the form set out in Schedule 3 (*Form of Health and Safety Report*) to this Agreement.
- 26.9 Without prejudice to any other provision of this Agreement, the Developer shall notify Homes England's Safety Health and 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 a Firm Scheme:
- 26.9.1 any specified (major) injuries, requiring reporting under RIDDOR;

- 26.9.2 a fatal accident to any worker or a member of the public;
- 26.9.3 any injury to a member of the public requiring reporting under RIDDOR;
- 26.9.4 any dangerous occurrence, as defined by RIDDOR;
- 26.9.5 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);
- 26.9.6 any incident having health, safety or environmental implications which attracts the attention of the police and/or the media;
- 26.9.7 the commencement of any criminal prosecution under health and safety or environmental legislation; and
- 26.9.8 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.

26.10 The Developer 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 Developer 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.

27 **Construction Industry Scheme**

27.1 In this Clause 27 (*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.

27.2 The Developer 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 Developer is entitled to receive payments under Construction Contracts without any deduction under the CIS. The Developer undertakes to notify Homes England within two (2) Business Days of ceasing to hold gross payment status.

27.3 The Developer 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.

28 **Assignment and sub-contracting**

28.1 Homes England will be entitled to transfer or assign all or part of this Agreement at any time without the consent of the Developer.

28.2 The Developer will not be entitled to transfer or assign all or part of this Agreement.

29 **Dispute resolution**

29.1 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 29 (*Dispute resolution*).

29.2 **Negotiation**

29.2.1 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 Developer's Representative 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 29.2 (*Negotiation*).

29.2.2 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 Developer and the chief executive officer of Homes England (together, the **Chief Executives**).

29.2.3 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.

29.3 **Referral to Expert**

29.3.1 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 29.3 (*Referral to Expert*).

29.3.2 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.

- 29.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause 29.3 (*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 29.3 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.
- 29.3.4 All matters under this Clause 29.3 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.
- 29.3.5 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.
- 29.3.6 To the extent not provided for by this Clause 29.3 (*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.
- 29.3.7 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 29.3 (*Referral to Expert*).
- 29.3.8 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 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.
- 29.3.9 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.

29.4 **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 29.2 (*Negotiation*) and/or 29.3 (*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.

29.5 **Continued Performance**

No reference of any dispute to an Expert pursuant to this Clause 29 (*Dispute resolution*) shall relieve any party from any liability for the due and punctual performance of its obligations under this Agreement.

30 **Co-operation**

30.1 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 Firm Schemes.

30.2 Without prejudice to the generality of the foregoing the Developer shall promptly and fully co-operate with any request for information or evidence from time to time of:

30.2.1 any auditor (whether internal or external) of Homes England; and/or

30.2.2 Homes England, to the extent such request relates to this Agreement (or any matter associated with it) and which Homes England is required by any Competent Authority or by Legislation to provide to any third party.

30.3 **Further Assurance**

30.4 At any time upon the written request of Homes England the Developer:

30.4.1 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 Developer hereby irrevocably appoints Homes England as its attorney solely for that purpose; and

30.4.2 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.

31 **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.

32 **No agency**

32.1 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.

32.2 The Developer 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 Developer. Neither the Developer nor any of its employees shall at any time hold itself or themselves out to be an employee of Homes England.

33 **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.

34 **Entire Agreement**

34.1 This Agreement and the Clauses herein contained together with the Schedules and Annexes, Capital Funding Guide and URB Recovery Determination constitute the entire agreement between the parties and may only be varied or modified in writing by deed.

34.2 The Developer 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 Developer is entering into this Agreement.

35 **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, Clause 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.

36 **Cumulative rights and enforcement**

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

36.2 The parties acknowledge that money damages alone may not properly compensate Homes England for any breach of the Developer'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.

37 **Waiver**

37.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by Homes England of Firm Scheme Grant under Clause 12 (*Payment of Grant*) 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 breach of any provision or be a waiver of the provision itself.

37.2 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.

37.3 Any waiver or release of any right or remedy of either party must be specifically granted in writing signed by that party and shall:

- 37.3.1 be confined to the specific circumstances in which it is given;
- 37.3.2 not affect any other enforcement of the same or any other right; and
- 37.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

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 Developer 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 2 (*The Approved Capital Bid*), 3 (*Review, Monitoring and Reporting*), 5 (*Default Events*), 6 (*OPSO Schemes*), 7.3 (*Firm Schemes – Submission Procedures*), 8 (*Firm Scheme Obligations*), 10 (*Changes to Firm Schemes*), 11 (*Grant Claim Procedures*), 12 (*Payment of Grant*), 13 (*Adjustments to Practical Completion Tranche Grant*), 14 (*Withholding of Grant*), 15 (*Repayment of Grant*), 19 (*Transparency Obligations*), 20 (*Subsidy*), 20.3 (*Anti-Bribery and Anti-Corruption*), 22 (*Information and Confidentiality*), 23 (*Data Protection*), 24 (*Intellectual Property*), 29 (*Dispute resolution*), 27 (*Construction Industry Scheme*), 36 (*Cumulative rights and enforcement*), 37 (*Waiver*), 39 (*Execution*), 40 (*Governing Law*), Schedule 4 (*Anti-Bribery and Anti-Corruption*), Schedule 5 (*Information and Confidentiality*), Schedule 6 (*Data Protection*), Schedule 7 (*Intellectual Property*), and this Clause 38 (*Survival of this Agreement*) and such other provisions of this Agreement as are necessary to give effect to such Clauses and/or Schedules are expressly agreed by the parties to survive the termination or expiry of this Agreement.

39 **Execution**

39.1 This Agreement may be executed:

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

39.1.2 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.

40 **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 29 (*Dispute resolution*) the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

41 **Notices**

41.1 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 the Developer's Representative (in the case of notices to be given to the Developer) 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.

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

41.2.1 if delivered by hand, when delivered to the recipient;

41.2.2 if delivered by a recorded delivery service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is:

41.2.3 on a day which is not a Business Day; or

41.2.4 is after 4.00pm

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

Schedule 1

Acknowledgements, Representations and Warranties

1 Powers, vires and consents

- 1.1 It is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.
- 1.2 It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement;
- 1.3 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.
- 1.4 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 1.5 The execution, delivery and performance by it of this Agreement do not:
- 1.5.1 insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - 1.5.2 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
 - 1.5.3 contravene or conflict with its memorandum and articles of association or rules (as applicable) from time to time.
- 1.6 All consents, required by it in connection with the execution, delivery, issue, validity or performance or enforceability of this Agreement and have been obtained and have not been withdrawn.
- 1.7 All consents required by it in connection with the enforceability of the any Payment Guarantee have been obtained and have not been withdrawn.
- 1.8 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.9 To the best of its knowledge, 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 which will or might have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.
- 1.10 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.

1.11 It has not committed any Prohibited Act.

2 **Programme Deliverability**

2.1 No person having any Security over the property or any other assets of the Developer has enforced or given notice of its intention to enforce such security.

2.2 It has obtained or will by Practical Completion of a Firm Scheme obtain all Consents 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 No Default Event has occurred and is continuing.

2.5 All information supplied by or on behalf of it to Homes England or its agents or employees in connection with the Developer's initial application for grant funding or in the course of the subsequent discussions 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 respects.

2.6 It has informed Homes England of any material change that has occurred since:

2.6.1 the date of submission of the Approved Capital Bid prior to the date of this Agreement; and

2.6.2 the Approved Capital Bid, as the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation 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.

2.7 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.

2.8 All data or other information supplied to Homes England and/or the Regulator in connection with, or related to the Approved Capital Bid, any Firm Scheme (including that submitted pursuant to Clause 3 (*Review, Monitoring and Reporting*)) any Disposal Notification and/or Constitutional Change Notification is complete and accurate.

2.9 The Developer is not in breach of its Transparency Obligations.

2.10 Save where expressly agreed by Homes England, no Firm Scheme which is a Planning Scheme is being subsidised by Firm Scheme Grant or RCGF.

- 2.11 So far as the Developer is aware (having made all reasonable enquiries) each Firm Scheme (including, inter alia, each Start on Site Date and Firm Scheme Completion Date) is capable of being Delivered without the need for a change to the Firm Scheme Details;
- 2.12 The Developer has issued any Disposal Notification and/or Constitutional Change Notification in accordance with the requirements of this Agreement where required to do so under this Agreement; and
- 2.13 The Developer will not advance or on-lend any Firm Scheme Grant to a third party (in whole or in part).

3 Application of Approved Capital Bid

Save where expressly agreed by Homes England, none of the AHP Dwellings to be provided pursuant to this Agreement has received or is intended to receive funding from Homes England other than as provided for in this Agreement nor has it been included amongst the projected units to be delivered under any Previous AHP Programme.

4 Authority of Developer's Representative

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

5 Propriety

- 5.1 No member, employee, agent or consultant of the Developer or of any partner organisation of the Developer has any personal, proprietary or pecuniary interest in:
- 5.1.1 any person from whom the Developer is purchasing land or property for the purposes of or in connection with this Agreement;
 - 5.1.2 any contractor engaged or to be engaged by the Developer in connection with this Agreement;
 - 5.1.3 any land or other property to be acquired or developed refurbished or improved by the Developer for the purposes of or in connection with this Agreement.
- 5.2 No member, employee, agent or consultant of the Developer or any partner organisation of the Developer is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
- 5.2.1 access to properties developed or Rehabilitated pursuant to this Agreement; or
 - 5.2.2 the prices at which such properties are let.

Schedule 2

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 2 (*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*):

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

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 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 a 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 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 Clause 7.2.1 (d) shall be inserted as follows:

"7.2.1(d) where the Firm Scheme is an OPSO Scheme it:

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

5 A new Clause 11.8.13 (*Grant Claim Procedures*) shall be inserted as follows:

"11.8.13 any OPSO Scheme does not fall in whole or in part within the definition of a Residential Care Home; and"

6 A new Clause 11.8.14 (*Grant Claim Procedures*) shall be inserted as follows:

"11.8.14 any OPSO Scheme only comprises dwellings which have been procured, constructed and/or designed for use by those in the relevant OPSO Client Group."

Schedule 3

Form of Health and Safety Report

Developer: []

Firm Scheme: []

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 4

Anti-Bribery and Anti-Corruption

- 1 The Developer must:
 - 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**);
 - 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;
 - 1.3 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 and paragraph 1.2 of this Schedule 4 (*Anti-Bribery and Anti-Corruption*), and will enforce them where appropriate;
 - 1.4 if required by Homes England, produce a written certificate to it signed by an officer of the Developer, confirming compliance with this Schedule 4 (*Anti-Bribery and Anti-Corruption*) by the Developer and all persons associated with it under paragraph 1.5 of this Schedule 4 (*Anti-Bribery and Anti-Corruption*). The Developer shall provide such supporting evidence of compliance as Homes England may reasonably request;
 - 1.5 ensure that any person associated with the Developer 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 Developer in this Schedule 4 (*Anti-Bribery and Anti-Corruption*) (Relevant Terms). The Developer 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;
 - 1.6 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 Developer in connection with the performance of this Agreement; and

for the purpose of this Schedule 4 (*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 Schedule 4 (*Anti-Bribery and Anti-Corruption*) a person associated with the Developer includes any Subcontractor.
- 2 Where the Developer is aware that it is in breach of an obligation under this Schedule 4 (*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.
- 3 If the Developer has any grounds for suspecting financial irregularity in the use of any Agreement Funding, it must:
 - 3.1 notify Homes England immediately;

- 3.2 explain to Homes England what steps are being taken to investigate the suspicion; and
- 3.3 keep Homes England informed about the progress of the investigation.

For the purpose of this paragraph 3 "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of Allocated Capital Grant for purposes other than the purposes permitted under this Agreement.

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Schedule 5

Information and Confidentiality

- 1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- 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.
- 3 The obligations of confidence referred to in this Schedule 5 (*Information and Confidentiality*) shall not apply to any Confidential Information which:
 - 3.1 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;
 - 3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 3.3 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
 - 3.4 is independently developed without access to the Confidential Information of the other party.
- 4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - 4.1 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;
 - 4.2 by any applicable law 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 Developer 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;
 - 4.3 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
 - 4.4 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.
- 5 The Developer shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:
 - 5.1 is given only to such of its 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;

- 5.2 is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement; and
- 5.3 where it is considered necessary in the opinion of Homes England the Developer shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 6 Nothing in this Schedule 5 (*Information and Confidentiality*) shall prevent Homes England from:
- 6.1 disclosing any Confidential Information for the purpose of:
- 6.1.1 the examination and certification of Homes England's accounts; or
- 6.1.2 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;
- 6.2 disclosing any Confidential Information obtained from the Developer:
- 6.2.1 to any other department, office or agency of the Crown; or
- 6.2.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 6.2.3 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;
- 6.2.4 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,
- provided that in disclosing information under any of paragraphs 6.2.1 (*Information and Confidentiality*) to 6.2.4 (*Information and Confidentiality*) of this Schedule 5 (*Information and Confidentiality*) inclusive, 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.
- 7 Nothing in this Schedule 5 (*Information and Confidentiality*) shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 8 The Developer 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.
- 9 Homes England shall be responsible for determining in its absolute discretion whether:
- 9.1 any Information is Exempted Information or remains Exempted Information; and/or

- 9.2 any Information is to be disclosed in response to a Request for Information, and in no event shall the Developer 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.
- 10 Notwithstanding any other provision of this Agreement but subject to paragraph 11 of this Schedule 5 (*Information and Confidentiality*) below, the Developer acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:
- 10.1 without consulting the Developer; or
- 10.2 following consultation with the Developer and having taken (or not taken, as the case may be) its views into account.
- 11 Without in any way limiting paragraph 9 of this Schedule 5 (*Information and Confidentiality*) or paragraph 10 of this Schedule 5 (*Information and Confidentiality*), in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Developer.
- 12 The Developer 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:
- 12.1 transfer any Request for Information received by the Developer to Homes England as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
- 12.2 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; and
- 12.3 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.
- 13 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 The obligations in this Schedule 5 (*Information and Confidentiality*) 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.
- 15 The Developer must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Developer must:

- 15.1 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 Developer or if such person leaves the Developer's employment or relinquishes that role;
- 15.2 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;
- 15.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
- 15.4 ensure that systems are in place to prevent any person accessing IMS under a 'User ID' other than their own.
- 16 The Developer 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 Developer regarding any redactions to the Information to be published pursuant to this Schedule 5 (*Information and Confidentiality*). Homes England will make the final decision regarding publication and/or redaction of the Information.

Schedule 6

Data Protection

- 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.
- 2 The Developer (including its employees agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this Schedule 6 (*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.
- 3 The Developer warrants and represent that it has 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.
- 4 The Developer 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.
- 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.
- 6 The provision of this Schedule 6 (*Data Protection*) shall apply during the continuance of the Agreement and indefinitely after its termination.
- 7 The Developer 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 Developer's destruction of and/or damage to any of the Shared Personal Data processed by the Developer, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Schedule 6 (*Data Protection*) by the Developer, its employees, agents or sub-contractors.
- 8 The Developer shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Developer'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.
- 9 The Developer undertakes to include obligations no less onerous than those set out in this Schedule 6 (*Data Protection*) in all contractual arrangements with agents engaged by the Developer in performing its obligations under this Agreement to Homes England.

Schedule 7

Intellectual Property

- 1 Subject to paragraph 5 of this Schedule 7 (*Intellectual Property*) the Developer 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 Developer or which are or become owned by the Developer and which relate to the Firm Schemes, for any purpose relating to this Agreement.
- 2 To the extent that any of the data, materials and documents referred to in paragraph 1 of this Schedule 7 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, the Developer 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 Developer 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 paragraph 1 of this Schedule 7 (*Intellectual Property*).
- 3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 4 The Developer shall fully indemnify Homes England within five (5) Business Days of demand under this paragraph 4 of this Schedule 7 (*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 Schedule 7 (*Intellectual Property*), any breach by the Developer of this Schedule 7 (*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.
- 5 The Developer shall only be entitled to revoke the licence granted to Homes England under paragraph 1 of this Schedule 7 (*Intellectual Property*) in the following circumstances and upon the following terms:
 - 5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Capital Grant has been paid to the Developer; or
 - 5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Capital Grant has been paid to the Developer **provided that** nothing in this paragraph 5.2 of this Schedule 7 (*Intellectual Property*) shall entitle the Developer to revoke such licence insofar as it relates to:
 - 5.2.1 Firm Schemes in respect of which Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Firm Scheme Grant has arisen;
 - 5.2.2 Continuing Firm Schemes; or
 - 5.2.3 Firm Schemes subject to the provisions of Clause 14.2 (*Withholding of Firm Scheme Grant*) of this Agreement.

- 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,
- in each case, where the Firm Scheme does not include OPSO Dwellings; and
- (b) where the Firm Scheme is comprised solely of OPSO Dwellings, will be made available 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;

Change in Control means:

- (a) where the Landlord is an RP Provider, a change in control, which 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:
 - i being the beneficial owner of more than 50% of the issued share capital, membership rights or voting rights in that corporate body; or
 - ii having the right to appoint or remove a majority of the board of management; or
 - iii otherwise controlling the votes at board meetings of that corporate body by virtue of any powers conferred by:
 - A the corporate body's governing document;
 - B any shareholder or members' agreement; or
 - C any other document regulating the affairs of that corporate body; or
- (b) where the Landlord is an LA Provider, the Landlord is or will be subject to a process of local government re-organisation approved by the Secretary of State which results in another local authority obtaining the legal capacity, power and authority to become a party to and to perform the obligations of it under this Deed;

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;

Completed Interest means a Secure Legal Interest which:

- (a) is a SLI (Excused); or
- (b) meets the description in limbs (a), (b) or (c) of the definitions of SLI (SO Accommodation) or SLI (Rented Accommodation);

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 in respect of which the Landlord becomes aware in its capacity as a party to this Deed or which is received by the Landlord 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 advisors 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 Landlord means such specific information as the Landlord 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 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;

Disposal means, other than a Permitted Disposal, a transaction the effect of which is that the legal or beneficial interest in any AHP Dwelling transfers 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 4.4 (*Covenants by the Landlord*) (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);

Excused Scheme means a Firm Scheme comprised of dwellings in respect of which the Capital Funding Guide authorised the Developer to hold a variant legal interest to that contemplated in the Grant Agreement and such variant legal interest was approved by Homes England to the Developer on IMS;

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;

Financial Assistance means the social housing assistance as at the date of this Deed in the Firm Scheme as specified in Clause 2.1.2 (*Acknowledgements*) of this Deed;

Firm Scheme means the development comprising the AHP Dwellings described in Schedule 1 (*Firm Scheme Details*) to this Deed;

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

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;

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;

Homes England Senior Officer means the Director of Affordable Housing Grants;

Insolvency Event means the occurrence of any of the following in relation to the Landlord, where it is an RP Provider:

- (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);
 - i a composition, compromise, assignment or arrangement with any of its creditors;
 - ii 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);
 - iii enforcement of any Security over any assets of the Landlord; or
 - iv 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 affecting any asset or assets of the Landlord which has a Material Adverse Effect;

Know Your Customer Information means the information identified in the Homes England "know your customer" documentation as pertaining to the Landlord's "Directors, Decision Makers or equivalent" or any other "know your customer" or comparable information identified by Homes England in connection with the Landlord or as otherwise required under this Deed;

LA Provider means an English local authority entered on the Register pursuant to paragraph 3 of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010;

Landlord Default has the meaning given to it in Clause 7 (*Landlord Default*);

Landlord's Representative means the Landlord's Development Director or such other member of the Landlord's executive management team agreed by Homes England to act as the Landlord's representative from time to time for the purposes of this Deed;

Legal Opinion means a legal opinion in the form set out in Schedule 6 (*Legal Opinion*) given by the Landlord's solicitor and dated on or prior to the date of 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 the Firm Scheme is situated;

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;

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 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 tenancy in respect of an AHP Rent Dwelling or a Rent to Buy Dwelling to an individual occupier in accordance with the terms of this Deed;

- (b) the grant of a Shared Ownership Lease (which, for the avoidance of doubt, does not include the subsequent acquisition by the occupier of an increased share of the equity of the relevant Shared Ownership Dwelling);
- (c) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to the Firm Scheme which does not materially prejudice the use or amenity of the AHP Dwellings;
- (d) a disposal pursuant to or required by a planning obligation within the meaning of Section 106 or Section 299A of the Town and Country Planning Act 1990 in connection with the Firm Scheme which does not materially prejudice the use or amenity of the AHP Dwellings;
- (e) 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 or amenity of the AHP Dwellings;
- (f) the grant of any mortgage or charge in favour of a commercial or institutional lender;
- (g) the grant of an easement which does not materially prejudice the use or amenity of the AHP Dwellings comprised in the Firm Scheme; or
- (h) any other disposal which Homes England agrees from time to time in writing will be a Permitted Disposal;

Profit Making Organisation means a body designated on the Register as a profit-making organisation;

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 Landlord 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;
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;

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;

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

RCGF Proceeds means those proceeds of the RCGF utilised by the Landlord in meeting in whole or in part any Development Costs or the acquisition costs of the AHP Dwellings;

RCGF-Only Dwelling means a dwelling delivered as rental accommodation with RCGF Proceeds but to which no Financial Assistance has been applied;

Recover has the meaning set out in the Recovery Determination;

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

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

Registered Provider means (as appropriate) an LA Provider or a body entered on the Register as a profit making and/or a non-profit organisation (as such terms are 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 Deed, the AHP Dwellings delivered pursuant to this Deed or any other affairs of Homes England;

Relevant Event has the meaning ascribed to it in the Recovery Determination;

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 Deed;

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 fulfils the following criteria:

- (a) is at the time of letting in employment and has demonstrated an intention to buy his/her own home; and
- (b) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling a first time buyer; or
- (c) 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;

Request for Information/RFI shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Firm Scheme this Deed or any activities or business of Homes England or the Landlord (where it is an LA Provider);

Restructure means any merger or de-merger or consolidation or reconstruction or amalgamation or a transfer of its engagements to any person or the acceptance of any transfer of engagements from any person or any other arrangement having an equivalent effect to these;

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;

RP Provider means a body entered on the Register as a profit-making and/or non-profit organisation (as such terms are defined in Section 115 of the HRA 2008);

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 a:

- (a) SLI (SO Accommodation) with respect to the Firm Scheme (other than an Excused Scheme) where it comprises one or more Shared Ownership Dwellings or Rent to Buy Dwellings;
- (b) SLI (Rented Accommodation) with respect to the Firm Scheme (other than an Excused Scheme) where it comprises one or more AHP Rent Dwellings; or
- (c) SLI (Excused) where the Firm Scheme is an Excused Scheme,

provided that in each case, where the Landlord possesses:

(d) the freehold estate and one or more leasehold interests derived from the freehold estate; or

(e) more than one leasehold interest in a chain of leases,

in the Firm Scheme, the interest which is the lowest leasehold interest owned by the Landlord in the chain of leases must satisfy limb (a), (b) or (c) above (as applicable);

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 a sale or lease and leaseback, a blocked account, set off or similar 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

(b) meets any applicable requirements of the Capital Funding Guide;

SLI (Excused) means the Landlord has in respect of any Excused Scheme a legal interest of the length permitted under the Capital Funding Guide and approved by Homes England on IMS;

SLI (Rented Accommodation) means the Landlord 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 Landlord with a limit of indemnity to at least the Financial Assistance attributed to the Firm Scheme;

SLI (SO Accommodation) means the Landlord 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 Landlord with a limit of indemnity to at least the Financial Assistance attributed to the Firm Scheme;

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);

Social Rent means a rent calculated in accordance with the formula for calculating social rents set out in the Rent Standard (subject to any contrary Legislation);

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

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 Clause 4.1.4 (*Covenants by the Landlord*)) and compensation for such by the Financial Assistance as a Service of Public Economic Interest under the United Kingdom Competition Requirement;

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;
 - iii the forgoing of revenue that is otherwise due;
 - iv the provision of goods or services, or the purchase of goods or services; or
 - v 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;

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

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;

Uplift Amount means an amount of the type described in the Recovery Determination and calculated for the purposes of Clause 5.1.4 (*Repayment of Grant*) in accordance with the methodology set out from time to time in the Capital Funding Guide;

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

- (a) an employee acting independently of the Landlord; or #
- (b) a subcontractor of any tier (or any employee of a subcontractor not acting independently of the subcontractor); or
- (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 Landlord 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 Landlord 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 or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or 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 Where any discretion is granted by this Deed to any party, that party shall be entitled to exercise that discretion freely and without fetter (implied or otherwise).
- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 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 Landlord.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.

- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 The term(s) Site and Firm Scheme includes each and every part of it.
- 1.2.17 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.
- 1.2.18 Save where a contrary intention is shown, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner 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.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Deed then the express terms shall prevail.
- 1.2.20 The Landlord 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 contractor, sub-contractor, employee or agent as if they were the acts or omissions of the Landlord.
- 1.2.21 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 Landlord 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.
- 1.2.22 In the event of any conflict between the Firm Scheme Details summarised in Schedule 1 (*Firm Scheme Details*) and the Firm Scheme Details set out in IMS (and accepted by Homes England through IMS) the Firm Scheme Details in IMS shall prevail.
- 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 The terms of the Capital Funding Guide are incorporated within this Deed (*mutatis mutandis*).

2 Acknowledgements

- 2.1 The Landlord acknowledges and agrees the following agreed principles in respect of the AHP Dwellings:

- 2.1.1 that the AHP Dwellings have been constructed with the benefit of financial assistance paid pursuant to Sections 19 and 31-34 of the HRA 2008;
- 2.1.2 notwithstanding that the Firm Scheme Grant for the Firm Scheme has or is to be paid to the Developer, the Landlord is deemed to have received, subject to Clause 6 (*Financial Assistance*) of this Deed, the sum of []¹ being the Firm Scheme Grant paid in respect of the Firm Scheme (**Financial Assistance**);
- 2.1.3 the Financial Assistance is subject to the provisions of the HRA 2008 and any determination made under such provisions and the provisions of Clause 5 (*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;
- 2.1.4 the provisions of this Deed and those of the Grant Agreement represent the conditions upon which Homes England makes and made the Financial Assistance available in relation to the Firm Scheme;
- 2.1.5 the Financial Assistance made in relation to the Firm Scheme is:
- (a) social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008 (**HRA 2008**); and
 - (b) subject to the provisions of that Act and any applicable determinations or directions made under it.
- 2.1.6 all RCGF Proceeds used for the purposes of funding the Firm Scheme in whole or in part constitute social housing assistance for the purposes of Section 32 HRA 2008 and will be subject to the terms of Clause 5 (*Repayment of Grant*);
- 2.1.7 where it is an RP Provider, it will offer the Right to Shared Ownership in accordance with the requirements of this Deed, the Capital Funding Guide and the RTSO Guidance; and
- 2.1.8 any failure by the Landlord to comply with the terms of this Deed constitutes a failure to comply with a condition attaching to the making of Capital Grant.

3 **Representations by the Landlord**

- 3.1 The Landlord represents to Homes England that in executing this Deed, it has received:
- 3.1.1 a copy of the Grant Agreement from the Developer;
 - 3.1.2 details of the Submitted Standards for the Firm Scheme from the Developer;
 - 3.1.3 written confirmation from an independent certifier or an employer's agent (in either case being a person who is entirely independent of the Landlord) that

¹ Insert figure which is the "Firm Scheme Grant" figure identified on IMS for the Firm Scheme

the AHP Dwellings have been constructed to a standard which is no less than the Submitted Standards; and

3.1.4 details of the agreed purposes specified in IMS by the Developer (and approved by Homes England) for which the AHP Dwellings are to be used (the **Agreed Purposes**).

3.2 The Landlord represents to Homes England that:

3.2.1 the RCGF proceeds which it is applying in respect of the acquisition from (or the construction by) the Developer (as applicable) of the AHP Dwellings is £[]; and

3.2.2 the acquisition price paid or to be paid to the Developer in respect of the AHP Dwellings is £[]².

3.3 The Landlord represents and warrants to Homes England that:

3.3.1 no member, employee, agent or consultant of the Landlord or of any partner organisation of the Landlord has any personal, proprietary or pecuniary interest in:

(a) any person from whom the Landlord is purchasing land or property for the purposes of or in connection with this Deed;

(b) the Developer engaged or to be engaged by the Landlord in connection with this Deed; and

(c) any land or other property to be acquired or improved by the Landlord for the purposes of or in connection with this Deed;

3.3.2 no member, employee, agent or consultant of the Landlord or any partner organisation of the Landlord 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 Grant Agreement and/or this Deed; or

(b) the prices at which such properties are let or disposed of; and

3.3.3 where the Landlord owns a Completed Interest that is a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease is of the longest duration that the Landlord could reasonably negotiate and complies with any applicable requirements of the Capital Funding Guide;

3.3.4 where the Landlord is an LA Provider, it:

(a) has provided a Legal Opinion to Homes England on or prior to the date of this Deed;

² Details to be inserted – they must reflect the information included on IMS for the Firm Scheme.

- (b) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (c) has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report.

3.4 The Landlord represents and warrants to Homes England that either:

- 3.4.1 it possesses a Completed Interest in the Site as at the date of this Deed; or
- 3.4.2 the Landlord has completed its Agreed Transfer with the Developer and an application has been submitted to HM Land Registry (together with the appropriate registration fee) within the relevant priority period to register an interest which will on completion of such registration at HM Land Registry comprise a Completed Interest.

4 **Covenants by the Landlord**

4.1 The Landlord covenants with Homes England that in operating and administering the Firm Scheme after Practical Completion it shall:

- 4.1.1 observe and comply with Legislation, the Recovery Determination and the Consents;
- 4.1.2 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;
- 4.1.3 not charge a higher initial rent in relation to an AHP Rent Dwelling or a Rent to Buy Dwelling than set out in the Firm Scheme Details;
- 4.1.4 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 as soon as reasonably possible;
- 4.1.5 subject to any contrary requirement of Legislation comply with the Rent Standard in respect of the AHP Rent Dwellings;
- 4.1.6 comply with the Tenancy Standard in respect of the AHP Rent Dwellings and Rent to Buy Dwellings;
- 4.1.7 observe and comply with the requirements of the Capital Funding Guide (and where applicable, the SO Consultation Outcome and, where the Landlord is an RP Provider, the RTSO Guidance) in relation to:
 - (a) the operation of the Firm Scheme;

- (b) any disposal of the Shared 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 or, with respect to any OPSO Dwelling, any Older People's Shared Ownership Lease (including those eligible to enter into such leases) granted by or to be granted by the Landlord in relation to an AHP Dwelling;
 - (d) the letting, management or disposal of AHP Rent Dwellings;
 - (e) the purpose, client group, letting, rents, management and disposals of Rent to Buy Dwellings;
 - (f) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Deed;
 - (g) the operation of the Right to Shared Ownership (where the Landlord is an RP Provider); and
 - (h) 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;
- 4.1.8 participate in any evaluation of AHP 2021/26 that DLUHC or Homes England or its or their agents may require from time to time;
- 4.1.9 supply (subject always to its data protection obligations under Schedule 5 (*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);
- 4.1.10 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
- 4.1.11 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);
- 4.1.12 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;
- 4.1.13 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 Financial Assistance (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;

- 4.1.14 provide Homes England with a completed Disposal Notification (in accordance with any applicable requirements of the Capital Funding Guide and the requirements of Clause 4.4 (*Covenants by the Landlord*)):
- (a) no less than ten (10) Business Days prior to a Disposal taking place; and
 - (b) if there is any change in the acquisition price payable to the Developer from the figure set out in Clause 3.2.2.
- 4.1.15 save where Homes England agrees otherwise:
- (a) provide any disponee with a copy of this Deed;
 - (b) procure that there is a binding contract between the Landlord and any disponee which:
 - i acknowledges that the amount of Financial Assistance allocated to the AHP Dwellings or property comprised in the Disposal is social housing assistance received by it for the purposes of Section 33(7) of the HRA 2008 and is subject to the terms of the Recovery Determination and the Capital Funding Guide; and
 - ii imposes such conditions on the disponee as Homes England may specify (which may include a requirement that the disponee offer the Right to Shared Ownership and/or comply with such provisions of this Deed as Homes England may identify (having regard to the nature of the Disposal)); and
 - (c) provide Homes England with a copy of the contract referred to in Clause 4.1.15(b) (*Covenants by the Landlord*) within ten (10) Business Days of the relevant Disposal;
- 4.1.16 ensure that it participates in any Home Ownership Agency Arrangements where the Firm Scheme includes Shared Ownership Dwellings or Rent to Buy Dwellings;
- 4.1.17 not seek possession of any Shared Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988;
- 4.1.18 be bound by and observe the Agreed Principles;
- 4.1.19 hold Registered Provider status at the point at which any AHP Rent Dwelling provided pursuant to the Grant Agreement and this Deed is acquired and made available for rent;
- 4.1.20 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 in occupation;

- 4.1.21 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;
- 4.1.22 comply or use its reasonable endeavours to procure compliance 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 in relation to the AHP Dwellings comprised within the Firm Scheme;
- 4.1.23 where it is an LA Provider notify Homes England immediately when any circumstance occurs which may or does give rise to the making of a Section 114 Report or the issue of a Section 15 Direction;
- 4.1.24 where Clause 3.4.2 (*Representations by the Landlord*) applies, it shall promptly respond to any requisitions raised by HM Land Registry before any cancellation date specified by HM Land Registry; and
- 4.1.25 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 Landlord with its obligations under this Deed.

4.2 Save where:

- 4.2.1 a Landlord or its 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 Landlord being able to notify in advance,

the Landlord shall provide Homes England with a completed Constitutional Change Notification (in accordance with the requirements of Clause 4.3 (*Covenants by the Landlord*)) at least ten (10) Business Days prior to any Change in Control or (in respect of an RP Provider) Restructure. Where the circumstances contemplated in Clause 16.6.1 4.2.1(*Covenants by the Landlord*) or Clause 16.6.2 16.6.2 (*Covenants by the Landlord*) apply the Landlord shall 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 Landlord will:

- 4.3.1 ensure that that any Disposal Notification, Constitutional Change Notification or any other notifications or certificates to be provided by the Landlord to Homes England pursuant to this Deed (the **Landlord Notifications**) are provided by a senior officer of the Landlord with 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 Landlord Notification is erroneous in any material respect; and
- 4.3.3 notify Homes England if any Know Your Customer Information in respect of the Landlord (that the Landlord acknowledges was provided by the Developer on its behalf prior to the date of this Deed) becomes inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request.
- 4.4 The Landlord must, where it is an RP Provider:
- 4.4.1 (subject to any contrary Legislation) offer and continue to offer the Right to Shared Ownership to the then current Tenant of each AHP Rent 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
- 4.4.2 where the Landlord possesses a Completed 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 Landlord'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) the Landlord must not vary the lease referred to in Clause 4.4.2(a) (*Covenants by the Landlord*) in a manner which could frustrate the operation of this Deed or the Right to Shared Ownership .
- 4.5 Where the Landlord applies RCGF Proceeds towards the delivery of any dwelling in any year of the AHP 2021/26:
- 4.5.1 the terms of this Deed will be construed as applying to such RCGF Proceeds (mutatis mutandis), except that Clause 3.3.3 (*Representations by the Landlord*) does not apply to any RCGF-Only Dwelling; and
- 4.5.2 the Landlord must comply with any applicable terms of the Capital Funding Guide with respect to such dwelling.
- 4.6 Where the Landlord only has possessory title or good leasehold title of the land upon which the Firm Scheme is situated, the Landlord covenants that it has defective title indemnity insurance with a limit of indemnity which is no less than the Financial Assistance.

5 **Repayment of Grant**

5.1 The parties acknowledge and agree that:

5.1.1 the Recovery Determination and the Capital Funding Guide have effect (mutatis mutandis) in respect of the Financial Assistance in respect of the Firm Scheme and that each party has the respective rights and obligations described in such determination and under the Capital Funding Guide;

5.1.2 for the purposes of the Recovery Determination, the amount of "Capital Grant" referred to therein shall be determined by reference to the amount of Financial Assistance for that Firm Scheme;

5.1.3 the occurrence of a Landlord 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; and

5.1.4 where the Landlord is a Profit Making Organisation, save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Landlord to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.

5.2 Without prejudice to any other term of this Deed, Homes England reserves the right to Recover from the Landlord the Financial Assistance in circumstances where a Landlord Default has occurred.

5.3 The Landlord shall pay any sum due to Homes England under Clause 5 (*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 from the date upon which Homes England's demand was made until the date upon which Homes England receives the demanded payment.

5.4 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Deed.

6 **Financial Assistance**

The Landlord acknowledges the rights of Homes England pursuant to Clause 15.2.5 (*Repayment of Grant*) and Clause 15.3.3(b) (*Repayment of Grant*) of the Grant Agreement and further acknowledges that the Financial Assistance may be adjusted as a consequence thereof. Homes England shall notify the Landlord following the determination of any such adjustment and from the date of such notification, the figure stated in Clause 2.1.2 (*Acknowledgements*) of this Deed shall be construed accordingly.

7 **Landlord Default**

7.1 The following shall constitute a Landlord Default:

7.1.1 an Insolvency Event has occurred in relation to the Landlord;

7.1.2 the Landlord ceases operating or trading;

- 7.1.3 the Landlord's status as a Registered Provider is lost, removed or relinquished;
- 7.1.4 any of the representations or warranties given by the Landlord pursuant to this Deed are found to be inaccurate;
- 7.1.5 the Landlord is in breach of any covenant or obligation contained in this Deed;
- 7.1.6 the Landlord (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; or
- 7.1.7 a Prohibited Act has been committed by or on behalf of the Landlord (in respect of which the Waiver Condition has not been satisfied);
- 7.1.8 where the Landlord is an LA Provider:
 - (a) it is subject to a Section 15 Direction which has or will have a Material Adverse Effect; or
 - (b) a Section 114 Report has been made in relation to the Landlord which in Homes England's opinion has or will have a Material Adverse Effect.

7.2 Where the Landlord Default is:

- 7.2.1 an occurrence specified in Clauses 7.1.1 (*Landlord Default*), 7.1.2 (*Landlord Default*), 7.1.3 (*Landlord Default*), 7.1.4 (*Landlord Default*), 7.1.6 (*Landlord Default*), 7.1.7 (*Landlord Default*) 7.1.7 and/or 7.1.8 (*Landlord Default*) Homes England shall, without prejudice to its rights under Clause 14 (*Withholding of Firm Scheme Grant*) of this Deed be entitled forthwith and without any liability to the Landlord terminate this Deed; and
- 7.2.2 an occurrence specified in Clause 7.1.5 (*Payment of Grant*), Homes England may serve notice on the Landlord requiring the Landlord 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; or
 - (b) where so permitted by Homes England the Landlord has not given an undertaking to remedy the breach on terms satisfactory to Homes England; or
 - (c) if it becomes apparent that the Landlord Default is incapable of remedy either within such period or at all

Homes England shall be entitled, without prejudice to its rights under Clause 5 (*Repayment of Grant*) of this Deed on giving not less than ten (10) Business Days' notice and without any liability to the Landlord to terminate this Deed.

7.3 Where Homes England purports to terminate this Deed in accordance with this Clause 7 (*Landlord Default*) and the Landlord disputes its entitlement to do so the provisions of Clause 14 (*Dispute Resolution*) shall apply.

8 Subsidy

8.1 The Landlord acknowledges that Homes England provided Subsidy to the Developer under the Grant Agreement by providing the Financial Assistance to deliver the AHP Dwellings as AHP Housing with the intention that it is lawful and complies with the requirements of the United Kingdom Competition Requirement.

8.2 The Landlord will comply with the requirements of the United Kingdom Competition Requirement and where the Landlord is an RP Provider, it:

8.2.1 is deemed to have received the Financial Assistance 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 the Financial Assistance gives rise to Unlawful Subsidy and is incapable of remedy, then Homes England shall be entitled to recover from the Landlord the amount of such 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 Landlord 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 Landlord to vary this Deed to the extent necessary to comply with such change in Legislation.

9 Anti-Bribery and Anti-Corruption

The Landlord must comply with the terms of Schedule 2 (*Anti-Bribery and Anti-Corruption*)

10 Information and confidentiality

10.1 The Landlord must comply with the terms of Part 1 of Schedule 3 (*Information and Confidentiality*).

10.2 Where the Landlord is an RP Provider, it must comply with the terms of Part 2 of Schedule 3 (*Information and Confidentiality*).

10.3 Where the Landlord is an LA Provider, it must comply with the terms of Part 3 of Schedule 3 (*Information and Confidentiality*).

11 **Intellectual Property**

The Landlord must comply with the terms of Schedule 4 (*Intellectual Property*).

12 **Data Protection**

The Landlord must comply with the terms of Schedule 5 (*Data Protection*).

13 **Assignment and sub-contracting**

13.1 Homes England will be entitled to transfer or assign all or part of this Deed at any time without the consent of the Landlord.

13.2 The Landlord will not be entitled to transfer or assign all or part of 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 Landlord's Representative 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 29.2 (*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 Landlord 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 29.3 (*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 29.3 (*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 29.3 (*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 29.3 (*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 29.3 (*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 29.3 (*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 29.2 (*Negotiation*) and/or 29.3 (*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 **Further Assurance**

15.1 At any time upon the written request of Homes England the Landlord:

15.1.1 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 Landlord hereby irrevocably appoints Homes England as its attorney solely for that purpose; and

15.1.2 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.

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, 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.

17.2 The Landlord 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 Landlord. Neither the Landlord nor any of its employees shall at any time hold itself or themselves out to be an employee of Homes England.

18 **Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

19 **Entire Agreement**

19.1 This Deed and the Clauses herein contained together with the Schedules (and to the extent necessary for the interpretation of this Deed, the Grant Agreement) constitute the entire agreement between the parties and may only be varied or modified in writing by deed.

19.2 The Landlord 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 Landlord is entering into this Deed.

20 **Severability**

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.

21 **Cumulative rights and enforcement**

21.1 Any rights and remedies provided for in this Deed whether in favour of Homes England or the Landlord are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

22 The parties acknowledge that money damages alone may not properly compensate Homes England for any breach of the Landlord'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.

23 **Waiver**

23.1 Neither 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 breach of any provision or be a waiver of the provision itself.

23.2 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.

23.3 Any waiver or release of any right or remedy of either party must be specifically granted in writing signed by that party and shall:

23.3.1 be confined to the specific circumstances in which it is given;

23.3.2 not affect any other enforcement of the same or any other right; and

23.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

24 **Survival of this Deed**

24.1 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.

24.2 Insofar as any of the obligations of the Landlord 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.

25 **Execution**

25.1 This Deed may be executed:

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

25.1.2 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.

26 **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 to the exclusive jurisdiction of the courts of England and Wales.

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 the Landlord's Representative (in the case of notices to be given to the Landlord) 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 Deed 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.

Schedule 1 - RP Deed of Adherence

Part 1

Firm Scheme Details

Sub- Product ID:

Offer Line:

Scheme ID:

Site/Development Address:

Scheme Description:

Total Attributed Grant:

Total Attributed RCGF:

Acquisition/Transfer Price:

Affordable Dwellings comprised
in the Developable Scheme

Total Units:

Target Mix

number of units & persons
e.g. 3 x 2b4p house Affordable Rent
2 x 1b2p flat Affordable Home Ownership etc.

Estimated Initial Rents payable in respect of all
affordable dwellings which are to be made available
at an Affordable Rent & the projected income from
initial sales of those affordable dwellings to be
disposed of on Affordable Home Ownership terms.

<i>Number</i>	<i>Type</i>	<i>Tenure</i>	<i>Estimated Initial Rent (£)</i>

Schedule 1 - RP Deed of Adherence

Part 2

Firm Scheme Details

Scheme handover practical completion date:

Grant Apportionment method: [equal division/square footage/market rental value]³

Unit No	Postal Address Line 1 (including house number)	Postal Address Line 2	Postal Address Line 3	Postcode	No of Bedrooms	Persons Per Unit
1						
2						
3						
4						
5						
6						
7						
8						

Unit No	Prospective Rent per week (£)	Attributable Grant per unit (£)	Attributable RCGF per unit (£)
1			
2			
3			
4			
5			
6			
7			
8			

³ Select grant apportionment method applied and delete square brackets

Schedule 2 - RP Deed of Adherence

Anti-Bribery and Anti-Corruption

- 1 The Landlord must:
- 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**);
- 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;
- 1.3 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 and paragraph 1.2 of this Schedule 2 (*Anti-Bribery and Anti-Corruption*), and will enforce them where appropriate;
- 1.4 if required by Homes England, produce a written certificate to it signed by an officer of the Landlord, confirming compliance with this Schedule 2 (*Anti-Bribery and Anti-Corruption*) by the Landlord and all persons associated with it under paragraph 1.6 of this Schedule 2 (*Anti-Bribery and Anti-Corruption*). The Landlord shall provide such supporting evidence of compliance as Homes England may reasonably request;
- 1.5 ensure that any person associated with the Landlord 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 Landlord in this Schedule 2 (*Anti-Bribery and Anti-Corruption*) (**Relevant Terms**). The Landlord 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;
- 1.6 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 Schedule 2 (*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 Schedule 2 (*Anti-Bribery and Anti-Corruption*) a person associated with the Landlord includes any subcontractor of the Landlord.
- 2 Where the Landlord is aware that it is in breach of an obligation under this Schedule 2 (*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.

Schedule 3 - RP Deed of Adherence

Part 1

Information and Confidentiality

- 1 Each party recognises that under this Deed it may receive Confidential Information belonging to the other.
- 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.
- 3 The obligations of confidence referred to in this Schedule 3 (*Information and Confidentiality*) shall not apply to any Confidential Information which:
 - 3.1 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;
 - 3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 3.3 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
 - 3.4 is independently developed without access to the Confidential Information of the other party.
- 4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - 4.1 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;
 - 4.2 by any applicable law 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 Landlord 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;
 - 4.3 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
 - 4.4 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.

- 5 The Landlord shall ensure that all Confidential Information obtained from Homes England under or in connection with this Deed:
- 5.1 is given only to such of 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;
- 5.2 is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Deed; and
- 5.3 where it is considered necessary in the opinion of Homes England it shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Deed.
- 6 Nothing in this Schedule 3 (*Information and Confidentiality*) shall prevent Homes England:
- 6.1 disclosing any Confidential Information for the purpose of:
- 6.1.1 the examination and certification of Homes England's accounts; or
- 6.1.2 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;
- 6.2 disclosing any Confidential Information obtained from the Landlord:
- 6.2.1 to any other department, office or agency of the Crown; or
- 6.2.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 6.2.3 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;
- 6.2.4 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,
- provided that in disclosing information under any of paragraphs 6.2.1 (*Information and Confidentiality*) to 6.2.4 (*Information and Confidentiality*) of this Schedule 3 (*Information and Confidentiality*) inclusive, 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.
- 7 Nothing in this Schedule 3 (*Information and Confidentiality*) shall prevent a party from using any techniques, ideas or know-how gained during the performance of the 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.

Part 2

RP Provider as Landlord

- 1 The Landlord 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.
- 2 Homes England shall be responsible for determining in its absolute discretion whether:
 - 2.1 any Information is Exempted Information or remains Exempted Information; and/or
 - 2.2 any Information is to be disclosed in response to a Request for Information,

and in no event shall the Landlord 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.
- 3 Notwithstanding any other provision of this Deed but subject to paragraph 11 of this Part 2 of Schedule 3 (*Information and Confidentiality*) below, the Landlord acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:
 - 3.1 without consulting the Landlord; or
 - 3.2 following consultation with the Landlord and having taken (or not taken, as the case may be) its views into account.
- 4 Without in any way limiting paragraph 9 of this Part 2 of Schedule 3 (*Information and Confidentiality*) or paragraph 10 of this Part 2 of Schedule 3 (*Information and Confidentiality*), in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Landlord.
- 5 The Landlord 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:
 - 5.1 transfer any Request for Information received by the Landlord to Homes England as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
 - 5.2 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; and
 - 5.3 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.

- 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.
- 7 The obligations in this Schedule 3 (*Information and Confidentiality*) 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.
- 8 The Landlord 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 Landlord regarding any redactions to the Information to be published pursuant to this Schedule 3 (*Information and Confidentiality*). Homes England will make the final decision regarding publication and/or redaction of the Information.

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Part 3

LA Provider as Landlord

- 1 The parties to this Deed are FOIA Authorities and:
 - 1.1 are subject to legal duties which may require the release of information under FOIA and/or EIR; and
 - 1.2 FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.
- 2 The FOIA Authority in receipt of or to receive the Request for Information (Relevant FOIA Authority) shall be responsible for determining in its absolute discretion whether:
 - 2.1 any Information is Exempted Information or remains Exempted Information; and/or
 - 2.2 any Information is to be disclosed in response to a Request for Information,

and in no event shall any party other than the Relevant FOIA Authority respond directly to a Request for Information except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.
- 3 Notwithstanding any other provision of this Deed but subject to paragraph 11 of this Part 3 of Schedule 3 (*Information and Confidentiality*) below, each party acknowledges that the Relevant FOIA Authority may be obliged under FOIA or EIR to disclose Information:
 - 3.1 without consulting the other; or
 - 3.2 following consultation with the other party and having taken (or not taken, as the case may be) its views into account.
- 4 Without in any way limiting paragraph 9 of this Part 3 of Schedule 3 (*Information and Confidentiality*) or paragraph 10 of this Part 3 of Schedule 3 (*Information and Confidentiality*), in the event that the Relevant FOIA Authority receives a Request for Information, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other party.
- 5 Each party will assist and co-operate with the Relevant FOIA Authority as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:
 - 5.1 transfer any Request for Information received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
 - 5.2 provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;

- 5.3 provide the Relevant FOIA Authority with any Information already in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information; and
- 5.4 permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 6 Nothing in this Deed will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.
- 7 The obligations in this Schedule 3 (*Information and Confidentiality*) 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.
- 8 Each party acknowledges and agrees that the other 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, the Relevant FOIA Authority may take account of any EIR Exceptions and FOIA Exemptions. Each party may in its absolute discretion consult with the other regarding any redactions to the Information to be published pursuant to this Schedule 3 (*Information and Confidentiality*). The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.

Schedule 4 - RP Deed of Adherence

Intellectual Property

- 1 Subject to paragraph 5 of this Schedule 4 (*Intellectual Property*) the Landlord 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 Landlord and which relate to the Firm Scheme, for any purpose relating to this Deed.
- 2 To the extent that any of the data, materials and documents referred to in paragraph 2 of this Schedule 4 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, the Landlord 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 Landlord 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 paragraph 1 of this Schedule 4 (*Intellectual Property*).
- 3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Deed.
- 4 The Landlord shall fully indemnify Homes England within five (5) Business Days of demand under this paragraph 4 of this Schedule 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 Schedule (*Intellectual Property*), any breach by the Landlord of this Schedule 4 (*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.
- 5 The Landlord shall only be entitled to revoke the licence granted to Homes England under paragraph 1 of this Schedule 4 (*Intellectual Property*) in the following circumstances and upon the following terms:
 - 5.1 on the termination of the whole of this Deed in circumstances where no Allocated Capital Grant has been paid to the Landlord; or
 - 5.2 on the termination of this Deed (in whole or in part) in circumstances where some Allocated Capital Grant has been paid to the Landlord provided that nothing in this paragraph 5.2 of this Schedule 4 (*Intellectual Property*) shall entitle the Landlord to revoke such licence insofar as it relates to the Firm Scheme.

Schedule 5 - RP Deed of Adherence

Data Protection

- 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.
- 2 The Landlord (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 Schedule 5 (*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.
- 3 The Landlord warrants and represent that they 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.
- 4 The Landlord 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.
- 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.
- 6 The provision of this Schedule 5 (*Data Protection*) shall apply during the continuance of the Deed and indefinitely after its termination.
- 7 The Landlord 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 Landlord's destruction of and/or damage to any of the Shared Personal Data processed by the Landlord, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Schedule 5 (*Data Protection*) by the Landlord, its employees, agents or sub-contractors.
- 8 The Landlord shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Landlord'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.
- 9 The Landlord undertakes to include obligations no less onerous than those set out in this Schedule 5 (*Data Protection*) in all contractual arrangements with agents engaged by the Landlord in performing its obligations under this Deed to Homes England.

Schedule 6 - RP Deed of Adherence

Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes and Communities Agency
One Friargate
Coventry
CV1 2GN

To: Homes and Communities Agency (trading as Homes England) (**Homes England**)

Dear Sirs,

Legal Opinion re Deed of Adherence (Relating to the AHP 2021-26 Agreed Transfer Model) and related matters

I refer to the proposed Deed of Adherence to be entered into between [] (the **Council**) and [Insert name of the Landlord] and Homes England (the **Deed**) for the purposes of, inter alia, providing affordable housing which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

- (a) the Deed in its final form prior to execution and delivery thereof by the Council;
- (b) the Council's Standing Orders for approving entry into and the execution and delivery of deeds by the Council and for the delegation of its authority and the powers of the Council's Executive;
- (c) such other documents I consider appropriate for the purposes of giving this opinion.

I do not express any opinion as to, nor have I investigated the law of any jurisdiction other than England.

I am of the opinion that, as at the date hereof, as a matter of English law, the Council has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Deed and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Deed and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Council of its obligations under the Deed will violate any provisions of any existing application law, rule, regulation or agreement binding on the Council, and the Deed constitutes a valid and legally binding obligation on the Council enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Council.

The above opinions are subject to the reservation that under English law, the power of the court to order or pursue performance of an obligation and any other equitable remedies is discretionary and, accordingly, an English court might make an award of damages where specific performance of an obligation at work or remedy is sought.

This opinion is given by virtue of my position as Solicitor to the Council and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to Homes England and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Council Solicitor⁴

Print Name:

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Deed referred to above.⁵

Name	Title	Specimen Signature

⁴ Council to ensure that the signatory to the Deed of Adherence is different to the Council Solicitor signing the Legal Opinion

⁵ Please note that the Legal Opinion will not be in a form satisfactory to Homes England unless the person executing the Deed is identified in this table.

EXECUTION PAGE TO THE DEED OF ADHERENCE

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

Landlord

[Insert Execution Block]

DRAFT

Schedule 9

SPEI Entrustment

Tasks entrusted under this Agreement: as set out at Clause 2.2 of this Agreement (the **Tasks**).

Compensation for delivery of Tasks: the Firm Scheme Grant, subject to the terms of this Agreement.

DRAFT

Schedule 10

Part 1

Development Costs

Heads of expenditure

1 Acquisition

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

2 Works

- 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 above (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.
- 3.5 Fees and charges associated with compliance with European Community directives, and Homes England's requirements relating to energy rating of dwellings, Eco-Homes certification and Housing Quality Indicators.
- 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 Developer's development and administration costs.
- 3.11 Marketing costs – for sale schemes only.
- 3.12 Post-completion interest - for sale schemes only.
- 3.13 Irrecoverable VAT on the above.

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 Costs unless the Developer 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 Developer is common both to the development of the AHP Dwellings within any Firm Scheme and to any other activity, asset or property of the Developer, only such part of that cost as is attributable to the development of the AHP Dwellings may be treated as a cost in respect of which grant under this Agreement may be paid.

Schedule 10

Part 2

Costs which are not Development Costs

Capital costs incurred:

- 1 which are not eligible for Social Housing Assistance;
- 2 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Firm Scheme;
- 3 on estate offices, factories, letting offices;
- 4 on stores (other than external storage provision required by the relevant design and quality standards in the Submitted Standards);
- 5 on medical or dental surgeries, clinics;
- 6 on police stations, public libraries, bus shelters;
- 7 on shops, restaurants, public houses, offices;
- 8 on transformer and other related buildings;
- 9 on maintenance depots, tools, plant and vehicles;
- 10 on garages (other than integral garages on market purchase scheme types) and greenhouses;
- 11 on separate commercial laundry blocks and related equipment.

Schedule 11

Developer Board Minutes

Form of Minutes Board Resolution – Developer (Limited Liability Company)

[Developer Name and Company Number]

**Extract from the minutes of a meeting of the Board of Directors of [] (the Developer)
held at [venue] on [date] at [time]**

Present

(Chair)

In attendance

Proposed grant agreement to be entered into with the Homes and Communities Agency (trading as Homes England) in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement

1 Purpose of Meeting

1.1 It was noted that the Homes and Communities Agency (trading as Homes England) (Homes England) had offered to make available to the Developer funding (the Funding) by way of grant in an aggregate amount of up to £[] under the Grant Agreement (as defined below).

1.2 The purpose of the meeting was to consider the above transaction and if thought fit to approve its terms and the execution of certain documents.

1.3 Save as expressly defined herein, words and expressions defined in the Grant Agreement (as defined below) shall have the same meanings when used herein unless otherwise defined in these minutes.

2 Documents

The following documents were produced to the meeting:

2.1 a draft grant agreement to be made between Homes England and the Developer (the Grant Agreement); and

2.2 a draft officer's certificate (the Officer's Certificate) to be given by an Authorised Signatory (as defined below) containing various certifications required pursuant to the Grant Agreement including a list of the Authorised Signatories together with a specimen of each authorised signature.

3 **Obligations**

It was reported to the meeting that the receipt of the full amount of the Funding under the Grant Agreement would not contravene any existing contractual or statutory obligations of the Developer and that the Developer was fully empowered to enter into the Grant Agreement and to perform its obligations thereunder.

4 **Disclosure of directors' interests**

4.1 Each director present [who was in any way, whether directly or indirectly interested in the proposed arrangements, duly disclosed the nature and extent of his interests in the transaction in accordance with section 177 of the Companies Act 2006] or [confirmed that he had no interest in any way in the business to be discussed at the meeting].

4.2 [It was noted that pursuant to [article] [number] of the Developer's Articles of Association, a director may vote and form part of the quorum in relation to any matter in which they are interested.] or [It was noted that the director(s) so interested would not vote or count as part of a quorum on any of the matters in which they were (respectively) interested and that, nevertheless, there would be a quorum for all items of business to be transacted at the meeting.]

5 **Resolutions**

it was resolved that:

5.1 [•], [•], [•] or [•]⁶ each be appointed as an Authorised Signatory;

5.2 the Grant Agreement be approved in substantially the form presented to the meeting and that any [one/two] Authorised Signator[y/ies] be and hereby [is] [are] authorised on behalf of the Developer to agree any amendments thereto which [it] [they] may, acting in [its] [their] absolute discretion, consider to be necessary or appropriate and that the Developer's acceptance of and performance of its obligations and the exercise of its rights under the Grant Agreement be approved;

5.3 any [one/two] Authorised Signator[y/ies] be and [is] [are] hereby authorised to sign on behalf of the Developer any other document to be entered into under hand pursuant to the Grant Agreement which such person[s] consider[s] should be entered into in connection therewith;

5.4 any [one/two]⁷ Authorised Signator[y/ies] be and [is/are] hereby authorised to execute and deliver the Grant Agreement as a deed and any other deed required at any time to be entered into pursuant to the Grant Agreement or which such person[s] consider[s] should be entered into in connection therewith; and if any deed to which it is a party requires execution under hand as a deed of the Developer, any [one/two] Authorised Signator[y/ies] be and [is/are] hereby authorised to execute the same on the Developer's behalf; and if any deed to which it is a party requires execution under seal as a deed of the Developer, the Developer's seal is hereby authorised to be affixed to the relevant document and such affixation be duly attested in accordance with the Developer's Memorandum and Articles of Association in the presence of any [one/two] Authorised Signator[y/ies];

⁶ The Authorised Signatory(ies) will be the director(s) and the secretary (if any).

⁷ If a single Authorised Signatory executes he must be a director and the signature must be witnessed under the provisions of the Companies Act 2006.

- 5.5 any Authorised Signatory be and hereby is authorised on behalf of the Developer to execute and deliver any other documents, notices, letters or other communications and perform all matters, acts and things which such officer in its absolute discretion deems to be necessary or desirable in connection with the Developer and the transactions contemplated thereby, including without limitation, the Officer's Certificate; and
- 5.6 [the company secretary] or [specify] be instructed to make all necessary entries in the books and records of the Developer to reflect the above matters and to make all necessary filings at Companies House.

It is hereby certified that:

- 6 this is a true extract from the minutes of a quorate meeting of the Board of Directors of the Developer duly convened and held; and
- 7 the passing of the resolutions set out in the minutes and the completion of the transactions thereby contemplated do not and will not contravene the provisions of the Developer's Memorandum and Articles of Association or any agreement or instrument to which the Developer or its directors are party or by which it or they are bound.

.....
Chairman

.....
Date

Schedule 12

Developer's Officer's Certificate

1

To: the **Homes and Communities Agency** (trading as Homes England) pursuant to the grant agreement dated on the date of this certificate, made between the Homes and Communities Agency (trading as Homes England) (**Homes England**) and [] (the **Developer**) in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement (the **Grant Agreement**)

Terms defined in the Grant Agreement and not otherwise defined herein shall bear the same meaning in this Certificate.

As a director of the Developer, I hereby certify as follows as at the date hereof:

- 1.1 attached at Annexure 1 hereto are true, complete and correct copies of an extract from the minutes of a meeting of the board of directors of the Developer which was duly convened and held on [] 20[] and at which a duly constituted quorum was present and voting throughout. The resolutions set out therein have not been revoked or rescinded in any manner and remain in full force and effect;
- 1.2 attached at Annexure 2 hereto are true, complete and correct copies of the constitutional documents of the Developer (including the Articles of Association [and if any the Memorandum of Association]) which are in full force and effect and incorporate all amendments made and registered to the date hereof;
- 1.3 attached at Annexure 3 hereto are true, complete and correct copies of the certificate of incorporation of the Developer issued by the relevant authority (and where relevant any certificates issued on change of name) which are in full force and effect and incorporate all amendments made and registered to the date hereof; and
- 1.4 the persons specified on the attached signatory certificate have been authorised by the Developer to execute the Grant Agreement and any other documentation relating thereto and the copies of their specimen signatures are set out at Annexure 4 to this Certificate.

dated 20

.....
Director
[insert Developer's name]

Annexure 1 - Developer's Officer's Certificate
Minutes of a Meeting of the Board of the Developer

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Annexure 2 - Developer's Officer's Certificate

Constitutional Documents of the Developer

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Annexure 3 - Developer's Officer's Certificate

Evidence of Incorporation of the Developer

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Annexure 4 - Developer's Officer's Certificate

Specimen Signature Certificate

Name	Position	Specimen Signature

DRAFT

Schedule 13
Payment Guarantee

dated 20

Homes and Communities Agency (trading as Homes England)
and
[Guarantor]

Guarantee and Indemnity

[DN: Form of Payment Guarantee subject to such amendments as are required depending on the nature of the entity providing the guarantee]

Guarantee and Indemnity

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/registered society/a local authority as defined in Section 1 of the Local Government Act 2000]⁸ incorporated under the laws of England and Wales with registered number [] with registered address [](the **Guarantor**).

Introduction

- (A) Homes England has provided grant funding to the Developer (as defined below) pursuant to the Grant Agreement (as defined below).
- (B) The Guarantor has agreed to provide this guarantee and indemnity to Homes England as a condition of Homes England providing the funding to the Developer.

Agreed terms

1 Interpretation

1.1 Unless the context otherwise requires or unless otherwise defined in this Guarantee, words and expressions shall have the same respective meanings that are given to them in the Grant Agreement.

1.2 In this Guarantee:

Developer means [];

Developer's Obligations means all monies and liabilities which are now or at any time after the date of this Guarantee becoming due from, or owing or incurred by, the Developer to Homes England under or in connection with the Grant Agreement;

Grant Agreement means the grant agreement dated [] between the Developer and Homes England (as the same may be amended from time to time);

Guarantor's Representative means such member of the Guarantor's executive management team agreed by Homes England to act as the Guarantor's representative from time to time for the purposes of this Guarantee; and

Homes England Senior Officer means the Director of Affordable Housing Grants;

Interest Rate means 2% above the base rate of The Royal Bank of Scotland plc from time to time.

1.3 In this Guarantee:

- 1.3.1 references to this Guarantee are to include the indemnity in Clause 3.4;
- 1.3.2 references to Clauses are to be construed as references to the Clauses of this Guarantee;
- 1.3.3 references to this Guarantee or any provisions of this Guarantee or to the Grant Agreement, or any other document or agreement are to be construed as references to this Guarantee, the Grant Agreement or those provisions or that document or agreement as is in force for the time being and as amended, varied, extended, restated, replaced or novated from time to time;
- 1.3.4 words importing the singular are to include the plural and vice versa;
- 1.3.5 references to a person are to be construed to include references to a corporation, firm, company, partnership, joint venture, unincorporated body of persons, individual or any state or any agency of a state, whether or not a separate legal entity;
- 1.3.6 references to any person are to be construed to include that person's assigns or transferees or successors in title, whether direct or indirect;
- 1.3.7 references to any statute or statutory provision include any statute or statutory provision which amends, extends, consolidates or replaces it, or which has been amended, extended, consolidated or replaced from time to time (whether before or after the date of this Guarantee) and shall include any orders, regulations, instruments or other subordinate legislation made under or deriving validity from that statute or statutory provision;
- 1.3.8 the words "other" and "otherwise" are not to be construed ejusdem generis with any foregoing words where a wider construction is possible;
- 1.3.9 references to liability are to include any liability or obligation whether actual, contingent, present or future and whether incurred solely or jointly; and
- 1.3.10 Clause headings are for ease of reference only and are not to affect the interpretation of this Guarantee.

2 Representations, Warranties and Undertakings

2.1 The Guarantor represents, warrants and undertakes to Homes England (such representations, warranties and undertakings to continue so long as this Guarantee remains subsisting) that:

2.1.1 [it is duly incorporated and is a validly existing [company/non-charitable registered society]⁹ under the laws of its place of incorporation, has the capacity

⁸ Delete as appropriate

⁹ Delete as appropriate

to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;]¹⁰

2.1.2 it has full power and authority to execute, deliver and perform its obligations under this Guarantee and no limitation on its powers will be exceeded as a result of it entering into this Guarantee;

2.1.3 the execution, delivery and performance by it of this Guarantee and the performance of its obligations under this Guarantee have been duly authorised by all necessary corporate, shareholder and other action and consents and do not and will not:

(a) [contravene or conflict with its memorandum and articles of association or other equivalent constitutional documents; or]¹¹

(b) contravene or conflict with any existing law, statute, rule or regulation or any judgment, decree or permit to which it is subject; or

(c) contravene or conflict with, or result in any breach of, the terms of, or constitute a default under, any agreement or other document to which it is a party or to which it is subject or which is binding upon it or any of its assets; or

(d) result in the creation or imposition of or oblige it to create any charge or other encumbrance on any of its assets, rights or revenues; [and]¹²

2.1.4 its obligations under this Guarantee are its legal, valid and binding obligations enforceable against it in accordance with their terms and are in full force and effect[; and

2.1.5 (unless it only has only one member on its board of management or one director, in which case it will be one member/director) two or more of its members of its board of management or directors (as applicable) have reviewed the Grant Agreement in full and have confirmed that they understand both the Grant Agreement (including, in particular, Clause 4 (*The Guarantor and Alternative Security*) and Clause 15 (*Repayment of Grant*) of the Grant Agreement) and the Developer's Obligations and that entry into this Guarantee is in the best interests of the Guarantor's business and to the commercial benefit and advantage of and a proper exercise of the powers of the Guarantor.]¹³.

2.2 The Guarantor will provide such information of its corporate governance or board of management or directors (as applicable) as Homes England shall request.

2.3 The Guarantor acknowledges that Homes England has accepted this Guarantee in full reliance on the representations and warranties set out in this Clause 2.

¹⁰ Delete Clause where Guarantor is an LA Provider. Delete as appropriate for company or non-charitable registered society. Any charitable registered society requires detailed consideration of vires issues and drafting as appropriate.

¹¹ Delete Clause if Guarantor is an LA Provider

¹² Insert if Guarantor is an LA Provider

¹³ Delete Clause if an LA Provider

3 **Guarantee and Indemnity**

3.1 As consideration for the provision by Homes England of funding to the Developer the Guarantor irrevocably and unconditionally undertakes the obligations and liabilities set out in Clause 3.2 and Clause 3.4.

3.2 The Guarantor irrevocably and unconditionally guarantees to Homes England:

3.2.1 the payment on demand, and in the currency in which they fall due for payment, of the Developer's Obligations; and

3.2.2 the due and punctual performance and discharge by the Developer of all of its payment obligations and liabilities under the Grant Agreement

provided that the total amount recoverable by Homes England from the Guarantor under Clause 3.2 shall not exceed £[], together with all costs, expenses and interest payable under this Guarantee.

3.3 If the Developer's Obligations are not recoverable from the Developer by reason of illegality, incapacity, the lack or exceeding of powers, ineffectiveness of execution or any other reason, the Guarantor shall notwithstanding any of the foregoing be liable under this Guarantee for the Developer's Obligations as if it were the Developer.

3.4 The Guarantor, as a principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 3.2, irrevocably and unconditionally agrees to indemnify Homes England in full on demand against losses, costs and expenses suffered or incurred by Homes England arising from or in connection with any of:

3.4.1 Homes England's making available any of the funding under the Grant Agreement;

3.4.2 Homes England's entering into the Grant Agreement;

3.4.3 any of the provisions of the Grant Agreement being or becoming void, voidable, invalid or unenforceable; and

3.4.4 the failure of the Developer fully and promptly to perform any of its payment obligations to Homes England under the Grant Agreement

provided that the total amount recoverable by Homes England from the Guarantor under Clause 3.4 shall not exceed £[], together with all costs, expenses and interest payable under this Guarantee.

3.5 The guarantee and indemnity contained in this Guarantee is in addition to any other security given or provided to Homes England in respect of the Developer's obligations, and will not be discharged or prejudiced by the grant of any further security in respect of the Developer's Obligations whether by the Guarantor or by any other party.

4 **Homes England Protections**

4.1 The Guarantor acknowledges and agrees that this Guarantee is and at all times shall be a continuing security and shall extend to cover the ultimate balance due at any time from the

Developer to Homes England under or in connection with the Developer's Obligations regardless of any intermediate payment or discharge in whole or in part. The Guarantor confirms that this Guarantee shall extend to the Developer's Obligations from time to time arising out of any amendment, variation, extension, restatement, replacement or novation of the Grant Agreement, no matter how fundamental, onerous or prejudicial to the Guarantor and whether or not with the knowledge and consent of the Guarantor.

4.2 The Guarantor acknowledges and agrees that none of its liabilities under this Guarantee shall be reduced, discharged or otherwise adversely affected by any act or omission which would, but for this Clause 4.2, reduce, discharge or prejudice such liabilities, including (without limitation):

4.2.1 any variation, novation, extension, discharge, compromise, dealing with, exchange or renewal of the Grant Agreement or any other right or remedy which Homes England may now or after the date of this Guarantee have from or against any of the Developer and any other person in connection with the Developer's Obligations, no matter how fundamental, onerous or prejudicial to the Guarantor;

4.2.2 any act or omission by Homes England or any other person in taking up, perfecting or enforcing any security, indemnity or guarantee from or against the Developer or any other person;

4.2.3 any termination, amendment, variation, extension, restatement, replacement or novation of or to any of the Developer's Obligations;

4.2.4 any grant of time, indulgence, waiver or concession to the Developer or any other person;

4.2.5 any insolvency, bankruptcy, liquidation, administration, winding-up, incapacity, limitation, disability, the discharge by operation of law, or any change in the constitution, name or style of the Developer or any other person;

4.2.6 any invalidity, illegality, unenforceability, irregularity or frustration of any actual or purported obligation of, or any security held from, the Developer or any other person in connection with the Developer's Obligations;

4.2.7 any claim or enforcement of payment from the Developer or any other person;

4.2.8 any act or omission which would have discharged or affected the liability of the Guarantor had it been a Developer instead of a guarantor or by anything done or omitted by any person which but for this provision might operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this Guarantee; or

4.2.9 any inadequacy in the manner of execution or enforcement of Homes England's rights and obligations under or in respect of the Grant Agreement, any related security or this Guarantee.

4.3 The obligations and liabilities expressed to be undertaken by the Guarantor under this Guarantee are those of primary obligor and not merely as a surety. Homes England shall not be obliged before taking steps to enforce any of its rights and remedies under this Guarantee:

- 4.3.1 to take action or obtain judgment in any court against the Developer or any other person;
- 4.3.2 to make or file any claim in a bankruptcy, liquidation, administration or insolvency of the Developer or any other person whether in connection with this Guarantee or in connection with any other claim or debt; or
- 4.3.3 to make demand, enforce or seek to enforce any claim, right or remedy against the Developer or any other person.
- 4.4 The Guarantor warrants to Homes England that it has not taken or received and (unless Homes England otherwise directs) shall not take, exercise or receive the benefit of any security or other right or benefit (whether by set-off, counterclaim, subrogation, indemnity, proof in liquidation or otherwise and whether from contribution or otherwise, all together **Rights**) from or against the Developer, its liquidator, an administrator, a co-guarantor or any other person in connection with any liability of, or payment by, the Guarantor under this Guarantee or in connection with any other debt or claim.
- 4.5 If any of the Rights is taken, exercised or received by the Guarantor, the Guarantor declares that those Rights and all monies at any time received or held in respect of those Rights shall be held by the Guarantor on trust for Homes England for application in or towards the discharge of the liabilities of the Guarantor to Homes England under this Guarantee.
- 4.6 The Guarantor agrees that all other Rights and all monies from time to time held on trust by the Guarantor for Homes England under or pursuant to Clause 4.5 shall be transferred, assigned or, as the case may be, paid to Homes England, promptly following Homes England's demand.
- 4.7 This Guarantee shall be in addition to and shall not affect or be affected by or merge with any other judgment, security, right or remedy obtained or held by Homes England from time to time for the discharge and performance of any of the liabilities and obligations of the Developer to Homes England.
- 5 **Interest**
- 5.1 The Guarantor agrees to pay interest to Homes England after as well as before judgment at the Interest Rate on all sums demanded under this Guarantee from the date of Homes England's demand under this Guarantee or, if earlier, the date on which the relevant damages, losses, costs or expenses arose in respect of which such demand has been made, in each case until, but excluding the date of actual payment. Interest shall accrue on a day-to-day basis, be calculated by Homes England on the basis of a 365-day year and be compounded in accordance with the usual practice of Homes England.
- 5.2 The Guarantor shall make all payments to Homes England for value on their due date.
- 5.3 Homes England shall not be entitled to recover any amount in respect of interest pursuant to Clause 5.1 of this Guarantee if it has already recovered an equivalent amount under the Grant Agreement from the Developer.

6 **Appropriation**

The Guarantor shall not and may not direct the application by Homes England of any sums received by Homes England from the Guarantor under, or pursuant to, any of the terms of this Guarantee.

7 **Discharge to be Conditional**

7.1 Any release, discharge or settlement between the Guarantor and Homes England in relation to this Guarantee shall be conditional upon no right, security, disposition or payment to Homes England by the Guarantor, the Developer or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency or for any other reason.

7.2 If any such right, security, disposition or payment is avoided, set aside or ordered to be refunded, Homes England shall be entitled subsequently to enforce this Guarantee against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment had not been made.

8 **Payments and Taxes**

8.1 All sums payable by the Guarantor under this Guarantee shall be paid to Homes England in full:

8.1.1 without any set-off, condition or counterclaim whatsoever; and

8.1.2 free and clear of all deductions or withholdings whatsoever except only as may be required by law or regulation which in either case is binding on it.

8.2 If any deduction or withholding is required by any law or regulation (whether or not that regulation has the force of law) in respect of any payment due from the Guarantor under this Guarantee, the sum payable by the Guarantor shall be increased so that, after making the minimum deduction or withholding so required, the Guarantor shall pay to Homes England and Homes England shall receive and be entitled to retain on the due date for payment a net sum at least equal to the sum which it would have received had no such deduction or withholding been required to be made.

8.3 The Guarantor shall promptly deliver or procure the delivery to Homes England of all receipts issued to it evidencing each deduction and withholding which it has made.

9 **Demands and Notification Binding**

Any demand, notification or certificate given by Homes England specifying amounts due and payable under or in connection with any of the provisions of this Guarantee shall, in the absence of manifest error, be conclusive and binding on the Guarantor.

10 **Costs**

10.1 The Guarantor shall, on demand and on a full indemnity basis, pay to Homes England the amount of all costs and expenses (including legal and out-of-pocket expenses and any

Value Added Tax on such costs and expenses) which Homes England incurs in connection with:

- 10.1.1 any actual or proposed amendment, variation, supplement, waiver or consent under or in connection with this Guarantee;
- 10.1.2 any discharge or release of this Guarantee;
- 10.1.3 the preservation or exercise (or attempted preservation or exercise), and the enforcement (or attempted enforcement) of, any rights under or in connection with, this Guarantee; and
- 10.1.4 any registration of this Guarantee.

11 **Communications**

11.1 Any notice to be given hereunder shall be in writing addressed to Homes England Senior Officer and Homes England's General Counsel (in the case of notices to be given to Homes England) or the Guarantor's Representative (in the case of notices to be given to the Guarantor) 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 Guarantee 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.

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

11.2.1 if delivered by hand, when delivered to the recipient; or

11.2.2 if delivered by recorded delivery, three (3) Business Days after and including the date of postage,

provided that if the delivery or receipt is:

11.2.3 on a day which is not a Business Day; or

11.2.4 is after 4.00 pm

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

12 **Rights of third parties**

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

13 **Transfers**

13.1 This Guarantee is freely assignable or transferable by Homes England.

13.2 The Guarantor may not assign any of its rights and may not transfer any of its obligations under this Guarantee or enter into any transaction which would result in any of those rights or obligations passing to another person.

13.3 Homes England may disclose to any person to whom Homes England is proposing to transfer or assign or has transferred or assigned any of its rights under this Guarantee any information about the Guarantor and any person connected or associated with it. The Guarantor represents and warrants that it has (and, subject to any contrary requirement of law, will maintain) any necessary authority by or on behalf of any such person to agree to the provisions of this Clause.

14 **Miscellaneous**

14.1 No delay or omission on the part of Homes England in exercising any right or remedy under this Guarantee shall impair that right or remedy or operate as or be taken to be a waiver of it; nor shall any single, partial or defective exercise of any such right or remedy preclude any other or further exercise under this Guarantee of that or any other right or remedy.

14.2 Homes England's rights under this Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as Homes England deems expedient.

14.3 Any waiver by Homes England of any terms of this Guarantee, or any consent or approval given by Homes England under it, shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

14.4 If at any time any one or more of the provisions of this Guarantee is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity and enforceability of the remaining provisions of this Guarantee nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

15 **Law and Jurisdiction**

This Guarantee shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

In witness whereof the Guarantor has entered into this Guarantee as a deed with the intention that it be delivered on the date appearing at the beginning of this Guarantee.

EXECUTION PAGE TO THE PAYMENT GUARANTEE

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:

[Guarantor]

[Insert Execution Block]

DRAFT

Schedule 14

Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes and Communities Agency
One Friargate,
Coventry,
CV1 2GN

To: Homes and Communities Agency (trading as Homes England) (**Homes England**)

Dear Sirs,

Legal Opinion re Payment Guarantee relating to a Grant Agreement and related matters

I refer to the proposed Payment Guarantee to be entered into between [] (the **Council**) and Homes England (the **Guarantee**) which is dated on or about the date hereof for the purposes of, inter alia, providing a payment guarantee and indemnity in relation to a grant agreement made between [] and Homes England for the delivery of affordable housing (Agreement). In connection with the giving of this opinion, I have examined:

- (a) the Agreement in its final form;
- (b) the Guarantee in its final form prior to execution and delivery thereof by the Council;
- (c) the Council's Standing Orders for approving entry into and the execution and delivery of deeds by the Council and for the delegation of its authority and the powers of the Council's Executive;
- (d) such other documents I consider appropriate for the purposes of giving this opinion.

I do not express any opinion as to, nor have I investigated the law of any jurisdiction other than England.

I am of the opinion that, as at the date hereof, as a matter of English law, the Council has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Guarantee and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Guarantee and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Council of its obligations under the Guarantee will violate any provisions of any existing application law, rule, regulation or agreement binding on the Council, and the Guarantee constitutes a valid and legally binding obligation on the Council enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Council.

The above opinions are subject to the reservation that under English law, the power of the court to order or pursue performance of an obligation and any other equitable remedies is discretionary and, accordingly, an English court might make an award of damages where specific performance of an obligation at work or remedy is sought.

This opinion is given by virtue of my position as Solicitor to the Council and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to Homes England and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Council Solicitor¹⁴

Print Name:

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Guarantee referred to above.¹⁵

Name	Title	Specimen Signature
[Redacted area for specimen signatures and titles]		

¹⁴ Council to ensure that the signatory to the Payment Guarantee is different to the Council Solicitor signing the Legal Opinion

¹⁵ Please note that the Legal Opinion will not be in a form satisfactory to Homes England unless the person executing the Guarantee is identified in this table.

Schedule 15

Security Board Minutes

Form of Minutes Board Resolution – [Guarantor/ Chargor] (Limited Liability Company)

[Guarantor/ Chargor Name and Company Number]

Extract from the minutes of a meeting of the Board of Directors of [] (the [Guarantor/ Chargor])
held at [venue] on [date] at [time]

Present

(Chair)

In attendance

Proposed guarantee/ legal charge¹⁶ in favour of the Homes and Communities Agency (trading as Homes England) in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement

1 Purpose of Meeting

- 1.1 It was noted that the Homes and Communities Agency (trading as Homes England) (Homes England) had offered to make available to [] (the **Developer**) funding (the Funding) by way of grant in an aggregate amount of up to £[] under the Grant Agreement (as defined below).
- 1.2 [It is the intention that [name] (the **Chargor**) secures the obligations of the Developer under the Grant Agreement (as defined below) by way of a fixed charge over land under the Legal Charge (as defined below).]¹⁷
- 1.3 [It is the intention that [name] (the **Guarantor**) guarantees the due and punctual performance of the payment obligations of the Developer under the Grant Agreement (as defined below) by entering into the Guarantee as defined below.]¹⁸
- 1.4 The purpose of the meeting was to consider the above transaction and if thought fit to approve its terms and the execution of certain documents.
- 1.5 Save as expressly defined herein, words and expressions defined in the relevant Documents (as defined below) shall have the same meanings when used herein unless otherwise defined in these minutes.

¹⁶ Delete as appropriate

¹⁷ Delete if not a charge

¹⁸ Delete if not a guarantee

2 Documents

The following documents (together the **Documents** and each of them a **Document**) were produced to the meeting:

- 2.1 a [draft]¹⁹ Grant Agreement to be made between Homes England and the Developer (the **Grant Agreement**);
- 2.2 [a draft Fixed Charge over Land relating to the Funding to be granted by the Chargor to Homes England over certain real property (the **Legal Charge**);]²⁰
- 2.3 [a draft Guarantee and Indemnity to be made between Homes England and the Guarantor (the **Guarantee**);]²¹ and
- 2.4 a draft officer's certificate (the **Officer's Certificate**) to be given by an Authorised Signatory (as defined below) containing various certifications required pursuant to the Documents including a list of the Authorised Signatories together with a specimen of each authorised signature.

3 Obligations

It was reported to the meeting that the [guaranteeing/ securing] of the full amount of the Developer's Obligations (as such term is defined in the [Guarantee/Legal Charge²²]) under the [Guarantee/ Legal Charge] would not contravene any existing contractual or statutory obligations of the [Guarantor/ Chargor] and that the [Guarantor/ Chargor] was fully empowered to enter into each of the [Guarantee/ Legal Charge] to which it is a party and to perform its obligations thereunder.

4 Disclosure of directors' interests

- 4.1 Each director present [who was in any way, whether directly or indirectly interested in the proposed arrangements, duly disclosed the nature and extent of his interests in the transaction in accordance with section 177 of the Companies Act 2006] **or** [confirmed that he had no interest in any way in the business to be discussed at the meeting].
- 4.2 [It was noted that pursuant to [article] [number] of the [Guarantor/ Chargor]'s Articles of Association, a director may vote and form part of the quorum in relation to any matter in which they are interested.] **or** [It was noted that the director(s) so interested would not vote or count as part of a quorum on any of the matters in which they were (respectively) interested and that, nevertheless, there would be a quorum for all items of business to be transacted at the meeting.]

5 [Power to Guarantee

[It was noted that [the Guarantor's Articles of Association contain a power to give the Guarantee at Clause []] **or** [the Guarantor has unrestricted objects and therefore has the power to give the Guarantee].

¹⁹ Amend as appropriate, taking into account timing of entry into the Guarantee

²⁰ Delete if not a fixed charge

²¹ Delete if not a guarantee

²² Ensure definition is included in Legal Charge

[and/or]

[There was produced to the meeting a written special resolution dated [•] and passed [by the sole member/all the members of the Guarantor] authorising and instructing the Guarantor to enter into the Guarantee.²³]

6 Resolutions

It was noted that, in order to properly exercise the [Guarantor/ Chargor]'s power to enter into the [Guarantee/ Legal Charge], the board must consider that, in the light of all relevant factors, it is in the commercial interests of the [Guarantor/ Chargor] to enter into the [Guarantee/ Legal Charge] Having considered:

- (a) the obligations of the [Guarantor/ Chargor] under and by virtue of the [Guarantee/ Legal Charge];
- (b) the financial position of the Developer [and the other members of the [Guarantor/ Chargor]'s group];
- (c) the duties of the directors and in particular those referred to in section 172 of the Companies Act 2006; [and]
- (d) [the terms of the written special resolution of the sole member/members of the Guarantor;]

it was resolved that:

- 6.2 [the Board of Directors considers that entering into the [Guarantee/ Legal Charge] is in the best commercial interests of the [Guarantor/ Chargor] and most likely to promote the success of the [Guarantor/ Chargor] for the benefit of its members as a whole;]
- 6.3 [•], [•], [•] or [•]²⁴ each be appointed as an **Authorised Signatory**;
- 6.4 the [Guarantee/ Legal Charge] be approved in substantially the form presented to the meeting and that any [one/two] Authorised Signator[y/ies] be and hereby [is] [are] authorised on behalf of the [Guarantor/ Chargor] to agree any amendments thereto which [it] [they] may, acting in [its] [their] absolute discretion, consider to be necessary or appropriate and that the [Guarantor/ Chargor]'s acceptance of and performance of its obligations and the exercise of its rights under the [Guarantee/ Legal Charge] be approved;
- 6.5 any [one/two] Authorised Signator[y/ies] be and [is] [are] hereby authorised to sign on behalf of the [Guarantor/ Chargor] any other document to be entered into under hand pursuant to the [Guarantee/ Legal Charge] which such person[s] consider[s] should be entered into in connection therewith;
- 6.6 any [one/two]²⁵ Authorised Signator[y/ies] be and [is/are] hereby authorised to execute and deliver the [Guarantee/ Legal Charge] as a deed and any other deed required at any time to be entered into pursuant to the [Guarantee/ Legal Charge] or which such person[s]

²³ The authorising special resolution is to be used only if there is some difficulty with the transaction such as lack of commercial benefit or an inability to get an independent quorum of directors.

²⁴ The Authorised Signatory(ies) will be the director(s) and the secretary (if any).

²⁵ If a single Authorised Signatory executes he must be a director and the signature must be witnessed under the provisions of the Companies Act 2006.

consider[s] should be entered into in connection therewith; and if any deed to which it is a party requires execution under hand as a deed of the [Guarantor/ Chargor], any [one/two] Authorised Signator[y/ies] be and [is/are] hereby authorised to execute the same on the [Guarantor/ Chargor]'s behalf; and if any deed to which it is a party requires execution under seal as a deed of the [Guarantor/ Chargor], the [Guarantor/ Chargor]'s seal is hereby authorised to be affixed to the relevant document and such affixation be duly attested in accordance with the [Guarantor/ Chargor]'s Memorandum and Articles of Association in the presence of any [one/two] Authorised Signator[y/ies];

6.7 any Authorised Signatory be and hereby is authorised on behalf of the [Guarantor/ Chargor] to execute and deliver any other documents, notices, letters or other communications and perform all matters, acts and things which such officer in its absolute discretion deems to be necessary or desirable in connection with the [Guarantor/ Chargor] and the transactions contemplated thereby, including without limitation, the Officer's Certificate; and

6.8 [the company secretary] or [specify] be instructed to make all necessary entries in the books and records of the [Guarantor/ Chargor] to reflect the above matters and to make all necessary filings at Companies House.

7 **[Filing]**

The Chairman instructed [the company secretary] or [specify] to file a signed copy of the special resolution authorising the Guarantor to enter into the Guarantee with the Registrar of Companies under section 30 of the Companies Act 2006 within 15 days.]

It is hereby certified that:

8 this is a true extract from the minutes of a quorate meeting of the Board of Directors of the [Guarantor/ Chargor] duly convened and held; and

9 the passing of the resolutions set out in the minutes and the completion of the transactions thereby contemplated do not and will not contravene the provisions of the [Guarantor/ Chargor]'s Memorandum and Articles of Association or any agreement or instrument to which the Guarantor or its directors are party or by which it or they are bound.

.....

Chairman

.....

Date

Schedule 16

Security Officer's Certificate

[Guarantor's/Chargor's] Officer's Certificate

To: the **Homes and Communities Agency** (trading as Homes England) pursuant to the:

[Guarantee and Indemnity dated on the date of this certificate, made between the Homes and Communities Agency (trading as Homes England) (**Homes England**) and [] (the **Guarantor**) in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement (the **Guarantee**) .]²⁶

[Legal Charge dated on the date of this certificate, made between Homes England and the Chargor] in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement (the **Charge**).]²⁷

Terms defined in the [Guarantee/Charge]²⁸ and not otherwise defined herein shall bear the same meaning in this Certificate.

As a director of the [Guarantor/Chargor], I hereby certify as follows as at the date hereof:

- 1.1 attached at Annexure 1 hereto are true, complete and correct copies of an extract from the minutes of a meeting of the board of directors of the [Guarantor/Chargor] which was duly convened and held on [] 20[] and at which a duly constituted quorum was present and voting throughout. The resolutions set out therein have not been revoked or rescinded in any manner and remain in full force and effect;
- 1.2 attached at Annexure 2 hereto are true, complete and correct copies of the constitutional documents of the [Guarantor/Chargor] (including the Articles of Association [and if any the Memorandum of Association][Rules]) which are in full force and effect and incorporate all amendments made and registered to the date hereof;
- 1.3 attached at Annexure 3 hereto are true, complete and correct copies of the certificate of [registration/incorporation] of the [Guarantor/Chargor] issued by the relevant authority (and where relevant any certificates issued on change of name) which are in full force and effect and incorporate all amendments made and registered to the date hereof; and
- 1.4 the persons specified on the attached signatory certificate have been authorised by the [Guarantor/Chargor] to execute the [Guarantee/Charge] and any other documentation relating thereto and the copies of their specimen signatures are set out at Annexure 4 to this Certificate.

dated 20[]

.....
Director
[insert [Guarantor's/Chargor's] name]

²⁶ Delete if a Charge

²⁷ Delete if a Guarantee

²⁸ Amend as appropriate throughout form

Annexure 1 - Security Officer's Certificate

Minutes of a Meeting of the Board of the [Guarantor/Chargor]

DRAFT

Annexure 2 - Security Officer's Certificate
Constitutional Documents of the [Guarantor/Chargor]

DRAFT

Annexure 3 - Security Officer's Certificate

Evidence of Incorporation of the [Guarantor/Chargor]

DRAFT

Annexure 4 - Security Officer's Certificate

Specimen Signature Certificate

Name	Position	Specimen Signature

DRAFT

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:

[Developer]

[Insert Execution Block]

