Homes England – Grant Funding Agreement in relation to:

Programme: Community Housing Fund (Local Authority Infrastructure Project)

**Project: [INSERT PROJECT DETAILS HERE]**

Dated                             2019

Parties:

1. **Homes and Communities Agency (trading as Homes England)** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (**Homes England**); and
2. **[INSERT PROVIDER PARTY DETAILS HERE]**

**[INSERT BID DETAILS HERE]**

**Homes England Programme:** Community Housing Fund (Local Authority Infrastructure Project)

**Recitals**

* 1. Homes England agrees to make grant funding available to the Local Authority on the terms of this Agreement.

1.2 These recitals, the schedules (including Standard Terms and Conditions of Funding) and the Appendices to this Agreement are incorporated into and form part of this Agreement.

Subject to the terms of this Agreement, the Local Authority may seek to deliver the Project by directly procuring contractors to deliver the CHF Funded Infrastructure Works.

**General**

1. 1. All definitions and principles of interpretation set out in the standard terms and conditions of Funding specified in Schedule 2 shall apply to this Agreement (including the schedules to this Agreement), together with the Project specific definitions set out in Schedule 1 and the schedules and the Appendix to this Agreement are incorporated into and form part of this Agreement.
	2. The Local Authority acknowledges and agrees that Homes England's obligation to provide the Funding is subject to Homes England receiving any approvals Homes England may require (whether internally or from central Government) and on central Government making funds available to Homes England for the Funding.
	3. The key principles of the proposed Funding for the Project are as follows:

|  |  |
| --- | --- |
| **Total Commitment** | [INSERT GRANT FUNDING AMOUNT HERE] |
| **Project**  | means the CHF Funded Infrastructure Works; |
| **CHF Funded Infrastructure Works** | **[INSERT PROJECT DETAILS HERE]** |
| **Site** | **[INSERT SITE DETAILS HERE]** |
| **Site Owner** | **[INSERT SITE OWNER DETAILS HERE]** |
| **Availability Period**  | means subject to the terms of this Agreement, the period up to 31 March 2020; |
| **Milestones** | See Schedule 3; |
| **Start Date**  | **[INSERT START ON SITE DATE HERE]** |
| **Project Completion Date** | **[INSERT PROJECT COMPLETION DATE HERE]** |
| **Restriction on title** In favour of Homes England requiring Homes England’s consent to dispositions made in relation to the Sit*e* | Yes |

1. **Conditions Precedent to Funding**
	1. Conditions precedent to each Claim for Funding
		1. Homes England’s obligations under this Agreement to make available any Funding is subject to the conditions precedent more particularly specified in  ***paragraph 1, Schedule 4,*** each being in a form and substance satisfactory to Homes England at the time:
			1. when the Local Authority makes a Claim from Homes England through the Portal; and
			2. when such Funding is to be made available to the Local Authority.
	2. The conditions precedent required by Homes England pursuant to this Clause 3 are for the sole benefit of Homes England and may only be waived or otherwise deferred by Homes England in writing at its entire discretion.
	3. **Funding**

Subject to clause 3.1 and the Standard Terms and Conditions of Funding and the other matters set out in this Agreement, Homes England will pay the Funding on the terms set out in this Agreement.

* 1. Reporting

The Local Authority will provide Homes England with the Monitoring and Progress Report in accordance with paragraph 9 to the Standard Terms and Conditions**.**

* 1. Repayment

The Local Authority will repay any overpayment of the Funding in accordance with paragraph 8 to the Standard Terms and Conditions.

* 1. Notices
		1. The Local Authority contact for all notices at Homes England is the CHF Programme Management Office.

All correspondence with Homes England (unless otherwise provided for in this Agreement) must be in writing and either be delivered at or sent by first class post to:

Homes England, Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH

with a copy to

CHF Programme Management Office, Homes England, Windsor House, 50 Victoria Street, London SW1H OTL.

* + 1. Any notice or other communications between us shall be accepted as having been received;
			1. if sent by first‑class post, three days after posting exclusive of the day of posting; or
			2. if delivered by hand, on the day of delivery,

in the case of Homes England addressed as set out above and in the case of the Local Authority – **[INSERT LOCAL AUTHORITY ADDRESS DETAILS HERE]**

Either of us may change the details of service by notice in accordance with the above.

* 1. Amendments to the Agreement

Homes England may amend or vary the Agreement where either:

* + - 1. mandatory changes are required by the UK or EU laws or regulations; and/or
			2. by mutual written consent between the Local Authority and Homes England.
1. Termination

Homes England reserves the right to terminate this Agreement by notice in writing and / or to implement paragraph 7 of Schedule 2 with immediate effect where:

* + - 1. the Local Authority fails to achieve any Milestone;
			2. the Local Authority fails to remedy any breach of this Agreement which is capable of remedy within 14 days of Homes England requesting the Local Authority to do so;
			3. the Local Authority Senior Officer issues a report under section 114 or section 114A of the Local Government Finance Act 1988;
			4. the Local Authority commits a breach of this Agreement which is incapable of remedy.

**IN WITNESS** whereof this document has been executed as a deed by the parties hereto but is not intended to have legal effect until it has been unconditionally delivered and dated

The common seal of )

**HOMES AND COMMUNITIES AGENCY** )

is hereunto affixed in the presence of: )

………………………………………………

  Name:

Authorised Signatory

The common seal of )

**[INSERT LOCAL AUTHORITY NAME HERE]** )

is hereunto affixed in the presence of: )

………………………………………………

 Name:

Authorised Signatory

1.

**PROJECT SPECIFIC DEFINITIONS**

The following terms shall have the following meanings when used in this Agreement (unless the context requires otherwise).

|  |  |
| --- | --- |
| **Development Costs** | means the costs for the Project which Homes England is satisfied will be reasonably and properly incurred by the Local Authority in procuring the carrying out the CHF Funded Infrastructure Works, such costs must constitute capital expenditure in accordance with Regulations made under the Local Government Act 2003. |
| **Local Authority Authorised Officer** | means the Local Authority Senior Officer or any person that the Local Authority has provided the information detailed in paragraph 1.5 of Schedule 4 to Homes England.  |
| **Local Authority Senior Officer** | means the employee of the Local Authority holding the title of 'Section 151 Officer'.  |
| **Project Completion****Date** | means the date by which the Project is actually completed to Homes England's reasonable satisfaction and in accordance with the terms of this Agreement.  |
| **Standard Terms and Conditions of Funding** | means the standard terms and conditions of funding contained at Schedule 2**.** |
| **Title Letter**  | means the certificate of title to the land in form set out in Appendix 2  |

1.

**STANDARD TERMS AND CONDITIONS OF FUNDING**

1. **DEFINITIONS**
	1. In these Standard Terms and Conditions the following words and expressions have the following meanings:

**Agreement** means this agreement, the attached schedules and annexes pursuant to which Homes England makes Funding available to the Local Authority from time to time and incorporating these Standard Terms and Conditions;

**Availability Period** means as defined in paragraph 2.3 to the Agreement;

**Business Day** means any day other than a Saturday, Sunday or statutory bank holiday in England;

**CDM Regulations** means the Construction (Design and Management) Regulations 2015;

**CHF Funded Infrastructure Works** means as defined in paragraph 2.3 to the Agreement;

**Claim** means an application for Funding;

**Clawback** means Homes England's right to recover the whole or any part of the Funding under paragraph 7 of **Schedule 2**;

**Customer Due Diligence Information** means the information supplied by the Local Authority to Homes England pursuant to paragraph 1.5 of Schedule 4 and any additional Customer Due Diligence Information reasonably required by Homes England;

**Data Protection Legislation** and **DPL** means (i) unless and until the General Data Protection Regulation (EU) 2016/679) (the GDPR) is no longer directly applicable in the UK, the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018 (the DPA) and (iii) all applicable Law relating to the processing of personal data and privacy;

**EU Procurement Regulations** 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 89/665/EEC, 2004/17/EC and 2014/24/EU, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228, 2006/6 and 2015/102 (Public Contracts Regulations 2015) insofar as the same are applicable;

**Financial Year** means the period from 1st April in one year to the 31st March in the subsequent calendar year;

**Funding** means funding made or to be made under the Agreement or the principal amount of each advance of Funding made by Homes England under the Agreement or the aggregate amount of all advances of Funding which have been made by Homes England as a financial contribution towards the Project;

**Health and Safety Legislation** means any applicable health and safety legislation, statutory instruments or regulations (including but not limited to the Health and Safety at Work etc. Act 1974) and any guidance and/or codes of practice relating to them;

**Monitoring and Progress Report** means a report prepared by the Local Authority and submitted to Homes England, the means of submission and the location of the form being as notified by Homes England to the Local Authority from time to time in writing;

**Milestones** means the key events and stages as agreed between the Local Authority and Homes England in relation to the Project as detailed in Part A of Schedule 3 and **Milestone Dates** shall be construed accordingly;

**Portal** means the Homes England bidding portal which is an online system to manage bids approved by Homes England under the Programme;

**Project** means the project to which the Funding relates, details of which are set out in paragraph 2.3 to the Agreement;

**Project Completion Date** means the date by which the work on the Project is to be completed as defined in paragraph 2.3 to the Agreement;

**Project Details** means information provided by or on behalf of the Local Authority in relation to the Project, which shall include, without limitation:

1. the descriptive and other details in respect of the Project as set out in the definitions of Project and the Milestones;
2. all details of the works required to complete the Project;

each as may have been varied from time to time with Homes England’s prior agreement in accordance with the terms of the Agreement;

**Quarter Date and Quarter** means each of 31 March, 30 June, 30 September and 31 December;

**Regulatory Body** means any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local and including, but not limited to, the Ministry for Housing, Communities and Local Government, UK central Government, the European Commission or any successor such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Homes England;

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

**SGEI Entrustment** means a deed of entrustment which includes the statement set out in Appendix 7 and such other provisions as may be required by Homes England (in its absolute discretion) in order to ensure that any Funding received by the Site Owner complies with EU State Aid laws and regulations;

**Site** means as defined in paragraph 2.3 to the Agreement;

**Start Date** means the date by which the work on the Project is to be started as defined in paragraph 2.3 to the Agreement; and

**Total Commitment** means as defined in paragraph 2.3 to the Agreement.

* 1. **Interpretation**
		1. A reference to:
1. the masculine includes the feminine and vice versa;
2. the singular includes the plural and vice versa; and
3. a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.
	* 1. Any reference in the Agreement (including, for the avoidance of doubt, these Standard Terms and Conditions) 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 the Agreement.
		2. Any reference to any enactment, order, regulation or similar instrument (including any Legislation) shall (except where expressly stated otherwise) be construed as a reference to the same as amended, replaced, consolidated or re-enacted.
		3. A time of day shall be a reference to London time.
		4. A party means a party to the Agreement.
		5. The words includes or including are to be construed without limitation.
		6. In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by or to Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in the Agreement or such other person as may be specified to the other parties from time to time.
		7. If there is any ambiguity or conflict between the implied terms and the express terms of the Agreement then the express terms shall prevail.
		8. No review comment or approval by Homes England under the provisions the Agreement shall operate to exclude or limit the Local Authority’s obligations or liabilities under the Agreement save where Homes England have confirmed the said review comment or approval in writing.
		9. The Local Authority shall be responsible as
		against Homes England for the acts or omissions of any contractor as if they were the acts or omissions of the Local Authority.
		10. Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in the Agreement or agreed in writing by Homes England, relieve the Local Authority of any of its obligations under the Agreement or of any duty which it may have to ensure its correctness, accuracy or suitability nor does it confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval, consent, examination, or acknowledgement was given or review made.
		11. "disposal" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "dispose" will be construed accordingly.
		12. any reference to "works" in the Agreement
		(including these Standard Terms and Conditions) shall mean the works to be carried out on each Site to enable the delivery of a Project in accordance with the Agreement, the Project Details, the Project Documents, the consents, the authorisations and the Agreement.
4. **PROVISION OF FUNDING**

Homes England (in exercise of its powers to give financial assistance under s19 of the Housing and Regeneration Act 2008) agrees to make available to the Local Authority during the Availability Period the Funding in an aggregate principal amount equal to the Total Commitment.

1. **PRE-CONDITIONS OF FUNDING**

Homes England’s obligations under this Agreement are subject to it having received all documents and other evidence detailed in **Schedule 4** each in form and substance to the satisfaction of Homes England.

1. **WARRANTIES AND REPRESENTATIONS**

In accepting this offer (and every time the Local Authority submits a valid Claim through the Portal which is accepted by Homes England) the Local Authority warrants and confirms to Homes England that:

* 1. it:
		1. is a legally constituted body and has the full capacity and authority and all necessary consents to enter into and perform the obligations under this Agreement; and
		2. acknowledges that it constitutes valid, legal and binding obligations of and on the Local Authority which are enforceable against it;
	2. all information, documents and accounts provided
	by the Local Authority or on its behalf, from time to time are and will be true, valid and correct;
	3. it is not in breach of any law, regulation, agreement
	or obligation which affects or may affect its ability to commit to this Agreement;
	4. is not under any statutory obligation to carry out
	the Project or any part of it;
	5. is not aware of any fact or circumstance that may
	affect the successful completion of the Project or otherwise constitutes a breach of this Agreement;
	6. it will procure that all the necessary consents and
	licences are in place and maintained for the duration of the Project without limitation;
	7. it will procure that all necessary planning consents
	and property licences for the Project are in place and maintained for the duration of the Project. If any such consents or licences are varied in any way or revoked it must inform Homes England in writing immediately;
	8. the Site Owner has full legal control and good title to the Site and
	all other assets (including Intellectual Property Rights) necessary to enable delivery of the Project and has all such further rights as are necessary to comply with its obligations in this Agreement;
	9. All:
1. Development Costs saved or recovered; and
2. any other monies the Local Authority is required to recover from a contractor, developer and/or Site Owner;

may be retained by the Local Authority subject to:

1. Homes England’s written approval; and
2. any conditions imposed by Homes England (in its entire discretion) as a term of such approval, and

any such monies must be used for further housing delivery;

* 1. it has in place legally binding arrangements with its contractors, developers and Site Owners to recover any:
1. savings;
2. recoveries; and
3. any other monies the Local Authority is required to recover from a contractor, developer and/or Site Owner;

such that the Local Authority can comply with its obligation in paragraph 4.9;

* 1. it will comply with EU Procurement Regulations (to the extent that the same apply);
	2. it will procure that all contractors comply with EU Procurement Regulations (to the extent that the same apply); and
	3. the Site Owner has appointed a Principal Designer and Principal Contractor (each being as defined by the CDM Regulations) and has provided Homes England with a copy of the notification to the Health and Safety Executive of the particulars specified in schedule 1 of the CDM Regulations.
1. **PAYMENT OF FUNDING**
	1. **Mechanics and payment of Funding**
		1. Claims must be submitted either:
2. on the Start Date; or
3. on the Project Completion Date

only one Claim may be made on each such date and the Local Authority made only deliver two Claims during the course of this Agreement.

* + 1. The Claim made on the Start Date must be in the amount which is equal to 90% of the Total Commitment.
		2. The Claim made on the Project Completion Date must be in the amount which is equal to 10% of the Total Commitment.
		3. A Claim will not be regarded as having been validly made by the Local Authority unless:
1. it is submitted through the Portal by a Local Authority Authorised Officer and it is:

i received by Homes England no later the time period specified in paragraph 5.1.1; and

ii delivered during the Availability Period; and

1. it relates to Development Costs and for which the Local Authority has not submitted any other Claim or received any other funding and it is accompanied by written evidence satisfactory to Homes England that the Development Costs have been or will be incurred within a 12 month period ending 31 March in the relevant Financial Year in which the Claim is made together with confirmation from a Local Authority Authorised Officer that it has verified and approved the Claim;
2. it accords with each Milestone is to be met by the relevant Milestone Date or is accompanied by evidence satisfactory to Homes England (in its absolute discretion) to justify any deviation; and
3. it is for an amount which (if paid) would not cause the Total Commitment to be exceeded.

5.1.5 Subject to the terms of the Agreement, Homes England will pay Funding to the Local Authority within ten (10) Business Days of receipt of a valid Claim.

5.1.6 Any amount not drawn by the Local Authority under Agreement during the Availability Period will be automatically cancelled.

* 1. **Use of Funding**
		1. The Funding will be the sole property of the Local Authority and will be used by the Local Authority for Development Costs only in line with the Milestones.
		2. Without affecting the obligations of the Local Authority in any way, Homes England is not bound to monitor or verify the application of any amount provided pursuant to the Agreement.
1. **LOCAL AUTHORITY DELIVERY OBLIGATIONS**

The Local Authority will procure that the Project commences by the Start Date and is carried out in accordance with the Milestone Dates.

1. **CLAWBACK ON DEFAULT**
	1. In the event that Homes England in its sole and absolute discretion determines that an event of default has occurred in respect of the events listed at paragraph 7.2 (**Event of Default**) Homes England has the right to call an Event of Default by issue of a notice to the Local Authority in respect of the same.
	2. An Event of Default occurs where:
		1. any representation or warranty made by the Local Authority pursuant to paragraph 4 is materially incorrect when made or repeated;
		2. the Local Authority fails to achieve any Milestone;
		3. the Local Authority Senior Officer issues a report under section 114 or section 114A of the Local Government Finance Act 1988;
		4. the Local Authority commits a material breach any of the terms and conditions of the Agreement and/or any other agreement the Local Authority has with Homes England (and fails to remedy such breach within 14 days of Homes England asking the Local Authority to do so);
		5. the Local Authority does not comply with paragraph 9;
		6. the Local Authority does not comply with any conditions on it to permit a retention pursuant to paragraph 4.9(d); and/or
		7. subject to the provisions of paragraph 4.9, any amount of Funding has not been spent by the Local Authority on Development Costs.
	3. **Homes England's rights**

Where an Event of Default has occurred Homes England in its absolute discretion may by notice to the Local Authority:

* + 1. pursuant to clause 7.2.2 only, consider and agree a revised Milestone Date with the Local Authority in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone Date; and
		2. pursuant to clause 7.2.3 only, require the Local Authority to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to Homes England within five (5) Business Days of such request for approval.
	1. **Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing Homes England may by notice to the Local Authority suspend or withhold payment of any instalments and/or recover all or part of the Funding (together with costs and expenses), any such recoveries to be paid to Homes England within three (3) Business Days of Homes England’s demand.

1. **OVERPAYMENTS**

Homes England may vary or withhold any or all of the payments of Funding under this Agreement and/or require repayment of any or all Funding already paid to the extent that:

* 1. repayment or recovery is required under or by virtue of any European Union state aid laws (including without limitation under Article 107 of the Treaty on the Functioning of the European Union and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) ("EU State Aid Law"); and/or
	2. Homes England is otherwise required to repay or
	recover such Funding in whole or in part by or to the European Commission.

Any Funding required to be repaid in accordance with this Clause 8 will bear interest at such rate as required under or by virtue of EU State Aid Law from the date of Homes England's notice requiring repayment to the date of repayment (both before and after judgement) or such other period as may be required under or by virtue of EU State Aid Law.

1. **APPLICANT NOTIFICATION AND REPORTING OBLIGATIONS**
	1. **Reporting**

The Local Authority will:

* + 1. from the date of this Agreement until the end of the Availability Period, and no later than ten (10) Business Days following each Quarter Date, the Local Authority will provide the Monitoring and Progress Report to Homes England save that the first Monitoring and Progress Report shall be the period commencing on the date of this Agreement and ending on the next Quarter Date;
		2. notwithstanding paragraph 9.1.1, provide Homes England with more frequent Monitoring and Progress Reports should it be requested to do so by Homes England (at its absolute discretion);
		3. provide Homes England with such other information as Homes England may reasonably require in connection with the Project (including without limitation evidence that a Claim relates to Development Costs) and the Milestones; and
		4. procure that the Local Authority’s representative and/or any other officers appointed by the Local Authority to deal with the Project will attend such meetings as Homes England may reasonably request to review progress in relation to the Project;
		5. within 30 days of the end of each Financial Year provide Homes England with a statement of grant usage in the form set out in Appendix 4.
	1. **Inspection and Audit Facilities**

The Local Authority will:

* + 1. allow or procure access to its premises for Homes England, its internal auditors or its other duly authorised staff or agents or any Regulatory Body and will allow such persons to inspect and take copies of documents relating to the Project. Homes England will be entitled to interview the Local Authority’s employees to obtain oral and/or written explanations of documents;
		2. provide Homes England, in writing, with any such information about the Funding and/or the Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions;
		3. allow Homes England or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Funding and the Project provided that Homes England does not impede or obstruct the progress of the Project; and
		4. at all times retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purpose of this paragraph 9.2.4 "Accounting Standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board.
1. **TITLE TO THE LAND**

The Local Authority will procure that the Local Authority’s solicitor provides a Title Letter in respect of the Site to Homes England in accordance with paragraph 1.8 of Schedule 4 to this Agreement.

1. **CONDUCT**
	1. The Local Authority must comply with and assist and co-operate with Homes England in order that it can comply with (and require third parties who benefit from this Funding and any appointed contractors do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:
		1. EU and UK Planning and Environmental legislation
		2. EU State Aid Law, including but not limited to N7471A/99 and N747/8/99 Partnership Support for Regeneration (1) Support for Speculative Developments and (2) Support for Bespoke Developments
		3. Any relevant health and safety legislation
		4. Modern slavery
		5. Employment legislation
		6. CDM Regulations
		7. Equal opportunities (in relation to race, sex, disability, faith and sexuality)
		8. Financial regulations and legislation
		9. Copyright and Data Protection legislation
	2. The Local Authority must not grant any lender security over assets funded, or part-funded, by this Funding unless the Local Authority has first obtained Homes England's written consent.
	3. In carrying out the Project the Local Authority must not act directly or indirectly in any way that will bring Homes England into disrepute.
	4. The Local Authority must inform Homes England immediately if any of its directors, officers or partners are a) disqualified, or b) subject to investigation or challenge which may have a detrimental effect upon Homes England and/or the Project.
	5. The Local Authority must advise Homes England immediately of any intention of its Local Authority Senior Officer to issue a report under section 114 or section 114A of the Local Government Finance Act 1988.
	6. The Local Authority will act in good faith to achieve the Milestones and will provide evidence of this to Homes England as required by Homes England.
	7. The Local Authority will provide Homes England with such evidence that it requires that the Development Costs have been incurred.
	8. The Local Authority will procure that all contractors comply at all times with the Health and Safety Legislation and the CDM Regulations and the requirements of the Health and Safety Executive.
	9. The Local Authority may (where Homes England has so approved in writing) provide the Funding to the Site Owner under the SGEI Decision provided that the Local Authority provides the Site Owner with an SGEI Entrustment and complies with the conditions of the SGEI Decision.
2. **INSURANCE**
	1. The Local Authority must procure that adequate insurance is taken out and maintained with a reputable insurance company of the type and level of cover which it is reasonable to expect from a business undertaking the Project.
	2. The Local Authority must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to Homes England within 10 days of any such request being made by Homes England.
3. **CONFIDENTIALITY, FREEDOM OF**

**INFORMATION, DATA PROTECTION, INTELLECTUAL PROPERTY, PUBLIC RELATIONS AND PUBLICITY**

* 1. **Definitions**

In this paragraph 13 the following words and expressions have the following meanings:

**Confidential Information** means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Agreement including but not limited to:

1. know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
2. the existence or terms of this Agreement or other information relating to the Project; and
3. information relating to a Party's business and affairs, its customers, employees and suppliers;

 in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information

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

**EIR Exception** means any applicable exemption to EIR;

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

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

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

**FOIA Exemption** means any applicable exemption to the FOIA;

**Information** means in relation to:

1. FOIA the meaning given under section 84 of the FOIA and which is held by Homes England at the time of receipt of an RFI; and
2. EIR the meaning given under the definition of “environmental information” in section 2 of the EIR and which is held by Homes England at the time of receipt of an RFI;

**Information Commissioner** has the meaning set out in section 6 of the DPA;

**Intellectual Property** includes, without limit, all copyright (and future copyright), patents, trademarks and service marks (whether registered or not) design rights, registered designs, database rights, moral rights and know-how together with the right to register, protect, enforce and exploit the above anywhere in the world.

**Pre-existing Intellectual Property Rights** means any Intellectual Property provided or used by the Local Authority in connection with the Project which exists as at the date of the Agreement.

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

* 1. **Confidentiality and freedom of information**
		1. **Confidentiality**
1. Each party recognises that under the Agreement it may receive Confidential Information belonging to the other.
2. Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of the 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 the Agreement.
3. The obligations of confidence referred to in paragraph 13.2.1(a) above will not apply to any Confidential Information which:

i is in, or which comes into, the public

 domain otherwise than by reason of a breach of the Agreement or of any other duty of confidentiality relating to that information; or

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

iii is lawfully in the possession of the
other party before the date of the Agreement and in respect of which that party is not under an existing obligation of confidentiality; or

iv is independently developed without access to the Confidential Information of the other party.

1. Each party will be permitted to disclose
Confidential Information to the extent that it is required to do so:

i to enable the disclosing party to perform its obligations under the Agreement; or

ii by any applicable law or by a court,
arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and the Local Authority acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information; or

iii by any regulatory body (including any
investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or

 iv in order to give proper instructions to
any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

1. The Local Authority will ensure that all
Confidential Information obtained from Homes England under or in connection with the Agreement:

i is given only to such of its employees, professional advisors, Contractors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

ii is treated as confidential and not disclosed (without Homes England’s prior written approval) or used by any such staff or professional advisors, contractors or consultants otherwise than for the purposes of the Agreement;

iii where it is considered necessary in the opinion of Homes England the Local Authority will ensure that such staff, professional advisors,
contractors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.

1. Nothing in this paragraph 13.2.1 shall
prevent Homes England:

i disclosing any Confidential Information for the purpose of:

A the examination and certification of Homes England’s accounts; or

B any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or

Ii disclosing any Confidential Information obtained from and the Local Authority:

A to any other department, office or agency of the Crown; or

B to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to the Agreement or any person conducting an Office of Government Commerce gateway review; or

iii provided that in disclosing information under paragraphs 13.2.1(f)(ii)(A) or 13.2.1(f)(ii)(B) above Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

1. Nothing in this paragraph 13.2.1 shall
prevent a party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
	* 1. **Freedom of information**
2. The Local Authority acknowledges that
Homes England is subject to legal duties

 which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.

1. Homes England shall be responsible for determining at its absolute discretion whether:

i any Information is Exempted Information or remains Exempted Information; or

ii any Information is to be disclosed in
response to a Request for Information.

1. Subject to paragraph 13.2.2(d) below, the
Local Authority acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:

i without consulting the Local Authority

; or

ii following consultation with the Local
Authority and having taken (or not taken, as the case may be) its views into account.

1. Without in any way limiting paragraphs

13.2.2(b) and 13.2.2(c) above, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Local Authority.

1. The Local Authority will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure obligations under the FOIA and the 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:

i provide all such assistance as may

be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and

1. Nothing in the Agreement will prevent
Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.
2. To the extent that the Local Authority becomes a FOIA Authority subject to the FOIA and the EIR during the course of the Agreement this paragraph will apply mutatis mutandis to both parties.
3. The obligations in this paragraph 13.2.2 will survive the expiry or termination of the 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 the Agreement or of any other duty of confidentiality relating to that information

.

* + 1. **Publication of information before Parliament**

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

* 1. **Data Protection**

For the purposes of this paragraph 13.3, "**Personal Data**" and "**Process**" shall have the meanings ascribed to them in the Data Protection Legislation as amended or re-enacted from time to time.

* + 1. **Cooperation**

The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the DPL.

* + 1. **Registrations, notifications and consents**

The Local Authority warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the DPL to Process Personal Data for the purposes of performing its obligations under the Agreement. The Local Authority undertakes at all times during the term of the Agreement to comply with the DPL (and the data protection principles contained therein) in processing all Personal Data in connection with the Agreement and shall not perform its obligations under the Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the DPL.

* 1. **Intellectual Property Rights**
		1. All Intellectual Property Rights arising from the Project which are vested in the Local Authority hereby vest in Homes England, other than Pre-existing Intellectual Property Rights, unless specifically detailed and agreed in writing with Homes England.
		2. Homes England is entitled to make publicly available Best Practice arising from the Project which is vested in the Local Authority ("Project Know-how") and (subject to Clause 13.4.3) the Local Authority hereby grant to Homes England a licence to use such Project Know-how in accordance with this Clause. Homes England will have the right to amend the Project Know-how or to combine with any other know how as it thinks fit when compiling and publishing what it regards as Best Practice.
		3. If the Intellectual Property Rights in Project Know-how are owned by a third party, the Local Authority will use your reasonable endeavours to obtain a licence for Homes England to use such Project Know-how in accordance with this Clause 13. The Local Authority will notify Homes England where the Local Authority are unable to obtain such licence and will identify which parts of the Project Know-how Homes England is not licensed to use ("Excluded Know how").
		4. Subject to Clause 13.4.3 the Local Authority will provide Homes England with complete copies of and access to all information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). The Local Authority will provide all assistance and explanation requested by Homes England to enable it to disseminate Best Practice.
		5. The Local Authority agrees to indemnify Homes England and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Homes England, or for which Homes England may become liable, with respect to any intellectual property infringement claim or other claim relating to the Intellectual Property Rights arising from the Project or the Project Know-how.
1. **INDEMNITY**

The Local Authority will be liable for and will indemnify Homes England in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to Homes England or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Local Authority of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England.

1. **ACCESS TO INFORMATION**
	1. The Local Authority is required to provide Homes England, in writing, any such information about the Funding as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.
	2. The Local Authority is required to record for Homes England any such information as may be required to monitor and evaluate the performance of the Agreement. The Local Authority is required to retain this information for access by Homes England or any Regulatory Body for a minimum period of 10 years from the Project Completion Date.
	3. The Local Authority is required to promptly provide to Homes England, at its reasonable request, access to all and any information about the Project including the location(s) at which the Project will be, and/or the beneficiaries of the Funding.
2. **TRANSFER**

The offer of Funding is personal to the Local Authority. Save as expressly contemplated by the Agreement or as otherwise specifically agreed in writing by Homes England the Local Authority may not assign, novate, transfer, sub-contract or dispose of in any other way either the benefit of the Funding or any of your obligations under this Agreement.

1. **VAT**

The Local Authority and Homes England both understand and agree that the Funding by Homes England under this Agreement is not consideration for any supply for Value Added Tax ("**VAT**") purposes whether by the Local Authority or otherwise. If,
notwithstanding the agreement and understanding of the Local Authority and Homes England, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

1. **CHANGES**

The Local Authority must advise Homes England immediately if the Local Authority want or require to make any changes to the Project including, but not limited to, changes to any of the Milestones, Start Date, Project Completion Date, Development Costs and Wider Project Costs and/or funding of the Project. Any changes must be agreed, in writing, with Homes England before taking effect.

1. **PUBLICITY**
	1. The Local Authority will ensure that, where appropriate, publicity is given to the Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England the Local Authority must comply with any guidance on publicity provided by or on behalf of Homes England from time to time.
	2. The Local Authority must not publicise or promote the Funding without Homes England's prior written agreement.
	3. Any reference to Homes England or the Funding in any publicity and/or promotional material relating to the Project must be approved in advance and in writing by Homes England.
	4. Homes England reserves the right to use all data provided by the Local Authority in relation to the Funding for publicity or promotional purposes.
2. **FEES AND EXPENSES**
	1. **Variations and Enforcement Costs**

The Local Authority shall within three (3) Business Days of demand on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

* + 1. in connection with the variation or
		amendment of, or enforcement or preservation of any rights under, the Agreement; or
		2. in investigating any Event of
		Default which has occurred.
1. **CUSTOMER DUE DILIGENCE**

On the written request of Home England, the Local Authority will promptly supply Homes England with all Customer Due Diligence Information using the form specified at Appendix 5.

1. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior negotiations, representations and undertakings whenever occurring.

1. **FURTHER ASSURANCE**

On the written request of Homes England, the Local Authority will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for Homes England the full benefit of this Agreement.

1. **APPLICABLE LAW**

This Agreement is governed and interpreted in accordance with English Law and subject to the jurisdiction of the courts of England and Wales. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full force and effect.

Milestone

**Part A: CHF Funded Infrastructure Milestones**

|  |  |  |  |
| --- | --- | --- | --- |
| **Milestone** | **Qualification** | **Payment** | **Evidence required to trigger payment** |
| Start on site | Allocation agreedCHF Funding Agreement signed  | 90% of the Total Commitment | Valid start on site claim submitted via the Portal, confirming: * The Site Owner and the building contractor have entered in to a building contract
* The building contractor takes possession of the site or property
* The CHF Funded Infrastructure Works have commenced
 |
| Completion |  | 10% of the Total Commitment | Valid completion Claim submitted via the Portal , confirming that the Project has been completed in accordance with the terms of the relevant building contract and the terms of the CHF Funding Agreement. |

1.

**PRE‑CONDITIONS**

1. Homes England will not advance any Funding under this Agreement (even where a Claim has been submitted through the Portal) unless:
	1. Homes England is satisfied that the Local Authority are not in breach of this Agreement;
	2. the Local Authority has provided satisfactory evidence to Homes England that the Local Authority has complied with the Local Authority representations and warranties set out in Clause 4 of Schedule 2;
	3. the Local Authority has provided Homes England with a copy of the legal opinion it has received for the Project in relation to EU State Aid Law, such legal advice shall be provided by a firm of reputable solicitors with expertise in EU State Aid Law;
	4. the Local Authority has provided Homes England with a capacity legal opinion in the form annexed at Appendix 3;
	5. the Local Authority has provided Homes England with a list of all key decision makers for the Local Authority and the Local Authority Senior Officer. Such list must be in the form set out in Appendix 5.
	6. the Local Authority confirms to Homes England in writing that it is satisfied that contractors have or will be appointed with sufficient capability, experience and funding to deliver the Project by the Project Completion Date;
	7. the Local Authority has issued (or procured the issue) to Homes England of the Title Letter in respect of the Site for which Funding is claimed;
	8. the Local Authority has provided Homes England with confirmation from its legal advisors that it has received legal advice to ensure its compliance with paragraphs 4.11 and 4.12 of the Standard Terms of this Agreement
	9. the Local Authority will procure that Homes England is provided with a completed Land Registry application form RX1 in respect of a restriction on the title of the Site at HM Land Registry in favour of Homes England requiring Homes England’s consent to dispositions made in relation to the Site together with an undertaking from the Site Owner's solicitors to register the same at HM Land Registry.
2. Homes England may agree to pay Funding to the Local Authority before the above pre-conditions have been met without prejudice or waiver to its rights under this Agreement or to its right to refuse to pay any further Funding until the above pre-conditions are met.
3.

**PLAN SHOWING THE SITE**

**TITLE LETTER**

**[Title Letter to be provided on Solicitors letterhead]**

|  |
| --- |
| Site: [*Land Registry description for the WHOLE title taken from the Official Copy Entries of the Title Number]* |
| Title Number:  |
| Local Authority:  |
| The Project:  |
| Date of Certificate:  |
| Insurance Amount: |

**TO**: **Homes and Communities Agency** (trading as Homes England), 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) (Homes England);

Except as set out in the Schedule hereto.

We certify that:

1. We investigated the title of [***please confirm details***] to the Site, including the carrying out of all appropriate searches and enquiries.
2. The Site is:
	1. held leasehold by [***please confirm details***]; and
	2. registered with absolute title at the Land Registry.
3. There are no financial charges secured on the Site.
4. The interest of [***please confirm details***] in the Site is sufficient to allow the Site to be included in the Project and for the development of residential units without the need to obtain any further property or rights or the consent of any third party.
5. [***please confirm details***] has a good and marketable title to the Site and to any appurtenant rights free from prior mortgages or charges and from onerous encumbrances that have an adverse effect on the development or use of the Site for the Project or its intended development.
6. We confirm that there either is, or will be on completion, sufficient insurance in place for the Insurance Amount as set out above.
7. [***please confirm details***] is not subject to any other contractual obligations which will adversely affect its ability to carry out the Project or materially affect the cost of the Project.
8. Nothing has been revealed by our searches and enquiries which would prevent the Site being used for the Project.

**Legal Opinion**

[TO BE TYPED ON LOCAL AUTHORITY NOTEPAPER]

 Our ref

 Your ref

 Date

 Email address

Homes England

Arpley House
110 Birchwood Boulevard
Birchwood
Warrington
WA3 7QH

To: Homes England

Dear Sirs,

**Legal Opinion re** **grant agreement and related matters**

I refer to the proposed grant agreement to be entered into between [                                    ] (the **Local Authority**) and Homes England (the **Agreement**) for the purposes of, inter alia, providing capital funding to support the pre-development costs of a community housing project which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

* + - 1. the Agreement in its final form prior to execution and delivery thereof by the Local Authority;
			2. the Local Authority's Standing Orders for approving entry into and the execution and delivery of deeds by the Local Authority and for the delegation of its Homes England and the powers of the Local Authority's Executive;
			3. such other documents I consider appropriate for the purposes of giving this opinion.

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

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

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

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

This opinion is given by virtue of my position as Solicitor to the Local Authority and is only given as the holder of that office. This opinion is addressed to Homes England and is solely for its benefit. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Solicitor to the Local Authority

being duly authorised for and on behalf of the Local Authority as a statutory chief officer within the meaning given to that expression in Section 2(6) of the Local Government and Housing Act 1989

**Form of Statement of Grant Usage**

**[*Insert name of organisation here*]**

**STATEMENT OF GRANT USAGE** **Year ended 31 March [XXXX]**

All figures in £s

|  |  |
| --- | --- |
| **ELIGIBLE EXPENDITURE** | **AMOUNT & SUPPORTING DETAILS** |
| Details and amount of expenditure |  |
| What has this expenditure procured? |  |
|  |
| **Total** |
| **SOURCES OF FUNDING** |
| Received from this grant |
| Funding sought from other sources  |
| This organisation's own contribution |
| Other |
| **Total** |

 To: **[*Insert contact name or post*]**.

 To the best of my knowledge and belief:

The Eligible Expenditure shown in this Statement of Grant Usage is a complete and accurate record of the payments made exclusively for the purposes set out in the grant offer, and does not include any amounts described as ineligible in the grant offer.

 Signed on behalf of the organisation’s accountant.

 ...................................………………………………………………………….….

 Name ..............................…………………………………………………………

Address ………………………….……………………………………………….

……………………………………………………………………………………….

Qualifications ……………………………………………………………………...

 Date ..............……….……………………………………………………………..

 Telephone number ..........…………………….…………………………………..

 Email: ……………………………………………………………………………….

**Appendix 5**

**Customer due diligence form**

[TO BE TYPED ON LOCAL AUTHORITY NOTEPAPER]

Our ref

 Your ref

 Date

 Email address

Subject: Confirmation of authorised signatories & section 151 officers

Please list the following information:

**Authorised signatories:**

Full Name:

Position (Job Title):

Signature:

Full Name:

Position (Job Title):

Signature:

**Section 151 officer:**

Full Name:

Position (Job Title):

Signature:

Full Name:

Position (Job Title):

Signature:

**Appendix 6**

**Guidance to external auditors or accountants**

**Definition of reporting accountant**

A reporting accountant is an accountant or firm of accountants appointed by the Grant Recipient who is/are independent of the Grant Recipient and (except for the Comptroller and Auditor General or the National Audit Office) holding a current practising certificate, or equivalent, issued by one of the following:

The Institute of Chartered Accountant in England & Wales

The Association of Chartered Certified Accountants

The Chartered Institute of Public Finance and Accountancy

The Chartered Institute of Management Accountants

The Institute of Chartered Accountants of Scotland

The Institute of Chartered Accountants in Ireland

The Association of International Accountants

The Association of Authorised Public Accountants

**Letter of engagement**

Homes England will sign a tripartite letter of engagement, if reporting accountants require this, setting out matters in addition to this guidance. In which case the reporting accountants should agree the wording of the letter with [***insert contact name***] (see contact details at the end of this guidance). However, please do not send signed reports or Statements of Grant Usage to [***insert contact name***] – send them to the contact named in the grant offer.

In the letter of engagement, reporting accountants may explain that their work consists of an examination of internal controls and tests carried out on a sample basis, and there can be no guarantee that fraud, misrepresentation or errors will be detected. They may also state that their work is not an audit and is not carried out in accordance with all Auditing Standards.

The letter of engagement should not say that accountants will carry out procedures solely to be able to report on whether the information has been accurately extracted from the underlying records of the Grant Recipient nor that their work will be carried out on the assumption that all of the information provided to them by the Grant Recipient is reliable and complete.

Suggested wording for the letter can be supplied if required. Please email [***insert contact name***] (see contact details at the end of this guidance).

**Reporting accountants' reports**

Reporting accountants' reports should be addressed to [***insert contact name*** ]. A copy of any signed tripartite letter of engagement should be attached to each report. Accountants’ reports that give an unqualified opinion should contain, as a minimum, an opinion on the reliability of the Statement of Grant Usage.

**Example:**

“We have read the funding agreement between [***insert Grant Recipient's name***] and Homes England dated [***insert date***].

In accordance with our engagement letter dated [***insert date***] ('the **engagement letter**'), a copy of which is attached, we have examined the attached Statement of Grant Usage, each page of which we have initialled for identification purposes only, in relation to the grant, reference [***insert reference***], for the period [***insert date*** ] to [***insert date*** ].

The Statement of Grant Usage has been prepared by, and is the sole responsibility of, the management of [***insert Grant Recipient's name*** ]. Our responsibility, under the terms of our engagement letter is to form an opinion on the basis of the work performed, and report our opinion to [***insert Grant Recipient's name***] and Homes England.

Our work was directed to those matters which in our view materially affect the Statement of Grant Usage, and was not directed to the discovery of errors or misstatements that we consider to be immaterial. Whilst we perform our work with reasonable skill and care, it should not be relied upon to disclose all misstatements, fraud or errors that might exist.

We have also examined the records of [***insert Grant Recipient's name***], carried out such tests as we consider necessary and received such explanations from the management of [***insert Grant Recipient's name***] as we consider necessary to enable us to form our opinion.

Opinions:

(1) On the basis of the work performed, in our opinion we have obtained sufficient and appropriate evidence that the Statement of Grant Usage, in all material respects, fairly presents [or reflects] the Eligible Expenditure in accordance with the definition of Eligible Expenditure set out in the funding agreement between [***insert Grant Recipient's name***] and Homes England, during the period [***insert date***] to [***insert date***].

(2) In the course of our work nothing came to our attention that is inconsistent with the statements made in the certificate signed on behalf of [***insert Grant Recipient's name***], which forms part of the Statement of Grant Usage.

This report is provided for the purpose of allowing [***insert Grant Recipient's name***] to meet its reporting obligations in respect of grants receivable from Homes England and on the basis that it is for use by [***insert Grant Recipient's name***] and Homes England only.”

In the case of reports that give unqualified opinions, any significantly different form of words in the opinion paragraphs should be agreed by the reporting accountants with [***insert contact name*** ] (see contact details at the end of this guidance). Changes will only be acceptable as long as they do not amount to a significant restriction in the ability of Homes England to reply on the reporting accountant’s opinions, beyond that described in this guidance. Any qualification to the opinions, any added emphasis, any limitation of scope that the reporting accountants encounter or any disclaimer of opinion should be supported by as complete an explanation as possible; for example, if there is any uncertainty, the reporting accountants should state what amount is uncertain or in dispute, and the facts relating to it.

**Signing reports**

With their signature, reporting accountants should write their name or give a reference that can be quoted if there are any queries. In addition they should give their postal address, telephone number and, if possible their email address.

**Materiality**

For the purposes of the work carried out by reporting accountants, amounts should be considered material if it is thought likely that they affect total eligibility for grant in the Funding Period by an amount exceeding 1% of the grant received in the year, or exceeding £1,000, whichever is the greatest. Notwithstanding this, all errors found by the reporting accountants, of whatever amount, must be corrected on the Statement of Grant Usage, by the Grant Recipient.

**Disputed amounts**

Reporting accountants need not seek to exclude all items from the Statement of Grant Usage where the eligibility is disputed but should report the facts in their report for consideration by Homes England. However, wherever possible, reporting accountants should give unqualified opinions, rather than opinions that are “subject to” or “except for”.

**Limit of liability**

We do not expect the reporting accountants to assume any liability to pay damages for losses arising as a result of breach of contract or professional negligence on their part in respect of their opinion on the Statement of Grant Usage, to any person other than Homes England.

In any case, reporting accountants' liability, in respect of damages resulting from professional negligence may be limited to the lower of:

the amount of Grant received by the Grant Recipient for the Funding Period plus any recovery costs incurred by Homes England, and

£1,000,000.

**Duty of care**

In accepting the assignment described in this guidance, reporting accountants accept that they owe a duty of care to Homes England.

Reporting accountants should note that the nature and extent of their tests is solely a matter for their professional judgement and their work will not be monitored by Homes England (but see below, under National Audit Office).

**National Audit Office**

In certain circumstances, the National Audit Office may ask to visit reporting accountants to discuss their methodology and findings. Reporting accountants are asked to co-operate with the National Audit Office as far as reasonably possible. Information gained by the National Audit Office in this way will not be used, without the reporting accountants' permission, for any purpose other than their audit of Homes England's annual accounts.

**Access to government information**

Homes England will not ask for anyone's permission before showing grant documents including reports from reporting accountants.

In addition to the above, the Freedom of Information Act obliges Homes England to disclose certain information, on request, to any member of the public.

**Other guidance**

Technical Release 03/03 *Public Sector Special Reporting Engagements - Grant Claims*, issued by the Institute of Chartered Accountants in England & Wales is applicable to this work. There is also a practice note issued by the Auditing Practices Board: *The Audit of Central Government Financial Statements (revised).* This is not intended to apply to grants but it contains definitions and explanations that reporting accountants might find useful.

If the reporting accountants need further advice or clarification, they can write to, telephone or email:

***[insert contact name and contact details]***

**Appendix 7**

**SGEI Entrustment**

[INSERT NAME OF LOCAL AUTHORITY] entrusts [INSERT NAME OF SITE OWNER] for a period not exceeding 10 years to facilitate, investigate the viability of, bring forward and to co-operate with other organisations to provide affordable housing in [INSERT THE AREA/DISTRICT]. This entrustment includes a public service obligation to undertake activities to investigate and works to deliver proposed affordable housing schemes in [INSERT THE AREA/DISTRICT] including to undertake such necessary designs, site investigations and planning applications. Nothing in this entrustment and public service obligation requires [INSERT NAME OF SITE OWNER] to incur liabilities unless it has secured public or other funding to do so.