

dated

2015

Homes and Communities Agency

and

[Grant Recipient]

Grant Agreement

in relation to Affordable Homes Programme 15/18

(Community Led Bodies Single Scheme Agreement)

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Grant Agreement

dated

Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (including any statutory successor) (the **Agency**); and
- (2) [] [(a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 ([registered number []]) [(a company)] ([registered 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 to, inter alia, make grants available to facilitate the development and provision of affordable housing.
- (B) The Agency has selected the Grant Recipient to receive funding under the 2015-18 Affordable Homes Programme as a community-led project.
- (C) The Agency agrees to make available grant funding to the Grant Recipient for the purpose of delivering Affordable Housing by 31 March 2018 in accordance with the terms of this Agreement.
- (D) Grant is made available under this Agreement on the understanding that the Grant Recipient intends to develop and retain a single Firm Scheme and is, or will become, a Registered Provider before grant funding may be claimed.
- (E) 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 and Condition 9.4.3;

Affordable Dwelling means a house, flat or maisonette developed with the benefit of grant payable under this Agreement as more particularly described in the Firm Scheme Details;

Affordable Home Ownership means low cost home ownership on Shared Ownership Lease 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 a rent (inclusive of service charges) which does not exceed eighty per centum (80%) of the market rent for an equivalent property of the relevant size and location such rent to be assessed and set in accordance with the requirements of the Rent 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 Grant means the amount of grant payable by the Agency to the Grant Recipient in respect of the Firm Scheme as set out in the Firm Scheme Details;

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 Agreement (including its Schedules, Annexures and Appendices (if any));

AHP means the programme described in the publication entitled "Affordable Homes Programme 2015-18 Prospectus" issued by the Agency in January 2014 (as the same may be amended or updated from time to time);

Allocated Grant means [REDACTED], being the maximum amount of grant payable by the Agency to the Grant Recipient pursuant to this Agreement (as may be amended from time to time in accordance with this Agreement);

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

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

Bid means the submission by the Grant Recipient in its application for funding including any supporting information;

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

Building Contractor means the building contractor or developer appointed or to be appointed by the Grant Recipient in respect of the 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 2015 S.I. No. 2015/51;

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 Scheme developed pursuant to this Agreement satisfies 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 but excluding in each case Excluded Information;

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

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;

Decision Allowable Costs means those costs incurred by the Grant Recipient in providing the Affordable Housing as specified in Schedule 2 (calculated using generally acceptable accounting principles) as follows:

- (a) the Development Costs;
- (b) all other direct costs of providing the Affordable Housing;
- (c) a proper proportion of costs (including for common infrastructure) if these are shared between Affordable Housing and other construction on sites where the Affordable Housing is situated; and/or
- (d) other costs permitted under the SGEI Decision of operating the Affordable Housing as affordable housing;

Decision Net Costs means under the SGEI Decision the maximum amount of aid which may be provided without Unlawful State Aid arising;

Decision Revenue means all income (including all Public Sector Subsidy but excluding Firm Scheme Grant) which the Grant Recipient or a Grant Recipient Affiliate receives for the purposes of or earns from the AHP Housing;

Default means any of the circumstances in Condition 12.1 has occurred;

Developable Scheme means the 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;

Developable Scheme Details means the agreed details for the Developable Scheme as set out in Schedule 2 (as may be amended by agreement between the Agency and the Grant Recipient);

Development Costs means the costs incurred or to be incurred by the Grant Recipient under 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;

Disposal means a transaction the effect of which is that the legal or beneficial title in any Affordable Dwelling transfers to becomes vested in is leased to or reverts to another person.

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 Bid;

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 2014/24/EC and 2007/66/EC, United Kingdom Statutory Instrument 2015/102 insofar as the same are applicable;

Excluded Information means Confidential Information:

- (a) disclosure of which is:
 - i reasonably required for the performance of either party's obligations under this Agreement (including disclosure to either party's professional advisers or commercial funders);
 - ii required by Legislation, Parliamentary obligation or the rules of any governmental or regulatory body having the force of law;
 - iii required of the Agency by any other department, office or agency of the Government; or
 - iv is necessary for the purpose of the examination, auditing or certification of either party's accounts or 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

which is (at the point of disclosure by either party) demonstrably generally available and in the public domain (otherwise than as a result of a breach of Condition 20);

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

Final Tranche Grant means subject to Condition 6.5 such sum as is equivalent to fifty per centum (50%) of the Firm Scheme Grant;

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 the 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 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 the 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** means the Agreed Grant;

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;

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

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 such person agreed by the Agency to act as the Grant Recipient's representative from time to time for the purposes of this Agreement;

Help to Buy Agency Agreement means an agreement (or any other formal arrangement) entered into between the Grant Recipient and the Help to Buy Agent in whose Area a Firm Scheme is located and pursuant to which the Help to Buy 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;

Help to Buy Agent means a body appointed by the Agency to undertake such roles or activities as the Agency may prescribe for Help to Buy 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 means in relation to:

- (a) FOIA, the meaning given under section 84 of the FOIA and which is held by the Agency at the time of receipt of an RFI; or

- (b) EIR, has the meaning given under the definition of “environmental information” in section 2 of EIR and which is held by the Agency at the time of receipt of an RFI;

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;

Interim Tranche Grant means subject to Condition 6.5 such sum as is equivalent to fifty per centum (50%) of the Firm Scheme Grant;

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 Firm Scheme is being delivered by the Grant Recipient;

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

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 Developable Scheme or the Firm Scheme (as applicable) 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;

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 the Firm Scheme in respect of which it has paid Firm Scheme Grant does not meet the Firm Scheme Details;

Ongoing Obligations means the Grant Recipient's obligations under Conditions 7.2 to 7.9 inclusive;

Open Book Basis means the full and transparent disclosure and declaration of all information which the Grant Recipient or a Grant Recipient Party is required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts;

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

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

Practical Completion means that stage 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 Bid;

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;

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 the Bribery Act 2010; 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 Firm Scheme 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;

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 2015 and any applicable successor determination;

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 Agency acting through the Regulation Committee established by it pursuant to Part 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Regulatory Framework means the Regulatory Framework for Social Housing in England published by the Regulator on 31 March 2015 (including any associated guidance issued by the Agency) as amended or replaced from time to time;

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;

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

Rent Standard Guidance means the "Guidance on Rents for Social Housing" issued by the Department for Communities and Local Government on 23 May 2014 (including any other guidance issued by the Agency or the Regulator in relation to that document and/or the Rent Standard) as such document and/or associated guidance may be amended, updated or replaced from time to time;

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

Review Meeting means a meeting held pursuant to Condition 3;

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

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 Firm Scheme Grant 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);

SGEI Information means such information about or relating to the Decision Allowable Costs, the Decision Revenue, the Decision Net Costs and such other information as the Agency may reasonably request;

SGEI Review means a review by the Agency of the provision of funding pursuant to this Agreement to determine whether an SGEI Decision Overpayment has arisen in relation to any Firm Scheme;

SGEI Decision means the European Commission's Decision on Services of General Economic Interest dated 20 December 2011 (2012/21/EU);

SGEI Decision Overpayment means the extent to which Public Sector Subsidy (including grant funding pursuant to this Agreement) exceeds the Decision Net Costs;

Shared Ownership 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;

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 a rent calculated in accordance with the formula for calculating social rent set out in the Rent Standard Guidance;

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 the standards referenced in the Firm Scheme Details in IMS;

Tenancy Standard means the tenancy standard contained within the Regulatory Framework;

Term means the period of time from the date hereof until 31 March 2018 (subject to earlier termination by the Agency of the entirety of this Agreement);

Total Grant Required means in respect of the Firm Scheme the figure shown under or in relation to that heading in the Firm Scheme Details from time to time¹;

Tranche means either of the Interim Tranche Grant or Final Tranche Grant;

Unlawful State Aid means State Aid which has been granted in contravention of Article 107(1) Treaty of the Functioning of the European Union and which does not qualify for an exemption pursuant to any of the provisions of the Treaty of the Functioning of the European Union or any of its subsidiary instruments or legislation;

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 "From time to time" reflects the potential operation of Conditions 13.2.3(b).

- 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" and "Firm Scheme" includes each and every part of it.
- 1.2.17 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.18 Save where a contrary intention is shown, any reference to the Agency acting reasonably shall be interpreted as requiring the Agency to act in a commercially reasonable manner.

- 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 **Purpose of Agreement**

- 2.1 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.
- 2.2 The Grant Recipient shall use its reasonable endeavours to deliver its commitments or proposals outlined in:
 - 2.2.1 the Procurement Efficiencies Statement;
 - 2.2.2 the Employment Skills Statement; and
 - 2.2.3 the Marketing Statement.
- 2.3 The Grant Recipient acknowledges and agrees that:
 - 2.3.1 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;
 - 2.3.2 the Public Sector Subsidy in respect of the Firm Scheme may not exceed an amount equal to the aggregated Actual Development Costs incurred by the Grant Recipient in respect of the delivery of the Firm Scheme;
 - 2.3.3 all funding under this Agreement is subject to the provisions of the HRA 2008 and any determinations made under such provisions and the provisions of Condition 13 represent the events and principles determined by the Agency for the purposes of Sections 31-34 of the HRA 2008;

2.3.4 the Affordable Dwellings provided with the benefit of the Allocated Grant shall be deemed to have been provided with public money for the purposes of Section 180 of the HRA 2008;

2.3.5 all Firm Scheme Grant paid under this Agreement is social housing assistance as defined in Section 32(13) of the HRA 2008;

2.3.6 any failure by the Grant Recipient to comply with the terms of this Agreement, or the occurrence of a Default constitutes a failure to comply with a condition attached to the making of capital grant for the purposes of paragraph 7(e) of the Recovery Determination.

2.4 The Grant Recipient shall, where and to the extent that those obligations apply to it, comply with the Open Book Obligations.

3 **Review Meetings**

3.1 The Agency or the Grant Recipient may call a Review Meeting at any time provided that the party requesting the meeting:

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

3.1.2 includes with the notice an agenda for such meeting together with details of any information reasonably required in advance of the meeting.

3.2 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 shall also be entitled to send a representative to attend such meetings.

4 **Not used**

5 **Not used**

6 **Firm Schemes – Submission Procedures**

6.1 The Grant Recipient 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 Bid;

(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;

- (d) is consistent with the relevant Developable Scheme details; and
- (e) comprises no Public Sector Subsidy beyond that identified in the Firm Scheme Details.

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 Bid (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution), it will 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 the 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 the Firm Scheme unless and until it has confirmed its acceptance of it in the manner described in Condition 6.2.

6.5 The Agency may at its absolute discretion vary the percentages attributed to Interim Tranche Grant and Final Tranche Grant from time to time save that no such variation will take effect in relation to any Firm Scheme in relation to which the Interim Tranche Grant has been paid.

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

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 Standards; 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 and the Capital Funding Guide.
- 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 Tenancy Standard and the Rent Standard in respect of the Affordable Rent Dwellings and the Social Rent Dwellings and not charge a higher initial rent in relation to a Social Rent Dwelling or Affordable Rent Dwelling than set out in the Firm Scheme Details;
 - 7.5.3 observe and comply with the requirements of the Capital Funding Guide in relation to:
 - (a) any Disposal of the Affordable Home Ownership Dwellings and ensure that such Disposal takes effect only at arms length and on market terms;
 - (b) the form and content of any Shared Ownership Lease granted by or to be granted by the Grant Recipient in relation to an Affordable Dwelling;
 - (c) the letting management or Disposal of Social Rent Dwellings and/or the Affordable Rent Dwellings; and
 - (d) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement.

- 7.5.4 comply with the Agency's requirements in relation to Compliance Audit;
 - 7.5.5 in relation to the Affordable Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner) and complete the "Initial Sales" data screens on IMS promptly following the sale of any Affordable Home Ownership Dwelling;
 - 7.5.6 save where the Agency agrees otherwise, procure on any Disposal a written acknowledgement from the disponent in favour of the Agency that the amount of Firm Scheme Grant allocated to the property comprised in the Disposal pursuant to this Agreement is social housing assistance received by it for the purposes of Section 33(7) of the HRA 2008;
 - 7.5.7 provide written notification to the Agency of any Disposal within ten (10) Business Days of such Disposal taking place; and
 - 7.5.8 in relation to each Social Rent Dwelling and Affordable Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds;
 - 7.5.9 provide the Agency with such information (and within such timescales) as the Agency may reasonably require to enable the Agency to monitor compliance by the Grant Recipient with its obligations under this Agreement.
- 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 the Firm Scheme.
- 7.7 The Grant Recipient must:
- 7.7.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
 - 7.7.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 7.7.3 comply with the Agency's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as the Agency or the relevant industry body may update from time to time (**Relevant Policies**);
 - 7.7.4 have and maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements and the Relevant Policies and Condition 7.7.2, and will enforce them where appropriate; and

7.7.5 immediately report to the Agency's Head of Risk and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the performance of this Agreement.

7.8 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith and with proper regard to the need for efficiency in the use of public funds.

7.9 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 the Firm Scheme**

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 Condition 8.3 and Condition 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 in the Agency's reasonable opinion materially and adversely affect the delivery of the Firm Scheme 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 shall not under any circumstances be required or obliged to extend a Firm Scheme Completion Date beyond 31 March 2018, but may at its sole discretion elect to do so.

9 **Grant Claim Procedures**

9.1 Subject to a Firm Scheme having reached the Start on Site Date, the Grant Recipient may apply to the Agency for the Interim Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in accordance with the requirements of IMS from time to time.

9.2 In submitting an application pursuant to Condition 9.1 the Grant Recipient is deemed to :

9.2.1 repeat the representations and warranties set out in Conditions 6.1;

- 9.2.2 represent and warrant to the Agency that the Start on Site Date has been reached and that such date is no later than that submitted therefor in IMS;
 - 9.2.3 represent and warrant to the Agency that 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; and
 - 9.2.4 represent and warrant to the Agency that the Grant Recipient is a Registered Provider and retains its status as an Investment Partner.
- 9.3 Subject to a Firm Scheme having reached Practical Completion, the Grant Recipient may apply to the Agency for the Final Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in accordance with the requirements of IMS from time to time.
- 9.4 In submitting an application pursuant to Condition 9.3 the Grant Recipient is deemed to represent and warrant to the Agency that:
- 9.4.1 the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of this Agreement;
 - 9.4.2 the Firm Scheme has reached Practical Completion;
 - 9.4.3 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;
 - 9.4.4 the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;
 - 9.4.5 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;
 - 9.4.6 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 for the purposes of this Condition 9.4.6 the parties acknowledge and agree that limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect; and
 - 9.4.7 the Firm Scheme is covered by the terms of a current Help to Buy Agency Agreement (where applicable).

10 **Not used**

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 (in the context of Final Tranche Grant)

11.1.2 Conditions 11.3, 11.4 and 12.1

the Agency shall pay the Interim Tranche Grant or Final Tranche Grant (as applicable) to the Grant Recipient within fifteen (15) 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 fifteen (15) 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 fifteen (15) 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 10 (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 Grant Recipient:

11.3.1 the Interim Tranche Grant before the date identified in the Firm Scheme Details as the forecast Start on Site Date;

11.3.2 the Final Tranche Grant 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 the event the Firm Scheme has not reached Practical Completion by 31 March 2018.

12 **Termination and 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 Interim Tranche Grant or Final Tranche Grant or otherwise where:

12.1.1 in relation to Final Tranche Grant only 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 and Condition 9.4 (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 lost, 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 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);
 - 12.1.9 a breach of the Open Book Obligations;
 - 12.1.10 any other breach of the Agreement which has a Material Adverse Effect;
 - 12.1.11 the Agency determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Bid has not been made by the Grant Recipient in delivering the Bid; or
 - 12.1.12 the Grant Recipient (either by its own actions or omissions or those of its contractors or agents) harms the Agency's reputation or brings the Agency or AHP into disrepute;
 - 12.1.13 the Grant Recipient is unable to make the representations and give the warranties set out in Schedule 1 applicable to it (in any case in whole or in part) and there is a resulting Material Adverse Effect in relation to that Firm Scheme.
- 12.2 The Grant Recipient must notify the Agency immediately in writing on the occurrence of any of the circumstances detailed in Condition 12.1 (the **Default**).
- 12.3 Where the Default is:
- 12.3.1 an occurrence specified in Condition 12.1.3, 12.1.4, 12.1.5 12.1.6, 12.1.11 and/or 12.1.12 the Agency shall be entitled forthwith and without any liability to the Grant Recipient terminate the Agreement;
 - 12.3.2 an occurrence specified in Condition 12.1.1, 12.1.2, 12.1.7, 12.1.8, 12.1.9, 12.1.10 and/or 12.1.13 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 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 terminate the Agreement,

12.4 Where either party purports to terminate this Agreement in accordance with this Condition 12 or condition 13.3.3(d) and the other party disputes its entitlement to do so the provisions of Condition 25 shall apply.

13 **Repayment of Grant**

13.1 The parties acknowledge and agree that 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.

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;

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 Firm Scheme in accordance with the agreed Firm Scheme Details;

13.2.6 the Grant Recipient has breached its obligations under Conditions 7.2, 7.5 to 7.7; or

13.2.7 an Insolvency Event has occurred in relation to the Grant Recipient.

13.3 In the circumstances set out in:

13.3.1 Conditions 13.2.1, 13.2.2, 13.2.6 and 13.2.7 the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant;

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 in respect of the Firm Scheme; and

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

- (c) the Grant Recipient shall immediately amend the relevant information on IMS to reflect any agreement reached pursuant to Condition 13.3.3(a);
- (d) 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 forthwith and without any liability to the Grant Recipient; and
- (e) under no circumstances will the Agency be required to make any payment to the Grant Recipient if the application of the calculation in Condition 13.3.3(b) results in RA being a negative figure.

13.4 Where the Agency (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Firm Scheme Grant for the Firm Scheme, the Agency shall be entitled to treat such claim as a Prohibited Act for the purposes of Condition 12 and will not be bound by the terms of Condition 13.3.3.

13.5 Not used.

13.6 Not used.

13.7 Subject to Condition 13.9, 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.

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

13.9 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 13.7.

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 **Not used**

16 **Open Book Obligations**

16.1 The Grant Recipient shall ensure that it and each Grant Recipient Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Affordable Housing which identify items of Decision Revenue, the Firm Scheme Grant and Decision Allowable Costs and such other items required under this Condition 16.

16.2 The Grant Recipient shall upon the Agency's written request:

16.2.1 make available upon reasonable notice for the Agency's inspection (and that of any person referred to in this Condition 16 or in Condition 20 or any person appointed pursuant to Condition 25 the books of account referred to in Condition 16.1 (together with, if specified, such supporting correspondence, agreements, orders, invoices, receipts and other documents) and shall submit a report in relation to the same to the Agency as and when requested to do so; and

16.2.2 procure that a representative of the Agency (or any of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Condition 16 are held or maintained and examine such records or information.

16.3 The Grant Recipient shall ensure that it and any Grant Recipient Affiliate (at its or their cost) co-operates with the Agency during an SGEI Review and it shall if requested promptly provide the Agency with SGEI Information and such other information, evidence and/or explanation as the Agency may reasonably require.

17 **Not used**

18 **State Aid**

18.1 If any funding provided pursuant to this Agreement gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the Agency shall be entitled to recover from the Grant Recipient the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is required by law to recover and the Grant Recipient must pay such amount(s) within ten (10) Business Days of the Agency requesting repayment.

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 1 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 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 or disclose Information:

20.3.1 without consulting the Provider; or

20.3.2 following consultation with the Provider and having taken (or not taken as the case may be) its views into account.

20.4 The Agency shall be responsible for determining in its absolute discretion whether:-

20.4.1 any Information is Exempted Information or remains Exempted Information; or

20.4.2 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.

20.5 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:

20.5.1 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;

20.5.2 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;

20.5.3 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;

20.5.4 permit the Agency to inspect such as requested from time to time

20.6 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.

20.7 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.

20.8 The Grant Recipient must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Grant Recipient must:

20.8.1 notify the Agency immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Grant Recipient or if such person leaves the Grant Recipient's employment or relinquishes that role;

20.8.2 maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;

20.8.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and

20.8.4 ensure that systems are in place to prevent any person accessing IMS under a User ID other than his own.

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 the Firm Schemes where Firm Scheme Grant has been paid or a valid entitlement to claim Firm Scheme Grant has arisen.

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 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 true 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 their obligations under this Agreement.

32.2 The Grant Recipient undertakes that to the extent that it 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 each 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 each 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 each shall allow the Agency to audit its compliance with the requirements of this Condition 32 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of their 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 that Grant Recipient to perform 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 no 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 it 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 a 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 their destruction of and/or damage to any of the Agency's Personal Data Processed by it, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 32 by that 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 that 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 it 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 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, 7 to 9, 11 to 13, 16, 18 to 22, 25, 32, 40 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 **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

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 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, 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 **Firm Scheme 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 the 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 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 Bid 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 **Authority of Grant Recipient's Representative**

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

4 **Propriety**

- 4.1 No member, employee, agent or consultant of the Grant Recipient or of any partner organisation of the Grant Recipient has any personal, proprietary or pecuniary interest in:
- 4.1.1 any person from whom the Grant Recipient is purchasing land or property for the purposes of or in connection with this Agreement;
- 4.1.2 any contractor engaged or to be engaged by the Grant Recipient in connection with this Agreement;
- 4.1.3 any land or other property to be acquired or developed refurbished or improved by the Grant Recipient for the purposes of or in connection with this Agreement.
- 4.2 No member, employee, agent or consultant of the Grant Recipient or any partner organisation of the Grant Recipient is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:

- 4.2.1 access to properties developed, rehabilitated or disposed of pursuant to this Agreement; or
- 4.2.2 the prices at which such properties are let or disposed of.

Schedule 2

Developable Scheme Details

Scheme name	
Description	
Allocated Grant	
Number of units, size and tenure type;	
Estimated total costs	
Estimated start on site date	
Estimated completion date	

Annex 1

Part 1

Development Costs

Heads of expenditure

5 Acquisition

- 5.1 Purchase price of land/site.
- 5.2 Stamp Duty Land Tax on the purchase price of land/site.

6 Works

- 6.1 Main works contract costs (excluding any costs defined as on costs).
- 6.2 Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.
- 6.3 statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.
- 6.4 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.
- 6.5 Irrecoverable VAT on the above (where applicable).

7 On costs

- 7.1 Legal fees and disbursements.
- 7.2 Net gains/losses via interest charges on development period loans.
- 7.3 Building society or other valuation and administration fees.
- 7.4 Fees for building control and planning permission.
- 7.5 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.
- 7.6 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 7.7 Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).
- 7.8 Contract performance bond premiums.
- 7.9 Borrowing administration charges (including associated legal and valuation fees).

- 7.10 An appropriate proportion of the Grant Recipient's development and administration costs.
- 7.11 Marketing costs – for sale schemes only.
- 7.12 Post-completion interest - for sale schemes only.
- 7.13 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:

- 8.1 which are not eligible for Social Housing Assistance as defined in Section 32(13) of the HRA 2008;
- 8.2 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;
- 8.3 on estate offices, factories, letting offices;
- 8.4 on stores (other than external storage provision required by Design and Quality Standards);
- 8.5 on medical or dental surgeries, clinics;
- 8.6 on police stations, public libraries, bus shelters;
- 8.7 on shops, restaurants, public houses, offices;
- 8.8 on transformer and other related buildings;
- 8.9 on maintenance depots, tools, plant and vehicles;
- 8.10 on garages (other than integral garages on market purchase scheme types) and greenhouses;
- 8.11 on separate commercial laundry blocks and related equipment.

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