

dated

2011

Homes and Communities Agency

and

[Grant Recipient]

Framework Delivery Agreement

in relation to the Affordable Homes Programme (ex RSL) 2011 - 2015

(LONDON)

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Framework Delivery Agreement¹

dated

Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Central Business Exchange II, 414-428 Midsummer Boulevard, Central Milton Keynes MK9 2EA (including any statutory successor) (the **Agency**); and
- (2) [] (company/I&P registration number []) whose registered office is at [] (the **Grant Recipient**).

Introduction

- (A) The Agency 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 affordable housing.
- (B) The Agency and the Grant Recipient have agreed the terms of a Programme Offer (as defined below) pursuant to which the Agency agrees to provide grant funding to the Grant Recipient for the purposes of the delivery by 31 March 2015 of the number of Affordable Dwellings specified in the Programme Offer.
- (C) Grant paid by the Agency to the Grant Recipient pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.

1 Definitions and interpretation

1.1 Definitions

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

Acceptance Date means the date upon which the Agency accepts a Developable Scheme as a Firm Scheme pursuant to Condition 6.2;

Actual Development Costs means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Grant Recipient in developing that Firm Scheme as such amount is certified by the Grant Recipient pursuant to condition 9.2.3;

Additional Design and Quality Standards means in respect of each Firm Scheme the standards offered by the Grant Recipient and accepted by the Agency through IMS which are additional to the requirements of the Design and Quality Standards;

Adjustment has the meaning given to it in Condition 5.8. A worked example of the calculation referred to in Condition 5.8 is included at Annex 2 for illustrative purposes only;

¹ As identified in the Framework Document, where bids under the Affordable Housing Programme encompass London and other parts of the country, two separate contracts will need to be entered into, one dealing with those schemes proposed for London and one for elsewhere. This "London" Agreement require to be modified to provide expressly for novation of the contract to the Greater London Authority (GLA) when the Agency's housing functions for London are transferred to the GLA. It will also be modified to take account of GLA's ongoing role, i.e. references to successor guidance etc and policies published by the Mayor and any other specific requirements of the GLA.

Affordable Dwelling means a house, flat or maisonette (including any Non Attributed Grant Unit) 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;

Affordable Home Ownership means low cost home ownership on Newbuild HomeBuy Lease terms or on Equity Loan Terms;

Affordable Home Ownership Dwelling means an Affordable Dwelling to be disposed of on Affordable Home Ownership terms;

Affordable Housing means subsidised housing provided by the Grant Recipient that will be made permanently available as:

- (a) Affordable Rent;
- (b) Social Rent; or
- (c) Affordable Home Ownership;

Affordable Rent means low cost rental accommodation (as defined in Section 69 of HRA 2008), other than Social Rent, made available on terms which comply with the Tenancy Standard;

Affordable Rent Dwelling means an Affordable Dwelling to be occupied on an Affordable Rent basis;

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

Agreed Payment Rate or **APR** means, subject to Condition 4, for:

- (a) Affordable Rent and Social Rent £[]; and
- (b) Affordable Home Ownership £[];²

per dwelling delivered under this Agreement;

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

Agreement means this Framework Delivery Agreement (including its Schedules, Annexures and Appendices (if any));

AHP means the 2011/15 Affordable Homes Programme as described in the Framework Document;

Allocated Grant means [], being, subject to Condition 4, the maximum amount of grant payable by the Agency to the Grant Recipient in respect of the Programme Offer;

² The Agreed Payment Rate will vary according to whether the Affordable Dwellings are inside/outside London. Where a Programme Offer comprises units in/out of London, two agreements will be required to be entered into.

Annual Review Meeting means the first Review Meeting in each Financial Year;

Area means a geographical area prescribed by the Agency from time to time in which a HomeBuy Agent operates;

Balancing Sum means such sum as represents the amount by which Public Sector Subsidy in respect of the Programme Offer exceeds the aggregated Actual Development Costs incurred by the Grant Recipient in the delivery of the Programme Offer;

Building Contract means the contract entered into between the Grant Recipient and the Building Contractor relating to the construction and development of a Firm Scheme;

Building Contractor means the building contractor or developer appointed or to be appointed by the Grant Recipient 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 "Affordable Housing Capital Funding Guide" published on the Agency's website or any successor guide published by the Agency (or any successor body) as updated from time to time;

CDM Regulations means the Construction (Design and Management) Regulations 2007 S.I. No. 320;

CEDR means the Centre for Effective Dispute Resolution;

Compliance Audit means the procedure (in a form advised by the Agency from time to time) by which an auditor independent of the Grant Recipient certifies whether the Firm Schemes developed pursuant to this Agreement satisfy the Agency's procedural compliance requirements (as described in the Capital Funding Guide);

Confidential Information means in respect of the Agency all information relating to the Agency'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 Grant Recipient becomes aware in its capacity as a party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either the Agency or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the Agency 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 Grant Recipient means such specific information as the Grant Recipient shall have identified to the Agency 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;

Continuing Firm Scheme means a Firm Scheme approved by the Agency on IMS and in respect of which the Start on Site Date has or will have occurred at the date of the expiry of the notice period referred to in Condition 5.4.2;

Conversion Capacity means, subject to Condition 4, the sum of £[]³;

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

Corporation means The Housing Corporation, a body corporate established under the Housing Associations Act 1985, whose investment functions were transferred to the Agency on 1 December 2008 pursuant to the HRA 2008;

Data Controller has the meaning ascribed to it in the DPA;

Data Subject has the meaning ascribed to it in the DPA;

Design and Quality Standards means the standards set out in the Corporation's publication entitled "Design and Quality Standards April 2007" and the standards set out in the London Housing Design Guide as published by the Greater London Authority;

Developable Scheme means each proposed scheme for the development (including, where relevant, the refurbishment) of Affordable Housing submitted by the Grant Recipient to the Agency pursuant to Condition 6.1;

Development Costs means the costs relating to the development of a Firm Scheme incurred or to be incurred in respect of such Firm Scheme by the Grant Recipient in respect of the heads of expenditure set out in Part 1 to Annex 1 or such other heads of expenditure as the Agency 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 Annex 1 shall not be capable of being treated as Development Costs;

DPA means the Data Protection Act 1998;

DPF means the Disposal Proceeds Fund maintained by the Grant Recipient in accordance with the requirements of Section 177 of the HRA 2008;

EIR means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such statutory instrument;

EIR Exemption means any applicable exemption to EIR;

Employment Skills Statement means the statement of that name incorporated within the Programme Offer;

Equity Loan means a loan which is equal in amount to a percentage to be acquired agreed between the Grant Recipient and the mortgagor (not exceeding twenty per centum (20%) of the market value of the dwelling) multiplied by the market value of the dwelling to be acquired as determined by the Grant Recipient when it makes the loan;

Equity Loan Terms means a disposal of a dwelling by the Grant Recipient to a purchaser and facilitated by an Equity Loan secured by an Equity Mortgage in each case on terms consistent with paragraphs 4.12, 4.13, 4.16 and 4.19 of the Framework Document;

³ Figure to be inserted from the Programme Offer which identifies the capacity to be generated from Permitted Conversions.

Equity Mortgage means a mortgage under which, in consideration for an Equity Loan, the mortgagor agrees that on the loan becoming repayable he shall pay to the Grant Recipient an amount which is equal to the agreed percentage multiplied by the value of the dwelling, determined in accordance with the terms of the mortgage, at the date upon which the loan becomes repayable;

EU Procurement Regime means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2004/18/EC, 89/665/EEC and 2004/17/EC, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228 and 2006/5 insofar as the same are applicable;

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

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 until the expiry of the Term or early termination of this Agreement;

Firm Scheme means each scheme for the development of Affordable Housing accepted by the Agency pursuant to Condition 6.2;

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

Firm Scheme Delivery Timetable means the timetable for construction and completion of the Firm Scheme as agreed by the Agency through IMS;

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

Firm Scheme Grant or **FSG** has (save where the context requires otherwise) the meaning given to it in Condition 10;

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;

Framework Document means the Agency publication entitled "2011-15 Affordable Homes Programme – Framework";

Funding Conditions mean the Funding Conditions set out within the Capital Funding Guide, as formally accepted by the Grant Recipient's board of management and indicated as such on IMS;

Grant Recipient Party means:

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

Grant Recipient's Representative means the Grant Recipient's Development Director or such other person agreed by the Agency to act as the Grant Recipient's representative from time to time for the purposes of this Agreement;

HomeBuy means the suite of low cost home ownership products designed to help people who cannot afford to buy homes generally available in the open market within the relevant local area;

HomeBuy Agency Agreement means an agreement entered into between the Grant Recipient and the HomeBuy Agent in whose Area a Firm Scheme is located and pursuant to which the HomeBuy Agent undertakes such roles or activities as the Agency may prescribe from time to time including inter alia the provision of a one stop service to qualifying applicants enquiring and applying for home ownership, marketing, the provision of lists of qualifying applicants to grant recipients and provision of information in respect of such services;

HomeBuy Agent means a body appointed by the Agency to undertake such roles or activities as the Agency may prescribe for HomeBuy Agents from time to time;

HRA 2008 means the Housing and Regeneration Act 2008;

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

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

Information Commissioner has the meaning set out in Section 6 of the DPA 1998;

Insolvency Event means the occurrence of any of the following in relation to the Grant Recipient;

- (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 the Agency 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 the Agency (such approval not to be unreasonably withheld or delayed);
 - ii a composition, compromise, assignment or arrangement with any of its creditor;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency (such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any assets of the Grant Recipient; 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 Grant Recipient which has a Material Adverse Effect;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) 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 a Registered Provider which has been confirmed by the Agency as having "Investment Partner Status" under the Agency's Investment Partner qualification procedure;

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in the United Kingdom;

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 Grant Recipient;

Marketing Statement means the statement of that name (if any) incorporated within the Programme Offer;

Material Adverse Effect means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the Programme Offer within the time limits (if any) for doing so;

Milestone means each stage in the development of the Firm Scheme agreed by the parties and set out in IMS;

Milestone Date means the date agreed by the Agency through IMS by which the relevant Milestone must have been achieved (as the same may be varied by the Agency pursuant to Condition 8.2);

Milestone Extension Events means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body which the Grant Recipient 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 Grant Recipient 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; or
- (l) any material failure by the Building Contractor under the terms of the Building Contract which has the direct result of delaying the Grant Recipient's compliance with a Milestone Date and which did not result from the Grant Recipient's failure effectively to manage the Building Contract;

unless:

- (a) any of the events arises (directly or indirectly) as a result of any wilful default or wilful act of the Grant Recipient or, save in respect of the event referred to in (k) above, any of its subcontractors; or
- (b) in respect of the event referred to in (f) above, such event arises as a result of any failure by the Grant Recipient (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 Grant Recipient to complete the Firm Scheme by the Firm Scheme Completion Date;

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

Newbuild HomeBuy Lease means a shared ownership lease that meets:

- (a) the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977; and
- (b) any applicable requirements of the Capital Funding Guide;

Non Attributed Grant Unit⁴ means an Affordable Dwelling comprised within a Firm Scheme in respect of which the Grant Recipient is entitled to be paid the Agreed Payment Rate but in relation to which the parties are deemed to have agreed that the amount paid by the Agency does not constitute social housing assistance for the purposes of Sections 19 and Sections 31-34 HRA 2008;

⁴ Note that the concept of Non Attributed Grant Unit only applies to units submitted as part of the Programme Offer and identified as such on IMS.

NHBC means the National House-Building Council;

Non Compliance Notification Date means the date on which the Agency notifies the Grant Recipient 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;

Officer's Certificate means the certificate to be provided in accordance with the provisions of Conditions 3.2 and 3.3 in substantially the form set out in Schedule 2 or in such other form as the Agency may prescribe from time to time;

Ongoing Obligations means the Grant Recipient's obligations under Conditions 7.2 to 7.8 inclusive;

Open Book means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Open Book Obligations mean the obligations set out in Condition 16;

Permitted Conversions means, subject to Conditions 4 and 5.10, the number of properties (other than the Affordable Dwellings) identified in the Programme Offer which the Grant Recipient intends to let at an Affordable Rent or, as applicable, dispose of either on Affordable Home Ownership terms or on market sale terms to generate the Conversion Capacity;

Personal Data has the meaning ascribed to it in the DPA;

Practical Completion means that stage in the execution of a Firm Scheme when the Firm Scheme has been completed in accordance with the terms of the relevant building contract and/or the terms of this Agreement being fit for beneficial occupation as a residential development in accordance with NHBC or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Firm Scheme and which would be reasonable to include in a snagging list, and Practically Complete shall be construed accordingly;

Process has the meaning ascribed to it in the DPA;

Procurement Efficiencies Statement means the statement of that name incorporated within the Programme Offer;

Professional Team means the architect, civil & structural engineer, the mechanical & electrical engineer and any other consultant appointed by the Grant Recipient in connection with a Firm Scheme;

Programme Aims means the Agency's requirements:

- (a) to ensure that the Allocated Grant and Conversion Capacity is properly and effectively spent; and

- (b) to maximise the delivery of Affordable Housing under the Programme Offer;

Programme Change Notice means a notification served by one party on the other pursuant to Condition 4.3;

Programme Default has the meaning given to it in Condition 5.1;

Programme Offer means the terms input by the Grant Recipient and approved by the Agency on IMS as at the date hereof upon which the Grant Recipient has agreed to deliver new Affordable Housing and the Agency has agreed to make the Allocated Grant available, details of which are appended at Schedule 1 (as the same may be amended from time to time in accordance with Condition 4);

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of the Agency 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 the Agency relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by the Grant Recipient 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 the Agency;
- (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 Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010 (once in force); or
- (d) defrauding or attempting to defraud or conspiring to defraud the Agency or the Regulator;

Public Sector Subsidy means all funding or subsidy in relation to the Programme Offer in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the Agency not provided under this Agreement;

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

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

Recovery Determination means the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2006;

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

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

Regulator means the body established pursuant to Section 81 of the HRA 2008 or any other body with responsibility for carrying on substantially the same regulatory or supervisory functions;

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 Grant Recipient's obligations under this Agreement;

Relevant Event has the meaning attributed thereto in the Recovery Determination;

Relevant Firm Scheme means a Firm Scheme in relation to which a Relevant Event occurs;

Request for Information 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 the Agency;

Review Meeting means a meeting held pursuant to Conditions 3.5 to 3.7;

RIDDOR means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time);

Section 106 Agreement means an agreement entered into by a local planning authority and a person under section 106 of the Town and Country Planning Act 1990;

Section 106 Scheme means a Firm Scheme where the Affordable Housing is part of a larger scheme comprising accommodation which is non-residential and/or residential which is not Affordable Housing which is subject to a Section 106 Agreement;

Secure Legal Interest means the Grant Recipient has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title (where the lease has at least 60 years unexpired duration) registered with title absolute;

- (c) freehold title registered with possessory title or good leasehold title and defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Total Grant Required for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site (owning either a freehold interest or leasehold interest of at least sixty (60) years unexpired duration) to secure one of the interests in (a) to (c) and that, securing that interest is conditional only upon matters that are within the direct and unilateral control of the Grant Recipient.

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 "flawed asset" arrangement);

Site means the site identified to the Agency as being the area of land comprised or to be comprised in a Firm Scheme and/or the Affordable Dwellings and common areas developed as part of such Firm Scheme;

Social Rent means low cost rental accommodation as defined in Section 69 of HRA 2008 made permanently available for letting to persons at Target Rents on assured tenancy terms and to include those persons nominated by any relevant local authority;⁵

Social Rent Dwelling means an Affordable Dwelling to be let as Social Rent;

Start on Site Works means:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving; or
- (d) drainage work specific to the buildings forming part of the Firm Scheme;

Start on Site Date means the date on which:

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

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

Submitted Standards means in respect of each Firm Scheme:

- (a) the Design and Quality Standards 2007; and

⁵ The reference to "assured tenancy terms" means both assured shorthold and assured non-shorthold tenancies.

- (b) the Additional Design and Quality Standards (if any);

Target Rents means those rent levels as specified by the Government's Social Rent Guidance in respect of Social Rent as published by the Department for the Environment Transport and the Regions in March 2001 (including any guidance subsequently issued by that or any successor department in relation to that document) and calculated in accordance with the Rent Influencing Regime Guidance as published by the Corporation in October 2001 and any other guidance subsequently issued by the Regulator in relation to that document;

Tenancy Standard means the standard described in Decision Instrument 5: Revision to the Tenancy Standard: Affordable Rent published by the Regulator in April 2011 as may be amended and updated from time to time;

Term means the period of time from the date hereof until 31 March 2015 (subject to earlier termination by the Agency of the entirety of this Agreement);

Total Grant Required means in respect of each Firm Scheme the figure shown under or in relation to that heading in the Firm Scheme Details;

Transparency Obligations means the obligations set out in Condition 17;

Unallocated Scheme Grant means in relation to any Firm Scheme the amount by which the Firm Scheme Grant exceeds the Total Grant Required;

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 Grant Recipient to the Agency that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Grant Recipient; or
- (b) a subcontractor (or any employee of a subcontractor not acting independently of the subcontractor); or
- (c) an employee of a subcontractor acting independently of such subcontractor; or
- (d) any person not specified in parts (a), (b) or (c)

and the Agency is satisfied that the Grant Recipient 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 directors of the Grant Recipient or relevant subcontractor;

Works means all of the works (including design, infrastructure works and all other works necessary for obtaining access to the Affordable Dwellings) to be undertaken in order to ensure that the Affordable Dwellings meet the Submitted Standards and are constructed 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 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 Agreement.
- 1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule or an Appendix to this Agreement.
- 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 Agreement.
- 1.2.13 In any case where the consent or approval of the Agency (or any officer of the Agency) is required or a notice is to be given by the Agency, 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 the Agency by notice in writing to the Grant Recipient.
- 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 Site includes 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, or where an express discretion is given by this Agreement, the Agency shall act reasonably in exercising its rights hereunder (including in granting approvals hereunder).
- 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 Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the Agency for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 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 the Agency shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Agency, relieve the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency 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.

2 The Programme Offer

- 2.1 The parties acknowledge the terms of the Programme Offer which the Grant Recipient agrees to deliver subject to and in accordance with the terms of this Agreement.
- 2.2 The Agency has agreed to make the Allocated Grant available to the Grant Recipient to develop the Affordable Dwellings subject to and in accordance with the terms and conditions of this Agreement.
- 2.3 The Grant Recipient shall use its reasonable endeavours to deliver its commitments or proposals outlined in:
 - 2.3.1 the Procurement Efficiencies Statement;
 - 2.3.2 the Employment Skills Statement; and
 - 2.3.3 the Marketing Statement.
- 2.4 The Grant Recipient shall:
 - 2.4.1 use its reasonable endeavours to complete the Permitted Conversions in accordance with the timescale projected for such Permitted Conversions in the Programme Offer;

2.4.2 not convert more dwellings let as Social Rent within its housing stock to Affordable Rent beyond that required to create the Conversion Capacity; and

2.4.3 not dispose of more dwellings let as Social Rent within its housing stock on Affordable Home Ownership or market sale terms than are required to create the Conversion Capacity SAVE THAT nothing in this Condition 2.4.3 is intended to preclude the Grant Recipient from making such other disposals from its housing stock as:

(a) are consistent with its corporate asset management strategies from time to time; and

(b) are consented to by the Regulator.

2.5 The Grant Recipient acknowledges and agrees that:

2.5.1 the Allocated Grant is being made available by the Agency on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of the Affordable Dwellings;

2.5.2 the Public Sector Subsidy in respect of the Programme Offer may not exceed an amount equal to the aggregated Actual Development Costs incurred by the Grant Recipient in respect of the delivery of the Programme Offer;

2.5.3 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 Condition 13 represent the events and principles determined by the Agency for the purposes of Sections 31-34 of the HRA 2008;

2.5.4 the Affordable Dwellings provided with the benefit of the Allocated Grant (including for the avoidance of doubt the Non Attributed Grant Units) shall be deemed to have been provided with public money for the purposes of Section 180 of the HRA 2008.

2.6 The Grant Recipient shall comply with the Open Book Obligations and the Transparency Obligations.

3 **Programme Offer - Monitoring and Reporting**

3.1 The Grant Recipient acknowledges the high importance to the Agency of it being advised when any circumstance occurs which may:

3.1.1 impact on the Grant Recipient's ability to deliver the Programme Offer;

3.1.2 change any assumptions in the Programme Offer which would provide an opportunity for the Grant Recipient to deliver more Affordable Dwellings with the Allocated Grant;

3.1.3 indicates that the Agency is making available more grant than is required to deliver the Programme Offer; or

3.1.4 without prejudice to the circumstances specified in 3.1.1 to 3.1.3 (inclusive), indicates that the Grant Recipient will need to make more or less Permitted Conversions

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

3.2 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Condition 3.

3.3 The Grant Recipient shall with effect from and including the first Quarter Date after the date of this Agreement submit a signed and dated Officer's Certificate to the Agency within five (5) Business Days of each Quarter Date, together with such other information as may have been requested on reasonable notice by the Agency.

3.4 The Officer's Certificate shall be signed by the Grant Recipient's Representative or, where agreed in advance by the Agency, another specified member of the Grant Recipient's executive management team.

3.5 Within ten (10) Business Days of receipt of the Officer's Certificate and the information required pursuant to Condition 3.3 (or such longer period as the Agency may at its absolute discretion agree), the Agency and the Grant Recipient shall meet to review:

3.5.1 the Grant Recipient's performance against the Programme Offer;

3.5.2 the Contract Monitoring Outputs;

3.5.3 the information supplied pursuant to the Open Book Obligations;

3.5.4 the Grant Recipient's progress against its obligation in Condition 2.3.2; and

3.5.5 the position on agreeing nomination arrangements in respect of Affordable Dwellings with relevant Local Authorities and in line with the Mayor of London's Housing Strategy.

3.6 At the Annual Review Meeting in addition to the matters to be addressed at each Review Meeting (as specified in Condition 3.5), the parties shall also review:

3.6.1 all changes made to the Programme Offer in the previous Financial Year;

3.6.2 the Grant Recipient's progress against its obligations in Conditions 2.3.1 and 2.3.3;

3.6.3 the allocations made in the previous Financial Year in accordance with the provisions of Condition 15

and the Grant Recipient shall supply the data referred to in Condition 3.6.3 no less than ten (10) Business Days prior to the Annual Review Meeting in a form which enables the Agency to satisfy itself that the Grant Recipient has complied with its obligations set out in Condition 15.

3.7 The Agency or the Grant Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:

3.7.1 gives reasonable prior written notice to the other of such meeting; and

3.7.2 includes with the notice an agenda for such meeting.

3.8 The Agency's Representative and the Grant Recipient's Representative (or, where agreed with the Agency in advance, such other member of the Grant Recipient's executive management team) shall attend all Review Meetings during the Term. The parties agree that the Regulator and the Mayor of London shall also be entitled to send a representative to attend such meetings.⁶

3.9 Save as otherwise agreed between the parties, any meeting under this Condition 3 shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.

4 **Programme Changes**

4.1 The parties acknowledge that changes may be required to the Programme Offer during the Term to ensure that inter alia:

4.1.1 the Programme Aims are being delivered; and/or

4.1.2 the Grant Recipient remains capable of delivering the Programme Offer from time to time

(the **Programme Offer Requirements**).

4.2 A change to the Programme Offer may take the form of one or more (or a combination of) the following:

4.2.1 a revision to:

(a) the profile of projected Start on Site Dates and dates for Practical Completion; and/or

(b) the type, location, number or tenure mix or the design and quality standards of Affordable Dwellings; and/or

(c) the rent levels forecast for such dwellings included in the Programme Offer;

4.2.2 a change in the number, location or rate of Permitted Conversions or Conversion Capacity;

4.2.3 a reduction in the Agreed Payment Rate;

4.2.4 the Grant Recipient committing more of its own resources to underpin the delivery of the Programme Offer;

4.2.5 fewer or more Affordable Dwellings being included in the Programme Offer; or

4.2.6 such other change as either party may propose.

⁶ In respect of contracts entered into for London, this provision will be amended to make clear that a representative of the GLA will also be entitled to attend Review Meetings prior to the 1st April 2012.

- 4.3 Either party shall notify the other in writing when it becomes aware of circumstances which give rise (in that party's opinion (acting reasonably)) to the need for a change to be implemented to the Programme Offer. Any Programme Change Notice shall specify the reasons for the proposed change to the Programme Offer and describe the proposed nature of the change being sought. The party issuing the Programme Change Notice may withdraw the notice at any time.
- 4.4 Save where the parties agree that a meeting is unnecessary a meeting shall be convened as soon as is practicable (but in any event no later than the next scheduled Review Meeting) to discuss a Programme Change Notice and shall be attended by the same persons as those required (or permitted) to attend Review Meetings.
- 4.5 In determining whether to implement a change to the Programme Offer, and the substance of that change, the parties shall act in good faith, reasonably and taking account of:
- 4.5.1 the Programme Offer Requirements;
 - 4.5.2 the performance, to date, of the Grant Recipient under the Agreement; and
 - 4.5.3 (where applicable) the principles described in Annex 3 of the Framework Document

the parties shall seek to agree the terms of any change to the Programme Offer **provided that and it is hereby agreed that** the Agency shall not be obliged to agree any change to the Programme Offer where such change would (when taken individually or together with other changes to the Grant Recipient's Programme Offer or to the programme offers of other grant recipients under the AHP) result in the Agency becoming liable to pay out more by way of grant in any Financial Year than is then available to the Agency for investment in Affordable Housing for the relevant Financial Year.

- 4.6 No change to the Programme Offer shall be implemented unless it has been agreed by the parties. The Agency shall, where it considers it necessary, consult with the Regulator on the proposed change before determining whether to approve a change to the Programme Offer.
- 4.7 Where a change to the Programme Offer has been agreed in accordance with Condition 4.6, the Grant Recipient shall input the agreed changes to the Programme Offer on IMS as soon as is practicable and in any event within five (5) Business Days of the date of the meeting or other forum or means at or through which the change was agreed. Acceptance by the Agency of the changes to the Programme Offer on IMS shall constitute evidence of the parties agreement as to the revised terms of the Programme Offer and no further evidence shall be required.
- 4.8 The Grant Recipient acknowledges that where a Programme Change Notice is submitted (and has not been withdrawn) and the parties are unable to agree on the change proposed in the Programme Change Notice within twenty (20) Business Days (or such longer period as the Agency may at its discretion permit) of the meeting held in accordance with the provisions of Condition 4.4 or where no such meeting is held the date of the next scheduled Review Meeting, either party (acting reasonably) shall be entitled to terminate this Agreement in accordance with Condition 5.

5 **Programme Default**

5.1 The following circumstances shall constitute a Programme Default:

- 5.1.1 failure by the Grant Recipient to comply with its obligations in Condition 3 and/or any information supplied in connection with its obligations in Condition 3, whether in an Officer's Certificate, the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;
- 5.1.2 the Grant Recipient is unable to make the representations and give the warranties set out in Schedule 3 (in any case in whole or in part) and there is a resulting Material Adverse Effect;
- 5.1.3 an Insolvency Event has occurred in relation to the Grant Recipient;
- 5.1.4 a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);
- 5.1.5 the occurrence of the circumstance referred to in Condition 4.8;
- 5.1.6 a breach of the Open Book Obligations and/or Transparency Obligations;
- 5.1.7 the Agency determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Programme Offer has not been made by the Grant Recipient in delivering the Programme Offer;
- 5.1.8 the Grant Recipient ceases operating;
- 5.1.9 the Grant Recipient's status as a Registered Provider is lost or removed;
- 5.1.10 the Grant Recipient's Investment Partner status is lost or removed;
- 5.1.11 the Regulator directs or recommends that grant is not to be paid to the Grant Recipient;
- 5.1.12 a breach of the Grant Recipient's obligations under Condition 7.5.4;
- 5.1.13 any other breach of the Agreement which has a Material Adverse Effect; and/or
- 5.1.14 the occurrence of the circumstance referred to in Condition 13.3.3(c).

5.2 The Grant Recipient must notify the Agency immediately in writing on the occurrence of a Programme Default.

5.3 Without prejudice to Condition 5.4, in the event of the occurrence of a Programme Default and for so long as that Programme Default subsists (or another Programme Default has occurred and is continuing) or a Programme Change Notice has been issued but not yet agreed by the parties, the Agency shall be entitled to reject the submission of any Firm Scheme on IMS.

5.4 Where the Programme Default is:

5.4.1 an occurrence specified in Condition 5.1.3, 5.1.4, 5.1.8, 5.1.9, 5.1.10 and/or 5.1.14, the Agency shall be entitled forthwith and without any liability to the Grant Recipient terminate the Agreement;

5.4.2 an occurrence specified in Condition 5.1.1, 5.1.2, 5.1.5, 5.1.6, 5.1.7, 5.1.11, 5.1.12 or 5.1.13 the Agency may serve notice on the Grant Recipient requiring the Grant Recipient 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 the Agency the Grant Recipient has not given an undertaking to remedy the breach on terms satisfactory to the Agency; or

(c) if it becomes apparent that the Programme Default is incapable of remedy either within such period or at all;

the Agency shall be entitled on giving not less than ten (10) Business Days' notice and without any liability to the Grant Recipient to exercise the termination rights in Condition 5.6.

5.5 In the circumstances identified in Condition 5.1.5:

5.5.1 either party shall be entitled on giving not less than ten (10) Business Days notice to terminate this Agreement; and

5.5.2 the provisions of Conditions 5.6 to 5.11 shall be deemed to apply (mutatis mutandis to a termination under this Condition 5.5 as if it were a termination pursuant to Condition 5.4.2.

5.6 Where Condition 5.4.2 applies and:

5.6.1 there are no Continuing Firm Schemes, the Agency may terminate this Agreement in its entirety such termination to take effect at the end of the notice period referred to in Condition 5.4.2;

5.6.2 there are Continuing Firm Schemes the Agency may terminate this Agreement in relation to all but the Continuing Firm Schemes such termination to take effect at the end of the notice period referred to in Condition 5.4.2.

5.7 In the event that this Agreement is terminated pursuant to Condition 5.4.1 or Condition 5.6.1, the Agency shall determine the Adjustment in accordance with the provisions of Condition 5.8. Where the figure calculated in accordance with Condition 5.8 is greater than zero, the provisions of Condition 5.9 shall apply. Where the figure calculated in accordance with Condition 5.8 is less than zero, the provisions of Condition 5.10 shall apply.

5.8 The Adjustment is the product of the following calculation:

$$A = B - C$$

where:

A is the Adjustment;

B is the aggregate of all sums paid by the Agency to the Grant Recipient under this Agreement less the aggregate of any Recoverable Amounts paid to the Agency as at the date of this calculation; and

C is that element of "B" which the Grant Recipient has allocated against Affordable Dwellings in accordance with the provisions of Condition 15.

5.9 Where this Condition 5.9 applies, the Grant Recipient shall pay a sum equivalent to the value of the Adjustment to the Agency within twenty (20) Business Days of receiving notification from the Agency of the Adjustment.

5.10 Where this Condition 5.10 applies, no payment shall be due from the Agency but the Grant Recipient shall be entitled to make such additional Permitted Conversions as are necessary to enable the Grant Recipient to recoup the Adjustment provided that the type and duration of such additional Permitted Conversions have been agreed with the Agency in consultation with the Regulator.

5.11 In the event that this Agreement is terminated pursuant to Condition 5.6.2, the Agency shall defer determination of the Adjustment until the earlier of:

5.11.1 any subsequent termination of the Agreement pursuant to Conditions 5.4.1 or 5.6.1 and

5.11.2 the delivery of the last remaining Continuing Firm Scheme

at which point the Agency shall determine the Adjustment in accordance with the provisions of Condition 5.8. Where the figure calculated in accordance with Condition 5.8 is greater than zero, the provisions of Condition 5.9 shall apply. Where the figure calculated in accordance with Condition 5.8 is less than zero, the provisions of Condition 5.10 shall apply.

5.12 Where either party purports to terminate this Agreement in accordance with this Condition 5 and the other party disputes its entitlement to do so the provisions of Condition 25 shall apply.

6 Firm Schemes – Submission Procedures

6.1 Where the Grant Recipient identifies a Developable Scheme, it must submit to the Agency through IMS such details of the Developable Scheme as the Agency may require. Such details must be submitted no later than ten (10) Business Days after the Start on Site Date. In submitting the details of the Developable Scheme, the Grant Recipient is deemed to represent and warrant to the Agency that:

6.1.1 the Developable Scheme:

(a) is consistent with the Programme Offer;

(b) is in its opinion (acting reasonably) deliverable in accordance with the Firm Scheme Delivery Timetable and the Submitted Standards;

- (c) has received the support of the Local Housing Authority which it acknowledges will be verified by the Agency with the Local Housing Authority; and

6.1.2 the Grant Recipient:

- (a) possesses or will possess a Secure Legal Interest in the Site; and
- (b) has obtained all Consents necessary for the lawful development of the Developable Scheme to the Submitted Standards as are then required.

6.2 If the Agency (acting reasonably) is satisfied with the details submitted under Condition 6.1 and considers that the Developable Scheme is consistent with the Programme Offer (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution), it will subject to Condition 5.3 confirm its acceptance of the Developable Scheme to the Grant Recipient through IMS.

6.3 With effect from the Acceptance Date, the Developable Scheme shall constitute a Firm Scheme and shall be subject to the whole terms and conditions of this Agreement.

6.4 The Agency has no obligation to make any payment of grant in respect of a Firm Scheme unless and until it has confirmed its acceptance of it in the manner described in Condition 6.3.

7 Firm Scheme Obligations

7.1 The Grant Recipient must carry out the design construction and completion of the Firm Scheme so that:

7.1.1 the Firm Scheme is (subject to Condition 8.2) delivered in accordance with the Firm Scheme Delivery Timetable;

7.1.2 when delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standard; and

7.1.3 any applicable requirements of the EU Procurement Regime are complied with

(collectively the **Firm Scheme Obligations**).

7.2 In delivering the Firm Scheme and in operating and administering the Firm Scheme after Practical Completion, the Grant Recipient must observe and comply with Legislation, the applicable terms of the Funding Conditions, the Capital Funding Guide and the Recovery Determination.

7.3 The Grant Recipient shall procure that the Agency'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 Grant Recipient with its obligations under this Agreement.

7.4 The Grant Recipient must notify the Agency in writing (save in respect of Condition 7.4.1, where notification is required to be given through IMS):

- 7.4.1 immediately once the Start on Site Date has occurred;
 - 7.4.2 immediately, in the event of the receipt by it of any other Public Sector Subsidy 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 Subsidy notified to the Agency by the Grant Recipient pursuant to Condition 6.1;
 - 7.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect;
 - 7.4.4 of any other event or circumstance in relation the Firm Scheme as the Agency may reasonably require from time to time and within such timeframes as the Agency may reasonably require.
- 7.5 Without prejudice to Condition 7.2, the Grant Recipient must in operating and administering the Firm Scheme after Practical Completion:
- 7.5.1 subject to Condition 13.1 not use the Affordable Dwellings for any purpose other than the Agreed Purposes without the Agency's prior written consent;
 - 7.5.2 comply with the Regulator's Tenancy Standard in respect of the Affordable Rent Dwellings and the Social Rent Dwellings;
 - 7.5.3 observe and comply with the requirements of the Capital Funding Guide in relation to any disposal of the Affordable Home Ownership Dwellings and ensure that such disposal takes effect only at arms length and on market terms;
 - 7.5.4 comply with the Agency's requirements in relation to Compliance Audit; and
 - 7.5.5 participate in the CORE system from time to time and complete the "Initial Sales" data screens on IMS promptly following the sale of any Affordable Home Ownership Dwelling.
- 7.6 The Grant Recipient shall ensure that the Agency's requirements from time to time in relation to public relations and publicity for capital projects (including site signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 7.7 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Programme Offer as appended to this Agreement and with proper regard to the need for efficiency in the use of public funds.
- 7.8 Where the Grant Recipient is aware that it is in breach of an obligation under this Condition 7 it must promptly notify the Agency of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 8 Changes to Firm Schemes**
- 8.1 The parties may from time to time agree changes to the Firm Scheme Details and where such changes are agreed they shall be implemented by the Grant Recipient amending the Firm Scheme Details in IMS and the electronic confirmation of that amendment by the Agency through IMS.

- 8.2 Where a Milestone Failure occurs or is in the opinion of the Agency reasonably likely to occur (having regard to the information supplied at the Review Meeting or pursuant to Condition 7.4) and such failure is directly caused by a Milestone Extension Event, the Agency shall subject to Conditions 8.3 and 8.4 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.
- 8.3 The Agency shall not be obliged to extend a Milestone Date where such extension would (when taken individually or together with other extensions in relation to the Grant Recipient) in the Agency's reasonable opinion materially and adversely affect the delivery of the Programme Offer or (when taken individually or together with other extensions in relation to the Grant Recipient or other grant recipients under the AHP) materially and adversely affect the Agency's projected expenditure profile in relation to any year of the AHP and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant Financial Year
- 8.4 The Agency may not extend a Firm Scheme Completion Date beyond 31 March 2015.

9 **Grant Claim Procedures**

- 9.1 Subject to a Firm Scheme having reached Practical Completion, the Grant Recipient may apply to the Agency for the grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in compliance with the procedures relating to grant claims and payments set out in the Capital Funding Guide.
- 9.2 In submitting an application pursuant to Condition 9.1 the Grant Recipient is deemed to represent and warrant to the Agency that:
- 9.2.1 the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of this Agreement;
 - 9.2.2 the Firm Scheme has reached Practical Completion;
 - 9.2.3 all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Firm Scheme have been are or will be correct in all material respects;
 - 9.2.4 the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;
 - 9.2.5 has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted Standard as are then required or to the extent that they are not obtained that the Grant Recipient 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;
 - 9.2.6 where it did not possess a Secure Legal Interest in the Site at the point of submitting a Developable Scheme pursuant to Condition 6.1, it possesses a Secure Legal Interest in the Site; and

9.2.7 the Firm Scheme is covered by the terms of a current HomeBuy Agency Agreement (where applicable).

10 **Calculation of Grant**

The amount of grant payable in respect of a Firm Scheme will be calculated in accordance with the following formula:

$$\text{FSG} = (\text{A} \times \text{B}) + (\text{C} \times \text{D})$$

where:

FSG is the Firm Scheme Grant payable in relation to the relevant Firm Scheme;

A is the Agreed Payment Rate for a completed Affordable Rent Dwelling (including a Social Rent Dwelling);

B is the number of completed Affordable Rent Dwellings and Social Rent Dwellings within the Firm Scheme;

C is the Agreed Payment Rate for a completed Affordable Home Ownership Dwelling;

D is the number of completed Affordable Home Ownership Dwellings within the Firm Scheme.

11 **Payment of Grant**

11.1 Subject to:

11.1.1 the Agency (acting reasonably) being satisfied with the Grant Recipient's application for payment; and

11.1.2 Conditions 11.3, 11.4 and 12.1

the Agency shall pay the Firm Scheme Grant to the Grant Recipient within ten (10) Business Days of receipt of the satisfactory application.

11.2 If the Agency is not satisfied with the Grant Recipient's application for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. The Agency must allow the Grant Recipient a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Conditions 9 to 11 (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended application for payment.

11.3 The Agency shall not be obliged to pay the Firm Scheme Grant to the Grant Recipient before the Firm Scheme Completion Date (as confirmed by the Agency through IMS) has occurred.

11.4 The Agency shall not be obliged to make any payment by way of Firm Scheme Grant or otherwise in respect of any Firm Scheme which has not reached Practical Completion by 31 March 2015.

11.5 Where the Agency pays Firm Scheme Grant to the Grant Recipient, the Allocated Grant shall be reduced by a commensurate amount.

12 **Withholding of Firm Scheme Grant**

12.1 Notwithstanding any other term of this Agreement the Agency shall not be obliged to make any payment to the Grant Recipient whether by way of Firm Scheme Grant or otherwise where:

12.1.1 the Firm Scheme has not been delivered in accordance with the Firm Scheme Details or to the Submitted Standard or in accordance with the Firm Scheme Delivery Timetable (in circumstances where the Agency was unable to agree revised Milestone Dates);

12.1.2 the Grant Recipient is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Condition 9.2 (in any case in whole or in part);

12.1.3 a Prohibited Act has been committed by or on behalf of the Grant Recipient and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;

12.1.4 an Insolvency Event has occurred in relation to the Grant Recipient;

12.1.5 the Grant Recipient has ceased to operate;

12.1.6 the Grant Recipient's status as a Registered Provider or Investment Partner is removed or withdrawn;

12.1.7 the Regulator directs the Agency not to give grant to the Grant Recipient or formally recommends to it that it should not do so; or

12.1.8 where the Grant Recipient is in material breach of any Firm Scheme Obligation or Ongoing Obligation and has not taken steps to remedy it to the Agency's satisfaction (acting reasonably).

12.2 In the circumstances contemplated in Conditions 12.1.1 and 12.1.2 the Agency (acting reasonably) shall be entitled (but not obliged) to elect between withholding the Firm Scheme Grant as permitted by Condition 12.1 and issuing a Programme Change Notice.

12.3 Where a change to the Programme Offer is agreed between the parties and confirmed by the Agency through IMS, the Agency shall (to the extent consistent with the change to the Programme Offer) pay the Firm Scheme Grant (mutatis mutandis) to the Grant Recipient within fifteen (15) Business Days of the date of it making its confirmation in IMS.

13 **Repayment of Grant**

13.1 The parties acknowledge and agree that:

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

13.1.2 for the purposes of the Recovery Determination, the amount of "Capital Grant" referred to therein shall be determined by reference to the amount of Firm Scheme Grant allocated to the Relevant Firm Scheme pursuant to Condition 15 and not by reference to the Firm Scheme Grant paid pursuant to Condition 11.1.1 in respect of such scheme.

13.2 Without prejudice to any other term of this Agreement, the Agency reserves the right whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) to recover from the Grant Recipient the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Condition 13.3 (the **Recoverable Amount**) in circumstances where:

13.2.1 a Prohibited Act has occurred and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;

13.2.2 the Firm Scheme Grant has been paid to the Grant Recipient on the basis of a misrepresentation made by or on behalf of the Grant Recipient other than in the circumstances specified in Condition 13.2.5;

13.2.3 the Agency has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Grant Recipient;

13.2.4 a Balancing Sum has arisen; or

13.2.5 the Firm Scheme Grant has been paid to the Grant Recipient but the Agency becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details.

13.3 In the circumstances set out in:

13.3.1 Conditions 13.2.1 and 13.2.2, the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant for any affected Firm Scheme;

13.3.2 Conditions 13.2.3 and 13.2.4, 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;

13.3.3 Condition 13.2.5, subject always to Condition 13.4, 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 Total Grant Required reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;

(b) where a revised figure for Total Grant Required is agreed, the Recoverable Amount shall be the product of the following calculation:

$$RA = FSG - TGR$$

where

RA is the Recoverable Amount;

FSG is the Firm Scheme Grant paid pursuant to Condition 11.1.1 in respect of the relevant Firm Scheme; and

TGR is the revised Total Grant Required figure agreed pursuant to Condition 13.3.3(a);

- (c) where the parties are unable to agree a revised Total Grant Required figure in accordance with Condition 13.3.3(a) the Agency shall be entitled to terminate this Agreement in accordance with Condition 5.

13.4 Where the Agency (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Firm Scheme Grant for the relevant Firm Scheme, the Agency shall be entitled to treat such claim as a Prohibited Act for the purposes of Condition 5.1 and will not be bound by the terms of Condition 13.3.3 or 13.5.

13.5 In the circumstances set out in Condition 13.2.5 the Agency shall be entitled (in its absolute discretion) to elect between:

13.5.1 permitting the Grant Recipient to apply the Recoverable Amount towards a pro rated reduction in the Agreed Payment Rate in which case the Agency shall issue a Programme Change Notice; or

13.5.2 requiring the repayment of the Recoverable Amount in which case the terms of Condition 13.6 will apply.

13.6 Subject to Condition 13.5 the Grant Recipient shall pay the Recoverable Amount to the Agency within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof) overpayment or payment in error was paid to the Grant Recipient until the date upon which the Agency receives the repayment required from the Grant Recipient under this Condition 13.

13.7 Where the Late Payment of Commercial Debts (Interest) Act 1998 applies the Parties agree that the rate of interest referred to in Condition 13.6 above shall be a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998.

13.8 Notwithstanding any other term of this Condition 13, where a payment has been made following an administrative error by the Agency, the Grant Recipient shall not be liable for interest on the amount repayable under Condition 13.6.

14 **VAT**

14.1 Except where expressly stated to the contrary in this Agreement:

14.1.1 the amount of any payment or the value of any supply is expressed exclusive of VAT properly chargeable on it;

14.1.2 where any payment or taxable supply falls to be made pursuant to this Agreement VAT properly chargeable on it will be paid in addition by the

recipient of the supply for which payment (if any) is consideration on the provision of a valid VAT invoice for it.

14.2 The payment of Firm Scheme Grant or any part thereof hereunder by the Agency to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.

15 **Allocation of Grant and Non Attributed Grant Units**

15.1 Without prejudice to the provisions of Condition 7.2, and subject to Condition 15.2, on receipt of Firm Scheme Grant, the Grant Recipient must allocate such Firm Scheme Grant against the Affordable Dwellings constructed with such grant **provided always that** the amount that may be allocated in respect of any Firm Scheme shall not exceed the Total Grant Required for that Firm Scheme. Where the Firm Scheme Grant for a Firm Scheme exceeds the Total Grant Required the Grant Recipient shall allocate the Unallocated Scheme Grant or such part thereof as it is capable of allocating in accordance with the terms of this Condition 15.1 against another Firm Scheme in respect of which Firm Scheme Grant has been paid but in respect of which the relevant Firm Scheme Grant was less than the Total Grant Required for that Firm Scheme and such process shall be repeated until any Unallocated Scheme Grant which is capable of being allocated has been allocated into other available Firm Schemes in accordance with the provisions of this Condition 15.1.

15.2 No Firm Scheme Grant shall be allocated in respect of a Non Attributed Grant Unit. The Grant Recipient must allocate any Firm Scheme Grant received in respect of a Non Attributed Grant Unit against Affordable Dwellings (other than Non Attributed Grant Units) in accordance with the process for allocating grant identified in Condition 15.1.

15.3 Without prejudice to the obligation on the Grant Recipient set out in Condition 3.6.3, where requested by the Agency (acting reasonably) the Grant Recipient shall provide the Agency within ten (10) Business Days of receiving written notification of such a request, details of any monies received under this Agreement which remain to be allocated as a consequence of the operation of Conditions 15.1 and 15.2.

16 **Open Book Obligations**

16.1 The Grant Recipient shall on an Open Book basis:

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

16.1.2 at all times when reasonably required to do so by the Agency, provide a summary of any of the income and Development Costs referred to in Condition 16.1.1 as the Agency may reasonably require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement; and

16.1.3 at all times provide such access or facilities as the Agency may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Condition 16.

16.2 Compliance with the above shall require the Grant Recipient 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 Grant Recipient 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:

- 16.2.1 income (including Public Sector Subsidy and receipts);
- 16.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;
- 16.2.3 payments made to Subcontractors;
- 16.2.4 capital and revenue expenditure;
- 16.2.5 VAT incurred on all items of expenditure where the Grant Recipient 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 Grant Recipient of such VAT as input tax from HM Revenue & Customs or other competent authority; and
- 16.2.6 such other item as the Agency 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 the Grant Recipient shall have (and procure that to the extent expressly agreed the Subcontractors shall have) the books of account evidencing the items listed in this Condition available for inspection by the Agency (and any person appointed pursuant to the dispute resolution provisions at Condition 25 to determine a dispute or otherwise authorised by the Agency) upon reasonable notice, and shall submit a report of these to the Agency as and when requested.

17 **Transparency Obligations**

17.1 The Grant Recipient acknowledges that:

- 17.1.1 where the Allocated Grant exceeds £3,000,000, the Grant Recipient 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
- 17.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Grant Recipient hereby consents for the Agency to publish such information as it considers appropriate in relation to the AHP, including, but not limited to, details of the Programme Offer, Development Costs and funding for Firm Schemes, including from time to time agreed changes to this information.

17.2 The Agency 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:

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

17.2.2 without consulting the Grant Recipient.

17.3 The Grant Recipient shall assist and cooperate with the Agency to enable the Agency to publish the information referred to in Condition 17.1.2.

18 **State Aid**

18.1 If the Agency is required pursuant to the Decision of the Commission of the European Communities published on 15 July 2005 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the Agency will be entitled to recover any such amount from the Grant Recipient.

19 **Representations and Warranties**

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

19.1.1 represents and warrants to the Agency on the date hereof and on each day until and including the date upon which the Grant Recipient receives the last payment of Grant payable under this Agreement in the terms set out in Schedule 3 inclusive; and

19.1.2 acknowledges and agrees that the Agency 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.

20 **Information and confidentiality**

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

20.2 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 the Agency 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.

20.3 The obligations of confidence referred to in Condition 20.2 shall not apply to any Confidential Information which:

20.3.1 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; or

20.3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or

- 20.3.3 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
 - 20.3.4 is independently developed without access to the Confidential Information of the other party.
- 20.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- 20.4.1 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; or
 - 20.4.2 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, EIR or the Code of Practice on Access to Government Information and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information; or
 - 20.4.3 by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - 20.4.4 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.
- 20.5 The Grant Recipient shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:-
- 20.5.1 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;
 - 20.5.2 is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
 - 20.5.3 where it is considered necessary in the opinion of the Agency the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 20.6 Nothing in this Condition 20 shall prevent the Agency:-
- 20.6.1 disclosing any Confidential Information for the purpose of:
 - (a) the examination and certification of the Agency's accounts; or

- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or
- 20.6.2 disclosing any Confidential Information obtained from the Grant Recipient:-
 - (a) to any other department, office or agency of the Crown; or
 - (b) to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
- 20.6.3 provided that in disclosing information under Condition 20.6.2(a) or 20.6.2(b) the Agency 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.
- 20.7 Nothing in this Condition 20 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
- 20.8 The Grant Recipient acknowledges that the Agency is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.
- 20.9 The Agency shall be responsible for determining in its absolute discretion whether:-
 - 20.9.1 any Information is Exempted Information or remains Exempted Information; or
 - 20.9.2 any Information is to be disclosed in response to a Request for Information;and in no event shall the Grant Recipient respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency unless otherwise expressly authorised to do so by the Agency.
- 20.10 Subject to Condition 20.11 below, the Grant Recipient acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:-
 - 20.10.1 without consulting the Grant Recipient or
 - 20.10.2 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account.
- 20.11 Without in any way limiting Conditions 20.9 and 20.10, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Grant Recipient.
- 20.12 The Grant Recipient will assist and co-operate with the Agency as requested by the Agency to enable the Agency 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:

- 20.12.1 transfer any Request for Information received by the Grant Recipient to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
 - 20.12.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
 - 20.12.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five (5) Business Days (or such other period as the Agency may specify) of the Agency requesting that Information;
 - 20.12.4 permit the Agency to inspect such as requested from time to time
- 20.13 Nothing in this Agreement will prevent the Agency 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.
- 20.14 The obligations in this Condition 20 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.

21 **Intellectual Property**

- 21.1 Subject to Condition 21.5 the Grant Recipient shall, to the extent that it is able to do so without incurring material cost, grant to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Grant Recipient or which are or become owned by the Grant Recipient and which relate to the Firm Schemes, for any purpose relating to this Agreement.
- 21.2 To the extent that any of the data, materials and documents referred to in Condition 21.1 are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by the Agency use its reasonable endeavours (without having to incur material cost) procure for the benefit of the Agency for the duration of this Agreement at the cost of the Grant Recipient the grant of a licence or sub-licence and supply any relevant software and/or database to enable the Agency making such request to access and otherwise use such data for the purposes referred to in Condition 21.1.
- 21.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 21.4 The Grant Recipient shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 21.4 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 Condition 21, any breach by the Grant Recipient of this Condition 21 and against all costs and damages of any kind which the Agency may incur in connection with any actual or threatened proceedings before any court or adjudication body.

21.5 The Grant Recipient shall only be entitled to revoke the licence granted to the Agency under Condition 21.1 in the following circumstances and upon the following terms:

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

21.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant has been paid to the Grant Recipient **provided that** nothing in this Condition 21.5.2 shall entitle the Grant Recipient to revoke such licence insofar as it relates to:

(a) 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;

(b) Continuing Firm Schemes; or

(c) Firm Schemes subject to the provisions of Condition 12.2.

22 **Grant Recipient's records and accounting**

22.1 The Grant Recipient shall, as and when requested by the Agency whether before or after the date of payment of the Firm Scheme Grant, make available in a timely manner to the Agency where required in connection with this Agreement or the Programme Offer a copy of each of:

22.1.1 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 Grant Recipient for the purposes of this Agreement; and

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

22.2 On the expiry of this Agreement or (if earlier) upon termination thereof, the Grant Recipient shall if requested to do so deliver up to the Agency all the data, materials, documents and accounts referred to in this Condition 22 which it has in its possession, custody or control and shall procure the handing over to the Agency such data, materials, documents and accounts referred to in Condition 22.1.2 or as otherwise directed by the Agency.

22.3 The Grant Recipient 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 Condition 22 and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only.

22.4 The Grant Recipient acknowledges that The Comptroller and Auditor General shall have rights of access to the information referred to in Condition 22.1 pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000.

23 **Health and Safety and Equality and Diversity**

23.1 The Grant Recipient will comply in all material respects with all relevant Legislation relating to health and safety, equality and relevant employment matters and will use reasonable endeavours to procure that all Grant Recipient Parties do likewise.

23.2 The Grant Recipient 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 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 the Agency.

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

23.4 To the extent that the Agency is a 'client' for the purposes of the CDM Regulations

23.4.1 where the Grant Recipient is engaging consultants and a contractor or contractors as Subcontractors to deliver the Firm Scheme the Grant Recipient elects to be the only client in relation to such Firm Scheme; or

23.4.2 where the Grant Recipient is contracting with a developer as a Subcontractor to deliver a Firm Scheme the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Firm Scheme on or before the date that a Developable Scheme becomes a Firm Scheme;

and the Agency hereby agrees to such election.

23.5 The Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to clause 23.4.1 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to clause 23.4.2 without the Agency's prior written consent, which the Agency may in its absolute discretion withhold.

23.6 The Grant Recipient 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.

23.7 The Grant Recipient 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.

23.8 The Grant Recipient shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme.

23.9 Without prejudice to any other provision of this Agreement, the Grant Recipient shall notify the Agency's Health & Safety Manager 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:

23.9.1 a fatal accident to any worker or a member of the public;

23.9.2 any injury to a member of the public requiring reporting under RIDDOR;

23.9.3 any dangerous occurrence, as defined by RIDDOR;

- 23.9.4 the service of any improvement or prohibition notice under the HS Act;
 - 23.9.5 any incident having health & safety implications which attracts the attention of the police and/or the media;
 - 23.9.6 the commencement of any criminal prosecution under the HS Act.
- 23.10 The Grant Recipient will procure that all its Subcontractors comply at all times with the HS Act and the CDM Regulations and will procure that:
- 23.10.1 where for the purposes of the Works a Subcontractor is a Client Designer, Principal Contractor or CDM Coordinator, the Subcontractor will comply with the obligations imposed on such role(s) under the CDM Regulations;
 - 23.10.2 each Subcontractor co-operates fully with the CDM Coordinator and the Principal Contractor appointed under the CDM Regulations (whether or not either of these roles are carried out by the relevant contractor);
 - 23.10.3 each Subcontractor allocates adequate resources to enable it to comply with its obligations under the relevant Works contract and the CDM Regulations;
 - 23.10.4 each Subcontractor co-operates with all other persons involved in the Works to consider the prevention of risks and protection of persons who may be exposed to risks;
 - 23.10.5 no Subcontractor will by any act or omission do anything that would cause the Grant Recipient to breach or be prosecuted under the HS Act and/or the CDM Regulations; and
 - 23.10.6 the Grant Recipient and each Subcontractor 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.

24 **Co-operation**

- 24.1 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. Without prejudice to the generality of the foregoing the Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:
- 24.1.1 of any auditor (whether internal or external) of the Agency and/or
 - 24.1.2 of the Agency where the Agency is required under any legislation to provide any document relating to the Firm Schemes to any person.

25 **Dispute Resolution**

- 25.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 25.

- 25.1.1 In the event that the Grant Recipient or the Agency consider 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 parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Condition 25.
- 25.1.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.
- 25.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 25.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Grant Recipient and the Agency (the **Chief Executives**).
- 25.1.4 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.
- 25.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Chief Executives, such Dispute must be dealt with in accordance with Condition 25.2
- 25.2 In the circumstances contemplated in Condition 25.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:
- 25.2.1 to initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 25.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
- 25.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

26 Notices

- 26.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, (but not by facsimile or electronic mail) or sent by a recorded delivery service addressed in the case of either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses as either party may from time to time notify to the other in writing **provided that** such other address is within England and Wales.

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

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

26.2.2 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 on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

27 **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 the Agency shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Agreement or any such other deed or document.

28 **No agency**

28.1 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.

28.2 The Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Agency and the Grant Recipient. Neither the Grant Recipient nor any of its employees shall at any time hold itself or themselves out to be an employee of the Agency.

29 **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.

30 **Assignment and sub-contracting**

30.1 The Agency will be entitled to transfer or assign all or part of this Agreement.

30.2 The Grant Recipient will not be entitled to transfer or assign all or part of this Agreement.

31 **Construction Industry Scheme**

31.1 For such time as:

31.1.1 the Grant Recipient continues to be a Registered Provider; and

31.1.2 the provisions of paragraph 13040 of Chapter 1 of HM Revenue & Customs' CIS Reform Manual remain in effect as published at July 2009,

the Grant Recipient warrants to the Agency that since it is a Registered Provider, it is deemed by concession to be certificated as a sub-contractor entitled to receive relevant payments gross under the Construction Industry Scheme set out in Chapter 3 of Part 3 of the Finance Act 2004 and associated regulations (the **CIS**) provided always that if either

Condition 31.1.1 or Condition 31.1.2 ceases to hold at a time when monies remain outstanding from the Agency to the Grant Recipient pursuant to this Agreement then the Grant Recipient shall promptly notify the Agency of such fact and the parties shall take such steps as may reasonably be required to ensure that the CIS is if necessary applied to all such outstanding payments.

32 **Data Protection**

32.1 The Grant Recipient warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Agreement.

32.2 The Grant Recipient undertakes that to the extent that the Grant Recipient and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of the Agency (the **Agency's Personal Data**) for the purpose of performing its obligations under this Agreement it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Grant Recipient agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:

32.2.1 the Grant Recipient shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the Agency's Personal Data and any person it authorises to have access to any the Agency's Personal Data will respect and maintain the confidentiality and security of the Agency's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when performing its obligations under this Agreement on the Agency's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

32.2.2 the Grant Recipient shall only process Personal Data for and on behalf of the Agency for the purpose of performing its obligations under this Agreement in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from the Agency to ensure compliance with the DPA;

32.2.3 the Grant Recipient shall allow the Agency to audit the Grant Recipient's compliance with the requirements of this Condition 32 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Grant Recipient's compliance with the obligations within this Condition 32.

32.3 The Grant Recipient undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to Condition 32.2 the Grant Recipient shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Grant Recipient to performing its obligations under this Agreement, or to the extent required under a court order.

- 32.4 The Grant Recipient shall:
- 32.4.1 take reasonable steps to ensure the reliability of any Grant Recipient Party who has access to the Personal Data;
 - 32.4.2 ensure that any Grant Recipient Party required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 32;
 - 32.4.3 ensure that none of any Grant Recipient Party publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agency;
 - 32.4.4 provide a written description of the technical and organisational methods employed by the Grant Recipient for processing Personal Data (within the timescales required by the Agency); and
 - 32.4.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Agency.
- 32.5 The Grant Recipient agrees to use all reasonable efforts to assist the Agency to comply with such obligations as are imposed on the Agency by the DPA. For the avoidance of doubt, this includes the obligation to:
- 32.5.1 provide to the Agency such access as may be reasonably required from time to time to all Personal Data stored or processed in performing its obligations under this Agreement in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;
 - 32.5.2 provide the Agency with reasonable assistance in complying with any request for information served on the Agency under Section 7 of the DPA;
 - 32.5.3 notify the Agency (within five (5) Working Days) about the receipt of any such request received by the Grant Recipient under Section 7 of the DPA or complaint or request relating to the Agency's obligations under the DPA and not disclose or release any information (including the Agency's Personal Data) in response to such a request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;
 - 32.5.4 provide the Agency with full co-operation and assistance in relation to any complaint of request made, including by:
 - (a) providing the Agency with full details of the complaint or request;

- (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;
- (c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
- (d) providing the Agency with any information requested by the Agency;

32.6 The Grant Recipient shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.

32.7 The Grant Recipient shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Grant Recipient's destruction of and/or damage to any of the Agency's Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 32 by the Grant Recipient, its employees, agents or sub-contractors.

32.8 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Grant Recipient's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.

32.9 The Grant Recipient undertakes to include obligations no less onerous than those set out in this Condition 32, in all contractual arrangements with agents engaged by the Grant Recipient in performing its obligations under this Agreement to the Agency.

32.10 For the purposes of this Condition 32:

Law means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate Legislation or notice of any Regulatory Body;

Regulatory Body means a 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 or any other affairs of the Agency;

33 Further Assurance

33.1 At any time upon the written request of the Agency the Grant Recipient:

33.1.1 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 the Agency the full benefit of this Agreement and of the

rights and powers herein granted and the Grant Recipient hereby irrevocably appoints the Agency as its attorney solely for that purpose.

- 33.1.2 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 Agreement.

34 **Entire agreement**

- 34.1 This Agreement and the conditions herein contained together with the Schedules and Annexes constitute the entire agreement between the parties and, subject always to Condition 4.7, may only be varied or modified in writing by agreement under the seals of the parties.

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

35 **Severability**

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

36 **Cumulative rights and enforcement**

- 36.1 Any rights and remedies provided for in this Agreement whether in favour of the Agency or the Grant Recipient 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 the Agency for any breach of the Grant Recipient's obligations hereunder and the parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies the Agency may have in law, in equity or otherwise the Agency 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 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its 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 the Agency provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

38.2 Insofar as any of the obligations of the Grant Recipient provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

38.3 Without limitation the provisions of Conditions 2.6, 5.7 - 5.12 (inclusive), 7.2, 7.4 to 7.8, 8 to 10, 12.1, 12.2, 13, 15, 16 to 18 and 20 to 22, 32.5, 32.7 and this Condition 38 and such other provisions of this Agreement as are necessary to give effect to such Conditions are expressly agreed by the parties to survive the termination or expiry of this Agreement.

39 **Execution**

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

40 **London Living Wage**

40.1 For the purposes of this Condition 40, unless the context indicates otherwise, the following expressions shall have the following meanings:

London Living Wage means the basic hourly wage of £7.85 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Grant Recipient.

40.2 Without prejudice to any other provision of this Agreement, the Grant Recipient shall:

40.2.1 use all reasonable endeavours to ensure that none of its employees engaged in the provision of the Works is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

40.2.2 use all reasonable endeavours to ensure that none of its employees engaged in the provision of the Works is paid less than the amount to which they are entitled in their respective contracts of employment;

40.2.3 provide to the Agency such information concerning the London Living Wage as the Agency or its nominees may reasonably require from time to time;

- 40.2.4 disseminate on behalf of the Agency to its employees engaged in the provision of the Works such perception questionnaires as the Agency may reasonably require from time to time and promptly collate and return to the Agency responses to such questionnaires; and
- 40.2.5 use all reasonable endeavours to co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.

41

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 Condition 25 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1
Programme Offer

Schedule 2

Officer's Certificate

To: Homes and Communities Agency (the **Agency**)

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

As an authorised signatory of the Grant Recipient⁷, I hereby certify that as at the date hereof (save as disclosed in the Schedule to this Certificate):

- 1 all data or other information submitted on IMS in respect of the Programme Offer and each Firm Scheme is accurate and the Grant Recipient is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate;
- 2 all data or other information supplied to the Regulator in connection with, or related to the Programme Offer is accurate (including, inter alia, details of any Permitted Conversions);
- 3 the Grant Recipient is not in breach of its Transparency Obligations;
- 4 save where expressly agreed by the Agency, no Firm Scheme which is a Section 106 Scheme is being subsidised by Conversion Capacity, FSG, RCGF or DPF.
- 5 save where expressly agreed by the Agency, all Affordable Dwellings and Permitted Conversions have been let or disposed of (as applicable) in accordance with the terms of the Programme Offer;
- 6 so far as the Grant Recipient is aware (having made all reasonable enquiries) the Programme Offer (including, inter alia, all projected Start on Site and Practical Completion dates) is capable of being delivered without the need for a change to the Programme Offer.

This Certificate is given by virtue of my position as []⁸ and is given on behalf of the Grant Recipient. I am not giving this Certificate in a personal capacity, nor do I accept any private or personal liability for any error or omission in it and the Agency, in relying on the contents of the Certificate, duly acknowledges that its remedy, in the event that any error or omission is later to be found, is that it constitutes a Programme Default and the rights that affords the Agency against the Grant Recipient.

Dated []

.....

Authorised signatory

[]

⁷ Under the terms of the Framework Delivery Agreement, the signatory is to be the Development Director unless the Agency's consent has been obtained in advance that the certificate can be provided by another member of the Grant Recipient's management team.

⁸ See footnote 1

Schedule []

| Paragraph Number | Disclosure |
|------------------|------------|
| | |
| | |

Schedule 3

Representation 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.
- 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 the 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 have been obtained and have not been withdrawn.
- 1.7 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.
- 1.8 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.
- 1.9 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.
- 1.10 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 Grant Recipient 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 obtained 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 Programme Default has occurred and is continuing.
- 2.5 All information supplied by or on behalf of it to the Agency or its agents or employees in connection with the Grant Recipient'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 the Agency of any material change that has occurred since the date of submission of the Programme Offer 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 Subsidy.
- 2.7 It is not aware of any material fact or circumstance that has not been disclosed to the Agency and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.

3 **Application of Programme Offer Capacity**

- 3.1 All financial capacity generated by the Grant Recipient through the terms of the Programme Offer is being and will be applied by the Grant Recipient to the delivery of new Affordable Housing supply under this Agreement.

4 **Authority of Grant Recipient's Representative**

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

Annex 1

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 the Agency'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 Grant Recipient'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 Grant Recipient can clearly demonstrate that such costs are properly chargeable to the housing development, i.e. for the sole use of the residents or to comply with any statutory obligations that may have been imposed.

Examples of these are as follows:

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

Note 3

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

Annex 1

Part 2

Costs which are not Development Costs

Capital costs incurred:

- 1.1 which are not eligible for Social Housing Assistance as defined in Section 32(13) of the HRA 2008;
- 1.2 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Firm Scheme;
- 1.3 on estate offices, factories, letting offices;
- 1.4 on stores (other than external storage provision required by Design and Quality Standards);
- 1.5 on medical or dental surgeries, clinics;
- 1.6 on police stations, public libraries, bus shelters;
- 1.7 on shops, restaurants, public houses, offices;
- 1.8 on transformer and other related buildings;
- 1.9 on maintenance depots, tools, plant and vehicles;
- 1.10 on garages (other than integral garages on market purchase scheme types) and greenhouses;
- 1.11 on separate commercial laundry blocks and related equipment.

Annex 2

Adjustment Mechanism Illustration

FDA start point

| Scheme | Total Scheme Costs | Affordable Rent grant | Affordable Home Ownership grant | Total grant required | Affordable Rent grant/unit | Affordable Home Ownership grant/unit | No of Affordable Rent units | No of Affordable Home Ownership units | No of Total units |
|--------|--------------------|-----------------------|---------------------------------|----------------------|----------------------------|--------------------------------------|-----------------------------|---------------------------------------|-------------------|
| A | £ 15,000,000 | £ 2,400,000 | £ 300,000 | £ 2,700,000 | £ 30,000 | £ 15,000 | 80 | 20 | 100 |
| B | £ 20,000,000 | £ 3,200,000 | £ 400,000 | £ 3,600,000 | £ 40,000 | £ 20,000 | 80 | 20 | 100 |
| C | £ 21,000,000 | £ 3,600,000 | £ 400,000 | £ 4,000,000 | £ 45,000 | £ 20,000 | 80 | 20 | 100 |
| D | £ 18,000,000 | - | - | - | - | - | 80 | 20 | 100 |
| | | £ 9,200,000 | £ 1,100,000 | £ 10,300,000 | £ 28,750 | £ 13,750 | 320 | 80 | 400 |
| | | | | | APR | APR | | | |

Over payment at termination

| Scheme | Total Scheme Costs | Total grant required | No of Affordable Rent units completed | No of Affordable Home Ownership units | No of Total units | Affordable Rent grant paid | Affordable Home Ownership grant paid | Total grant paid | Under/over (-£) payment |
|--------|--------------------|----------------------|---------------------------------------|---------------------------------------|-------------------|----------------------------|--------------------------------------|------------------|-------------------------|
| A | | | - | - | - | | | | |
| B | | | - | - | - | | | | |
| C | £ 21,000,000 | £ 4,000,000 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | £ 1,425,000 |
| D | £ 18,000,000 | - | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | -£ 2,575,000 |
| | | £ 4,000,000 | 160 | 40 | 200 | £ 4,600,000 | £ 550,000 | £ 5,150,000 | -£ 1,150,000 |

At termination only C & D have completed.
 APR payments have underpaid C and over paid D (a nil grant scheme) against the total grant required for those schemes. Total of £5.15m has been paid resulting in a net over payment of £1.15m against the £4m grant required for C.
 £4m is allocated for recovery against C as per principles in Capital Funding Guide.
 £0 is allocated for recovery against D

Shortfall at termination

| Scheme | Total Scheme Costs | Total grant required | No of Affordable Rent units completed | No of Affordable Home Ownership units | No of Total units | Affordable Rent grant paid | Affordable Home Ownership grant paid | Total grant paid | Under/over (-£) payment |
|--------|--------------------|----------------------|---------------------------------------|---------------------------------------|-------------------|----------------------------|--------------------------------------|--------------------|-------------------------|
| A | | | - | | | | | | |
| B | £ 20,000,000 | £ 3,200,000 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | £ 625,000 |
| C | £ 21,000,000 | £ 4,000,000 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | £ 1,425,000 |
| D | | £ - | - | | | | | | |
| | | £ 7,200,000 | 160 | 40 | 200 | £ 4,600,000 | £ 550,000 | £ 5,150,000 | £ 2,050,000 |

At termination only B & C have completed. APR payments have been insufficient to meet grant requirements of both schemes. Total of £5.15m has been paid resulting in a net shortfall of £2.05m against £7.2m total grant required. Grant Recipient uses remaining conversion capacity to meet funding shortfall.

For recovery purposes £5.15 is applied using Capital Funding Guide principles across the two schemes. Grant Recipient cannot attribute more than agreed total grant required for each scheme.

Scheme variation

| Scheme | Total Scheme Costs | Total grant required | No of Affordable Rent units completed | No of Affordable Home Ownership units | No of Total units | Affordable Rent grant paid | Affordable Home Ownership grant paid | Total grant paid | Under/over (-£) payment |
|----------|-------------------------|------------------------|---------------------------------------|---------------------------------------|-------------------|----------------------------|--------------------------------------|------------------------|-------------------------|
| A | £ 15,000,000 | £ 2,700,000 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | £ 125,000 |
| B | £ 20,000,000 | £ 3,600,000 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | £ 1,025,000 |
| C | £ 12,600,000 | £ 2,700,000 | 60 | - | 60 | £ 1,725,000 | £ - | £ 1,725,000 | £ 975,000 |
| D | £ 18,000,000 | £ - | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | -£ 2,575,000 |
| | | £ 9,000,000 | 300 | 60 | 360 | £ 8,625,000 | £ 825,000 | £ 9,450,000 | -£ 450,000 |

At termination all schemes have completed.
Scheme C has only delivered 60 units against agreed 100. All other schemes have delivered as expected.

£9.45m has been paid out resulting in a net overpayment of £450k against the reduced grant requirement of £2.7m for C. £450k is refunded to the Agency.

£9m is allocated for recovery across ABCD. Grant Recipient cannot attribute more than agreed total grant required for each scheme.

13.3.2

Scheme variation following compliance audit

Start point

| Scheme | Total grant required | Affordable Rent grant/unit | Affordable Home Ownership grant/unit | No of Affordable Rent Affordable units | No of Affordable Home Ownership units | No of Total units |
|--------|----------------------|----------------------------|--------------------------------------|--|---------------------------------------|-------------------|
| A | £ 2,700,000 | £ 30,000 | £ 15,000 | 80 | 20 | 100 |
| B | £ 3,600,000 | £ 40,000 | £ 20,000 | 80 | 20 | 100 |
| C | £ 4,000,000 | £ 45,000 | £ 20,000 | 80 | 20 | 100 |
| D | £ - | £ - | £ - | 80 | 20 | 100 |
| | £ 10,300,000 | £ 28,750 | £ 13,750 | 320 | 80 | 400 |
| | | APR | APR | | | |

Compliance Audit reveals C delivered smaller homes

| Scheme | Total grant required | Affordable Rent grant/unit | Affordable Home Ownership grant/unit | No of Affordable Rent units | No of Affordable Home Ownership units | No of Total units | Affordable Rent grant paid | Affordable Home Ownership grant paid | Total grant paid | Under/over (-£) payment |
|--------|----------------------|----------------------------|--------------------------------------|-----------------------------|---------------------------------------|-------------------|----------------------------|--------------------------------------|------------------|-------------------------|
| | | | | | | | | | | |
| C | £ 1,960,000 | £ 22,000 | £ 10,000 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | -£ 615,000 |
| | £ 1,960,000 | £ 28,750 | £ 13,750 | 80 | 20 | 100 | £ 2,300,000 | £ 275,000 | £ 2,575,000 | -£ 615,000 |
| | | APR | APR | | | | | | | |

Following completion of C, compliance audit reveals C has delivered smaller, lower cost units. Parties seek to agree revised Total Grant Required figure having regard to what has been delivered. In this example, that sum is £1.96m grant (£4m previously). At completion 100 units for C received £2.575m based on Agreed Payment Rate. C received £0.615 in excess of what was required.

For recover purposes, the Grant Recipient will need to reallocate the grant in the Affordable Dwellings to reflect the revised figures.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE COMMON SEAL of)
HOMES AND COMMUNITIES AGENCY)
was hereunto affixed in the presence of:)

Authorised Signatory

EXECUTED as a **DEED** by affixing)
THE COMMON SEAL of)
[GRANT RECIPIENT])
in the presence of:)

Authorised Officer