

dated

2013

Homes and Communities Agency

And

ExtraCare Charitable Trust

Grant Agreement (new RP – non Local Authority)

in relation to the Care and Support Specialised Housing Fund

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Grant Agreement (new RP – non Local Authority)

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) **ExtraCare Charitable Trust** (company/I&P registration number 2205136) whose registered office is at 7 Harry Weston Road, Binley Business Park, Binley, Coventry, CV3 2SN (the **Grant Recipient**).

Introduction

- (A) The Department of Health (**DH**) has created the Care and Support Specialised Housing Fund to support and accelerate the development of a specialised housing market to support the housing needs of older people and adults with disabilities. The DH has delegated responsibility for the administration of the fund and delivery of the Fund's desired outcomes to the Agency.
- (B) The Agency is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia, to make grants available to facilitate the development and provision of housing.
- (C) The Grant Recipient has submitted a bid to the Agency for grant funding to assist the Grant Recipient in the construction or remodelling of specialist affordable housing for individuals in the Target Client Groups.
- (D) The Agency has agreed to advance grant funding to the Grant Recipient pursuant to the Approved Bid to facilitate the delivery of those housing schemes subject to and in accordance with the terms of this Agreement.
- (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 { TC "1 Definitions and interpretation" \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:

2013-15 Affordable Homes Guarantees Programme means the programme described in the publication entitled "2013-15 Affordable Homes Guarantees Programme Framework" issued by the Department for Communities and Local Government and the Agency in December 2012;

Acceptance Date means the date upon which the Agency accepts a scheme for the delivery of CSSH Housing in IMS;

Actual Development Costs means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Grant Recipient in acquiring, developing and/or remodelling that Firm Scheme as such amount is certified by the Grant Recipient pursuant to Condition 9.2.3 and Condition 9.4.3;

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

Additional Scheme means a scheme proposed by the Grant Recipient pursuant to Condition 15.9;

Additional Scheme Acceptance Date means the date upon which the Agency accepts an Additional Scheme pursuant to Condition 15.10;

Affected CSSH Dwelling means a CSSH Dwelling in relation to which a Recovery Event occurs;

Affordable Home Ownership means low cost home ownership on Shared Ownership Lease terms or on Older People's Shared Ownership Lease terms;

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

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

Affordable Rent Dwelling means a CSSH 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 Client Group means in relation to each Firm Scheme such of the Target Client Groups set are out in the Firm Scheme Details;

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

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

Allocated Grant means £6,481,500, being the maximum amount of grant payable by the Agency to the Grant Recipient in respect of the Approved Bid (as the same may be amended from time in accordance with the terms of this Agreement);

Approved Bid means the aggregate of the Firm Schemes accepted by the Agency in IMS as at the date of this Agreement and summarised in Schedule 1 (as the same may be amended or varied in accordance with the terms of 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 a Firm Scheme exceeds the Actual Development Costs incurred by the Grant Recipient relation to that Firm Scheme;

BREEAM means the Building Research Establishment Environmental Assessment Method;

BREEAM Standard means the BREEAM multi-residential standard;

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

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

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

Capital Funding Guide means the "Affordable Housing Capital Funding Guide" published on the Agency's website or any successor guide so published subject to such amendments variations or updates to the same as the Agency (or any successor body) may publish on its website from time to time;

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

CEDR means the Centre for Effective Dispute Resolution;

Code for Sustainable Homes means the code set out in the "Code for Sustainable Homes Technical Guidance November 2010" published by the Department for Communities and Local Government in November 2010 (as the same may be amended, updated or replaced from time to time);

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

Confidential Information means in respect of the Agency all information relating to the Agency's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which the Grant Recipient becomes aware in its capacity as a party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either the Agency or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the Agency or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Grant Recipient means

such specific information as the Grant Recipient shall have identified to the Agency in writing prior to the date hereof as confidential information for the purposes of this Agreement;

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

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

CORE means the national information source "Continuous Recording" that records information on new CSSH 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;

CSSH means the Care and Support Specialised Housing Fund described in the Funding Prospectus;

CSSH Dwelling means:

- (a) a house, flat or maisonette which was developed with the benefit of grant payable under this Agreement and in relation to each relevant Firm Scheme as more particularly described in the relevant Firm Scheme Details; and
- (b) a Nil Grant Unit;

CSSH Housing means subsidised care and support specialised housing provided by the Grant Recipient pursuant to this Agreement that will be made permanently available:

- (a) as Affordable Rent;
- (b) on Affordable Home Ownership terms; or
- (c) subject to the Agency's specific consent, Social Rent.

CSSH Standard mean the standards described in Schedule 5;

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

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

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

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

Dementia Sufferers means adults or Older People who suffer from dementia;

Design and Quality Standards means the standards set out in the Corporation's publication entitled "Design and Quality Standards April 2007" as they apply to accommodation of the type comprised in the relevant Firm Scheme;

Design Statement means the statement of that name submitted by the Grant Recipient in relation to the Approved Bid;

Development Costs means the costs relating to Site acquisition and Works in relation to a Firm Scheme incurred or to be incurred in respect of such Firm Scheme by the Grant Recipient in respect of the heads of expenditure set out in Part 1 to Schedule 4 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 Schedule 4 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 CSSH 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;

Eligible Purchaser means a person who:

- (a) falls within the Agreed Client Group;
- (b) satisfies the eligibility criteria issued from time to time by the Agency in relation to those entitled to purchase Shared Ownership Leases or Older People's Shared Ownership Leases (as applicable);
- (c) is not connected with the Grant Recipient; and
- (d) has provided written confirmation to the Grant Recipient that he (and any co-purchaser) do not currently own a residential property;

Eligible Tenant means a Tenant who falls within the Agreed Client Group;

Employment and Skills Statement means the statement of that name submitted by the Grant Recipient in relation to the delivery of the Approved 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 2004/18/EC, 89/665/EEC and 2004/17/EC, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228 and 2006/5 insofar as the same are applicable;

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

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

Firm Scheme means each scheme for the development of the CSSH Dwellings as:

- (a) detailed in the IMS; and
- (b) accepted by the Agency through IMS as at the date hereof;

Firm Scheme Completion Date means the date set out in the Firm Scheme Delivery Timetable by which the Site acquisition and/or completion of the Works (as applicable) must have been achieved;

Firm Scheme Delivery Timetable means the timetable for the construction (or remodelling) and delivery of each Firm Scheme as agreed by the Agency through IMS;

Firm Scheme Details means the descriptive and other details in respect of each Firm Scheme summarised in Schedule 1 but as more particularly described in IMS and 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 means the amount of grant payable by the Agency in respect of a Firm Scheme as set out in the relevant Firm Scheme Details as at the date of this Agreement;

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

Fund Proceeds means those proceeds of the DPF utilised by the Grant Recipient in meeting in whole or in part the Development Costs;

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

Funding Prospectus means the Department of Health and Agency publication entitled "Care and Support Specialised Housing Fund – Prospectus – October 2012";

Grant Recipient Party means:

- (a) the Grant Recipient, the Building Contractor, any member of the Professional Team, agent, employee or subcontractor of the Grant Recipient and the Grant Recipient's Representative;

- (b) any subsidiary or holding company of the Grant Recipient or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;

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

Guarantee Funds means finance made available pursuant to or in connection with the Housing Guarantee Scheme or the 2013-15 Affordable Homes Guarantees Programme;

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

Help to Buy Agency Agreement means an agreement 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;

Housing Guarantee Scheme means the Housing Guarantee Scheme (Private Rented Sector) and Housing Guarantee Scheme (Affordable Housing) described respectively in the "Housing Guarantee Scheme Rules – Private Rented Sector" and "Housing Guarantee Scheme Rules – Affordable Housing" issued by the Department for Communities and Local Government in February 2013;

HRA 2008 means the Housing and Regeneration Act 2008;

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

Identified Strategies means the strategic assessments referred to in paragraphs 82 to 86 (inclusive) of the Prospectus (as the same may be updated, amended or replaced from time to time);

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

Information has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by the Agency or the Grant Recipient (as appropriate) at the time of receipt of an RFI; and
- (b) EIR, given under the definition of environmental information in Section 2 of the EIR and which is held by the Agency or Grant Recipient (as appropriate) 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(2) 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 creditors;
 - 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;
 - 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 in relation to the Approved Bid or any Firm Scheme.

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style,

or other matter or thing, existing or conceived, used, developed or produced by any person;

Investment Partner means a Registered Provider which has been confirmed by the Agency as having "Investment Partner Status" under the Agency's Investment Partner qualification procedure;

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;

Legislation means:

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

in each case in the United Kingdom;

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

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 Approved Bid or a Firm Scheme (as the context requires) on the basis agreed and/or within the time limits (if any) for doing so;

Milestone means each stage in the delivery of the Firm Scheme agreed by the parties and set out in IMS (including as a minimum a Start on Site Date and a Firm Scheme Completion Date);

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;

Nil Grant Unit means a house, flat or maisonette comprised within a Firm Scheme in respect of which unit the Grant Recipient did not seek grant funding under this Agreement;

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

Officer's Certificate means a certificate in the form set out in Schedule 2 or in such other form as the Agency may prescribe from time to time;

Older People means individuals over the age of fifty five (55);

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

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

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

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

Partial Termination Event means this Agreement is terminated in relation to one or more particular Firm Schemes pursuant to Condition 5.4.3;

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

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

Practical Completion means that stage in the execution of a Firm Scheme when the Works have been completed in accordance with the terms of the relevant building contract and/or the terms of this Agreement such that the CSSH Dwellings comprised within the Firm Scheme are fit for beneficial occupation as a residential development in accordance with applicable NHBC or equivalent requirements current at the date of 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;

Professional Team means (as applicable) 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 under 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 a 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;

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

Recovery Event means any of the following circumstances:

- (a) where Firm Scheme Grant is claimed or paid in anticipation of an agreed Milestone being achieved and the Milestone is not achieved or is achieved later than agreed and the Agency has not agreed to the delay;
- (b) where the Agency discovers that the aggregate Firm Scheme Grant paid to the Grant Recipient in respect of a Firm Scheme was greater than required for the delivery of that Firm Scheme;
- (c) where the Grant Recipient has failed to use the Firm Scheme Grant for the purpose for which it was paid;
- (d) where the Grant Recipient has failed to comply with a condition attached to the making of the Firm Scheme Grant;
- (e) save where Condition 13.1.2 applies where the Agency discovers that incorrect information has been supplied or errors made in connection with the calculation of the Firm Scheme Grant payable or recoverable;
- (f) the de-registration of the Grant Recipient by the Regulator under sections 118 or 119 of the Housing and Regeneration Act 2008;
- (g) a change of use of the Site or CSSH Dwellings;
- (h) cessation of use of property or land funded by Firm Scheme Grant;
- (i) demolition of property funded by Firm Scheme Grant;
- (j) Disposal of property funded by Firm Scheme Grant except:
 - i with the prior approval of the Agency to another Registered Provider (taking the property subject to liability for the Firm Scheme Grant within it pursuant to Section 33 of the HRA 2008);
 - ii the sale of the first share of an Affordable Home Ownership Dwelling under Older People's Shared Ownership Lease or a Shared Ownership Lease where such dwelling is/was specifically provided for sale on Older People's Shared Ownership Lease or Shared Ownership Lease terms;
 - iii Disposal of an Affordable Rent Dwelling or a Social Rent Dwelling to a tenant of the Grant Recipient with the assistance of grant under section 35 of the HRA 2008;
 - iv The letting of an Affordable Rent Dwelling or a Social Rent Dwelling to a tenant on terms which comply with the Tenancy Standard;

Recovery Principles means the principles set out in Schedule 6;

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 Body means any government departments or regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Agency.

Regulatory Framework means the regulatory framework for social housing in England from April 2012 published by the Agency in March 2012 (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 Conversion means the charging of an Affordable Rent in respect of a dwelling which prior to the date of its bid for funding under the CSSH was let by the Grant Recipient as Social Rent;

Rent Standard means the rent standard contained within the Regulatory Framework;

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

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

Review Meeting means a meeting held pursuant to Conditions 3.4 and 3.5;

RIDDOR means Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995;

RPI means the general index of retail prices (for all items) published by the Office of National Statistics or, if that index is not published for any month, any substituted index or index figures published by that office;

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

Section 106 Agreement means an agreement in respect of and affecting any CSSH Dwelling (or prospective CSSH Dwelling) made pursuant to Section 106 of the Town and Country Planning Act 1990 and/or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or Section 38 and/or Section 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 or an agreement with any competent authority or body relating to other services;

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; or
- (c) freehold title registered with possessory title or leasehold title registered with good leasehold title (where the lease has at least 60 years unexpired duration) and in each case defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Firm Scheme Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to secure one of the interests in limbs (a) to (c) and that securing that interest is conditional only upon the 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);

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, buildings or dwelling-houses comprised or to be comprised in a Firm Scheme and/or the CSSH Dwellings and common areas developed as part of such Firm Scheme;

Social Housing has the meaning attributed to it in Section 68 of the HRA 2008;

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

Social Rent Dwelling means a CSSH Dwelling to be let as Social Rent;

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 physical Works to the Site have commenced.

Statements means the Design Statement and the Employment and Skills Statement;

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

Submitted Standards means in respect of each Firm Scheme:

- (a) the Design and Quality Standards 2007;
- (b) the Additional Design and Quality Standards (if any);
- (c) the CSSH Standards; and
- (d) in so far as the Firm Scheme is unsuitable for assessment under the Code for Sustainable Homes by virtue of the presence of communal facilities, the BREEAM Standard.

Substitute Scheme has the meaning ascribed to it in Condition 15.1;

Substitute Scheme Acceptance Date means the date upon which the Agency accepts a Substitute Scheme pursuant to Condition 15.5;

Target Client Groups means any of the following groups:

- (a) Older People;
- (b) Dementia Sufferers; and
- (c) Individuals over the age of 18 with a disability (including learning, physical or sensory disabilities or with mental health problems);

Target Rents means those rents as required by the Rent Standard for Social Rents;

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

Tenant means (as the context requires):

- (a) A tenant occupying an Affordable Rent Dwelling or a Social Rent Dwelling; or
- (b) A prospective tenant of an Affordable Rent Dwelling or a Social Rent Dwelling;

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 Termination Event means this Agreement is terminated as a whole pursuant to Condition 5.4.1 or Condition 5.4.2;

Tranche means either of the First Tranche Grant or the Second Tranche Grant;

Transparency Obligations means the obligations set out in Condition 17;

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

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;

Withholding Event means an event or circumstance of the type described in Condition 12.1;

Works means in relation to each Firm Scheme all of the works (including design, infrastructure works and all other works necessary for obtaining access to the CSSH Dwellings) to be undertaken in order to ensure that the CSSH Dwellings meet the Submitted Standards and are developed or remodelled in accordance with the Firm Scheme Details.

1.2 Interpretation

1.2.1 Words denoting any gender include all other genders.

1.2.2 The singular includes the plural and vice versa.

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

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

1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.

- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule or an Appendix to this Agreement.
- 1.2.11 A paragraph in a Schedule or Appendix shall be construed as references to a paragraph in that particular Schedule or, as the case may be, Appendix.
- 1.2.12 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.13 In any case where the consent or approval of the Agency (or any officer of the Agency) is required or a notice is to be given by the Agency, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the Agency by notice in writing to the Grant Recipient.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.
- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 The term Site includes each and every part of it.
- 1.2.17 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.18 Save where a contrary intention is shown, or where an express discretion is given by this Agreement, the Agency shall act reasonably in exercising its rights hereunder (including in granting approvals hereunder).
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the Agency for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 1.2.21 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Agency shall, unless

otherwise expressly stated in this Agreement or agreed in writing by the Agency, relieve the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.

1.2.22 In the event of any conflict between the Firm Scheme Details summarised in Schedule 1 and the Firm Scheme Details set out in (and accepted by the Agency through IMS) the Firm Scheme Details on IMS shall prevail.

1.2.23 The terms "Allocated Grant" and Firm Scheme Grant" shall (unless the context precludes such interpretation) include every tranche thereof.

2 { TC "2 Purpose and acknowledgements" \11 } **Purpose and acknowledgements**

2.1 The Agency has agreed to make the Allocated Grant available to the Grant Recipient to provide the CSSH Dwellings subject to and in accordance with the terms and conditions of this Agreement.

2.2 The Grant Recipient acknowledges and agrees that:

2.2.1 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 CSSH Dwellings which are to be let or disposed of to individuals within the Agreed Client Groups;

2.2.2 all Fund Proceeds identified in the Firm Scheme Details must be applied solely for the purposes of funding the Development Costs in respect of the relevant Firm Scheme;

2.2.3 the Public Sector Subsidy in respect of a Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Grant Recipient in respect of the delivery of that Firm Scheme nor may the Public Sector Subsidy in respect of the Approved Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Bid;

2.2.4 all funding under this Agreement is:

- (a) social housing assistance as defined in Section 32(13) of the HRA 2008; and
- (b) 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;

- 2.2.5 All Fund Proceeds used for the purposes of funding (in whole or in part) the Development Costs constitute social housing assistance for the purposes of Section 32 HRA 2008;
- 2.2.6 Any failure by the Grant Recipient to market, use and continue to use a CSSH Dwelling as an Affordable Rent Dwelling, Social Rent Dwelling or Affordable Home Ownership Dwelling or to use a CSSH Dwelling to accommodate individuals from the Agreed Client Group constitutes a failure to comply with a condition attached to the making of the Firm Scheme Grant for the purposes of limb (d) of the definition of Recovery Event..
- 2.3 The Grant Recipient shall comply with the Open Book Obligations.
- 3 { TC "3 Monitoring and Reporting" \1 } **Monitoring and Reporting**
- 3.1 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Condition 3.
- 3.2 The Grant Recipient shall with effect from and including the first Quarter Date after the date of this Agreement submit a signed and dated Officer's Certificate to the Agency within five (5) Business Days of each Quarter Date together with such other information as may have been requested on reasonable notice by the Agency.
- 3.3 The Officer's Certificate shall be signed by the Grant Recipient's Representative or, where agreed in advance by the Agency, another specified member of the Grant Recipient's executive management team.
- 3.4 Within ten (10) Business Days of receipt of the Officer's Certificate and the information required pursuant to Condition 3.2 (or such longer period as the Agency may at its absolute discretion agree), the Agency shall notify the Grant Recipient as to whether it considers that a meeting is necessary or desirable to discuss any matters arising out of the Officer's Certificate and the Grant Recipient shall attend any such meeting subject to having received at least five (5) Business Days' notice of the same.
- 3.5 The Agency or the Grant Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:
- 3.5.1 gives reasonable prior written notice to the other of such meeting; and
- 3.5.2 includes with the notice an agenda for such meeting.
- 3.6 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.
- 3.7 Save as otherwise agreed between the parties, any meeting under this Condition 3 shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.
- 3.8 The Grant Recipient shall provide the Agency with such information as the Agency shall reasonably require to support or facilitate the discussions referred to in this Condition 3.

4 { TC "4 Not used" \1 } **Not used**

5 { TC "5 Default Events" \1 } **Default Events**

5.1 The following circumstances shall constitute a Default Event:

- 5.1.1 failure by the Grant Recipient to comply with its obligations in Condition 3 or Condition 16 and/or any information supplied in connection with its obligations in Condition 3 (including that within the Officer's Certificate) or Condition 16 is materially deficient, misleading or inaccurate;
- 5.1.2 the Grant Recipient is unable to make the representations and give the warranties set out in Schedule 3 (in any case in whole or in part) and there is a resulting Material Adverse Effect in relation to:
 - (a) the Approved Bid; or
 - (b) a Firm Scheme;
- 5.1.3 an Insolvency Event has occurred in relation to the Grant Recipient;
- 5.1.4 a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);
- 5.1.5 a failure by the Grant Recipient to comply with any repayment obligation under Condition 13;
- 5.1.6 the Agency determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Approved Bid has not been made by the Grant Recipient in delivering the Approved Bid;
- 5.1.7 the Grant Recipient ceases operating;
- 5.1.8 the Grant Recipient's status as a Registered Provider is lost or removed;
- 5.1.9 the Grant Recipient's Investment Partner status is lost or removed;
- 5.1.10 the Regulator directs or recommends that grant is not to be paid to the Grant Recipient;
- 5.1.11 a breach of the Grant Recipient's obligations under Condition 7.1.1(c), Condition 7.5.4 or Condition 17;
- 5.1.12 a breach of Condition 7.1.1(a), or Condition 7.1.1(b), Condition 7.1.2, Condition 7.2 or Condition 7.5 (excluding Condition 7.5.4);
- 5.1.13 a failure or inability by the Grant Recipient to comply with the requirements of Conditions 9.1 to 9.4 (as applicable);
- 5.1.14 any other breach of the Agreement which has a Material Adverse Effect in relation to a Firm Scheme; and/or

- 5.1.15 the Grant Recipient (either by its own actions or omissions, or those of its contractors or agents) harms the Agency's, the CSSH's or the DH's reputation or brings the Agency, the CSSH or DH into disrepute.
- 5.2 The Grant Recipient must notify the Agency immediately in writing on the occurrence of a Default Event.
- 5.3 Without prejudice to Condition 5.4, in the event of the occurrence of a Default Event and for so long as that Default Event subsists (or another Default Event has occurred and is continuing) the Agency shall be entitled to reject the submission of any proposed Firm Scheme or Substitute Scheme on IMS.
- 5.4 Where the Default Event is:
- 5.4.1 an occurrence specified in Condition 5.1.3, 5.1.4, 5.1.7, 5.1.8, 5.1.9 and/or 5.1.15, the Agency shall be entitled forthwith and without any liability to the Grant Recipient to terminate the Agreement;
- 5.4.2 an occurrence specified in Condition 5.1.1, 5.1.2(a), 5.1.5, 5.1.6, 5.1.10, 5.1.11 and/or 5.1.13 the Agency may serve notice on the Grant Recipient requiring the Grant Recipient to remedy the breach or failure and if within a period of thirty (30) Business Days following service of such notice:
- (a) the breach or failure has not been remedied;
- (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 Event 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 this Agreement in its entirety;
- 5.4.3 an occurrence specified in Conditions 5.1.2(b), 5.1.12, 5.1.14 or Condition 13.2.3(d), the Agency be entitled forthwith and without any liability to the Grant Recipient but without determining the whole of this Agreement terminate the Agreement insofar as it relates to the Firm Scheme to which the relevant occurrence relates.
- 5.5 Subject to Condition 5.7, where Condition 5.4.2 applies and:
- 5.5.1 there are no Continuing Firm Schemes, the Agency may terminate this Agreement in its entirety such termination to take effect at the end of the notice period referred to in Condition 5.4.2;
- 5.5.2 there are Continuing Firm Schemes the Agency may terminate this Agreement in relation to all but the Continuing Firm Schemes such termination to take effect at the end of the notice period referred to in Condition 5.4.2.

5.6 Where the Agency purports to terminate this Agreement in accordance with this Condition 5 and the Grant Recipient disputes its entitlement to do so the provisions of Condition 25 shall apply.

5.7 Condition 5.5.2 shall not apply in the circumstances contemplated in Condition 5.1.10 and in that case the provisions of Condition 5.5.1 shall be deemed to apply in place of those of Condition 5.5.2.

6 { TC "6 Firm Schemes" \11 } **Firm Schemes**

6.1 The Grant Recipient must upload such details of each prospective scheme for the delivery of CSSH Housing comprised within the Approved Bid as are required onto the Agency's IMS. Where such scheme is accepted by the Agency through IMS, it will become a Firm Scheme for the purposes of this Agreement with effect from the Acceptance Date.

6.2 The Grant Recipient represents and warrants to the Agency in relation to each Firm Scheme that:

6.2.1 the Firm Scheme:

- (a) is in its opinion (acting reasonably) deliverable in accordance with the Firm Scheme Delivery Timetable and is consistent with the Submitted Standards and the Approved Bid;
- (b) has received the support of the Local Housing Authority (which it acknowledges will be verified by the Agency with the Local Housing Authority) and is consistent with one or more of the Identified Strategies;
- (c) comprises no Public Sector Subsidy beyond that identified in the Firm Scheme Details;
- (d) subject to Condition 6.3, has committed revenue funding from the local authority in whose administrative area the Firm Scheme is located;
- (e) does not and will not (when developed or remodelled) fall in whole or in part within the definition of a Residential Care Home; and
- (f) will comprise no dwellings which have not been specifically designed for use by those in the relevant Agreed Client Group.

6.2.2 the Grant Recipient:

- (a) possesses a Secure Legal Interest in the Site; and
- (b) has obtained all Consents necessary for the lawful development or remodelling of the Firm Scheme to the Submitted Standards and for the delivery of the Firm Scheme in accordance with the Firm Scheme Details as are then required.

6.3 The Grant Recipient will be permitted to disclose against the warranty given in Condition 6.2.1(d) but must provide details of the then current revenue funding position to the Agency.

- 6.4 The Agency has no obligation to make any payment of grant to the Grant Recipient in relation to anything other than a Firm Scheme.
- 6.5 The Agency may at its absolute discretion vary the percentages attributed to First Tranche Grant and Second Tranche Grant from time to time save that no such variation will take effect in relation to any Firm Scheme which has been confirmed as such by the Agency pursuant to Condition 6.1 and in relation to which the First Tranche Grant has been paid.
- 6.6 Under no circumstances shall the Agency be obliged to accept any 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 CSSH) to provide Firm Scheme Grant in relation to the relevant scheme.
- 7 { TC "7 Firm Scheme Obligations" \1 } **Firm Scheme Obligations**
- 7.1 The Grant Recipient must in relation to each Firm Scheme:
- 7.1.1 carry out the acquisition of the Site and procure the completion of the Works so that:
- (a) the Firm Scheme is (subject to Condition 8.2) delivered or remodelled (as applicable) in accordance with the Firm Scheme Delivery Timetable;
 - (b) when delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standards; and
 - (c) any applicable requirements of the EU Procurement Regime are satisfied.
- 7.1.2 actively market the CSSH Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to Eligible Purchasers or Eligible Tenants at the Firm Scheme Completion Date (or as soon as reasonably possible thereafter)
- (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:
- 7.2.1 observe and comply with Legislation, the applicable terms of the Funding Conditions and the Capital Funding Guide; and
- 7.2.2 use its reasonable endeavours to deliver the commitments and/or proposals outlined in the Statements.
- 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:

- 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 the same, in respect of a 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 6.2;
 - 7.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect in relation to a Firm Scheme;
 - 7.4.4 of any other event or circumstance in relation a 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 each Firm Scheme after Practical Completion:
- 7.5.1 not use the CSSH Dwellings for any purpose other than the Agreed Purposes without the Agency's prior written consent (such consent to be given or withheld in the Agency's absolute discretion);
 - 7.5.2 comply with the Rent Standard and the Tenancy Standard in respect of the Affordable Rent Dwellings and the Social Rent Dwellings;
 - 7.5.3 participate in the CORE system from time to time and complete the "Initial Sales" data screens on IMS promptly following the sale of any Affordable Home Ownership Dwelling;
 - 7.5.4 comply with the Agency's requirements in relation to Compliance Audit; and
 - 7.5.5 observe and comply with applicable 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 forms and content of the Shared Ownership Lease and Older People's Shared Ownership Lease and those eligible to enter into such leases;
 - (c) the minimum and maximum amounts of equity which an Eligible Purchaser may acquire in an Affordable Home Ownership Dwelling and the maximum amount of rent payable by the Eligible Purchaser in relation to the unpurchased equity within such dwelling from time to time; and
 - (d) the letting, management or disposal of the Affordable Rent Dwellings and Social Rent Dwellings.
 - 7.5.6 register with the Housing Learning and Improvement Network Website to participate in knowledge and information exchange opportunities from time to time;

- 7.5.7 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;
 - 7.5.8 provide written notification to the Agency of any Disposal within ten (10) Business Days of such Disposal taking place; and
 - 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 each Firm Scheme.
- 7.7 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Approved Bid as appended to this Agreement and with proper regard to the need for efficiency in the use of public funds.
- 7.8 Where the Grant Recipient is aware that it is in breach of an obligation under this Condition 7 it must promptly notify the Agency of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 8 { TC "8 Changes to Firm Schemes" \11 } **Changes to Firm Schemes**
- 8.1 The parties may from time to time agree changes to the Firm Scheme Details and where such changes are agreed they shall be implemented by the Grant Recipient amending the Firm Scheme Details in IMS and the electronic confirmation of that amendment by the Agency through IMS. In the event of any discrepancy in relation to a Firm Scheme between the contents of IMS and the relevant contents of Schedule 1, the contents of IMS shall prevail.
- 8.2 Where a Milestone Failure occurs or is in the opinion of the Agency reasonably likely to occur (having regard to the information pursuant to Condition 3 or Condition 7.4) and such failure is directly caused by a Milestone Extension Event, the Agency shall, subject always to 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 (when taken individually or together with other extensions in relation to the Grant Recipient) in the Agency's reasonable opinion materially and adversely affect the delivery of the Approved Bid or (when taken individually or together with other extensions in relation to the Grant Recipient or other grant recipients under the CSSH) materially and adversely affect the Agency's projected expenditure profile in relation to any year of the CSSH 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.

9 { TC "9 Grant Claim Procedures" \1 } **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 First 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 and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

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

9.2.1 repeat the representations and warranties set out in Condition 6.2;

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;

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; and

9.2.5 represents and warrants to the Agency that no Withholding Event has occurred or arisen.

9.3 Subject to a Firm Scheme having reached Practical Completion, the Grant Recipient may apply to the Agency for the Second 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 in accordance with the Firm Scheme Details and to the Submitted Standards 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 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;

9.4.7 the Firm Scheme is covered by the terms of a current Help to Buy Agency Agreement (where applicable);

9.4.8 the Firm Scheme does not fall in whole or in part within the definition of a Residential Care Home;

9.4.9 no Withholding Event has occurred or arisen; and

9.4.10 the Firm Scheme comprises no dwellings which have not been specifically designed for use by those in the relevant Agreed Client Group.

10 { TC "10 Not used" \11 } **Not used**

11 { TC "11 Payment of Grant" \11 } **Payment of Grant**

11.1 Subject to:

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

11.1.2 Conditions 11.3, 11.4, 12 and 38.1

the Agency shall (resources permitting) pay the First Tranche Grant or the Second Tranche Grant (as applicable) to the Grant Recipient within ten (10) Business Days of receipt of a relevant satisfactory application.

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

11.3 The Agency shall not be obliged to pay the Grant Recipient:

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

11.3.2 the Second 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 Second Tranche Grant or otherwise in respect of any Firm Scheme which has not reached Practical Completion by 31 March 2018.

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

12 { TC "12 Withholding of Firm Scheme Grant" \11 } **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 First Tranche Grant or Second Tranche Grant or otherwise where:

12.1.1 the Firm Scheme has not been delivered in accordance with the Firm Scheme Details or to the Submitted Standards 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 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;

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

12.1.9 the Grant Recipient (either by its own actions or omissions, or those of its contractors or agents) harms the Agency's or Department of Health's reputation or brings the Agency, the Department of Health or the CCSH into disrepute; or

12.1.10 the Grant Recipient has failed to comply with any of its obligations under any of Conditions 3, 13 or 16.

12.2 Without prejudice to any other term of this Agreement, where the Agency determines (acting reasonably) that proper progress against the Grant Recipient's delivery projections in the Approved Bid has not been made by the Grant Recipient in delivering the Approved Bid, the Agency shall be entitled (acting reasonably) and without any liability to the Grant Recipient permanently to withhold any Firm Scheme Grant and to reallocate it to a third party PROVIDED THAT the Agency shall not be entitled to withhold grant under this

Condition 12.2 from a Firm Scheme in relation to which the Start on Site Date has occurred. Nothing in this Condition 12.2 shall preclude the Agency from withholding the relevant Firm Scheme Grant on any other ground.

13 { TC "13 Repayment of Grant" \1 } **Repayment of Grant**

13.1 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 13.2 (the **Recoverable Amount**) in circumstances where:

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

13.1.2 the relevant Tranche 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 13.1.5;

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

13.1.4 a Balancing Sum has arisen;

13.1.5 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 or operate the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;

13.1.6 the Grant Recipient has breached its obligations under Conditions 7.1, 7.2, 7.5 or 7.8;

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

13.1.8 a Partial Termination Event has occurred;

13.1.9 a Total Termination Event has occurred; or

13.1.10 a Recovery Event occurs.

13.2 In the circumstances set out in:

13.2.1 Conditions 13.1.1, 13.1.2, 13.1.6, 13.1.7, 13.1.8 or 13.1.9 the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant for any affected Firm Scheme;

13.2.2 Conditions 13.1.3 and 13.1.4, 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;

13.2.3 Condition 13.1.5, subject always to Condition 13.3, the Recoverable Amount shall be determined in accordance with the following procedure:

(a) the parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure for the Firm Scheme Grant figure reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;

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

$$RA = FSG - RFSG$$

where

RA is the Recoverable Amount;

FSG is the Firm Scheme Grant paid pursuant to Condition 11.1 in respect of the relevant Firm Scheme; and

RFSG is the revised Firm Scheme Grant figure agreed pursuant to Condition 13.2.3(a);

(c) subject to Condition 25, the Grant Recipient shall amend the relevant information on IMS in respect of the relevant Firm Scheme to reflect the agreement made pursuant to Condition 13.2.3(a);

(d) where the parties are unable to agree a revised Firm Scheme Grant figure in accordance with Condition 13.2.3(a) the Agency shall be entitled to exercise its termination rights under Condition 5.4.3 and the Recoverable Amount shall be an amount equal to the Firm Scheme Grant paid pursuant to Condition 11.1 in respect of the relevant Firm Scheme;

(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 13.2(b) results in RA being a negative figure; and

13.2.4 Condition 13.1.10, the Recoverable Amount shall be calculated by the Grant Recipient in accordance with the Recovery Principles.

13.3 Where the Agency (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Firm Scheme Grant for the relevant Firm Scheme, the Agency shall be entitled to treat such claim as a Prohibited Act for the purposes of Condition 5.1 and will not be bound by the terms of Condition 13.2.3.

13.4 Where the Agency exercises its right to recover the Recoverable Amount under this Condition 13 it will raise an invoice for the repayment of the Recoverable Amount and the Grant Recipient shall pay the Recoverable Amount to the Agency in accordance with the terms and schedule for payment set out in the invoice. The Grant Recipient shall not forward a payment pursuant to this Condition 13.4 in advance of receiving an invoice from the Agency.

- 13.5 The Grant Recipient shall pay interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc on all sums which fall to be repaid pursuant to this Condition 13, such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof), overpayment or payment in error (as applicable) was paid to the Grant Recipient until the date upon which the Agency receives the repayment required from the Grant Recipient under this Condition 13.
- 13.6 Where the Late Payment of Commercial Debts (Interest) Act 1998 applies the Parties agree that the rate of interest referred to in Condition 13.5 above shall be a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.7 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 13.4.
- 13.8 The Grant Recipient must maintain a written record of calculations underpinning all Recoverable Amounts arising pursuant to this Condition 13.
- 13.9 Without prejudice to Condition 7.5.8 where a Recovery Event occurs or is planned by the Grant Recipient to occur the Grant Recipient must notify the Agency in writing as soon as reasonably practicable of:
- 13.9.1 the nature of the Recovery Event; and
- 13.9.2 the:
- (a) amount of Firm Scheme Grant allocated to the relevant Firm Scheme in accordance with Part 2B of Schedule 6;
- (b) amount of Firm Scheme Grant allocated to the Affected CSSH Dwellings in accordance with Part 2B of Schedule 6 where the Recovery Event does not affect the whole of the relevant Firm Scheme; and
- (c) Recoverable Amount.
- 14 { TC "14 VAT" \1 } **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; and
- 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 { TC "15 Firm Scheme Substitution or Addition" \1 } **Firm Scheme Substitution or Addition**

- 15.1 The Grant Recipient may, where he considers (acting reasonably) that a Firm Scheme constitutes an Undeliverable Scheme, request the Agency to accept the substitution of a different scheme (a **Substitute Scheme**) in place of the Undeliverable Scheme.
- 15.2 If the Grant Recipient wishes to submit a Substitute Scheme, it must submit to the Agency through IMS such details of the relevant Substitute Scheme as the Agency may require. In submitting the details of the Substitute Scheme, the Grant Recipient is deemed to make and give the same representations and warranties in relation to the Substitute Scheme as it gives pursuant to Condition 6.2 in relation to a Firm Scheme.
- 15.3 The Agency shall consider the submitted details and if the Agency is satisfied (a) with the information provided and (b) that:
- 15.3.1 the Substitute Scheme offers value for money;
 - 15.3.2 the Substitute Scheme is consistent with the Approved Bid (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution);
 - 15.3.3 the Grant Recipient's performance in respect of other Firm Schemes has satisfied the terms of this Agreement;
 - 15.3.4 the Substitute Scheme can be fully delivered by 31 March 2018 (or such earlier date as is set out in IMS);
 - 15.3.5 no Default Event of the type described in any of Conditions 5.1.3, 5.1.4, 5.1.5, 5.1.7 to 5.1.10 or 5.1.15 subsists;
 - 15.3.6 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory; and
 - 15.3.7 the Substitute Scheme is consistent with the requirements of the affordable housing element of the CSSH
- the Agency shall be entitled (but not obliged) to accept the Substitute Scheme as a Firm Scheme.
- 15.4 Where the Agency accepts a Substitute Scheme into the Approved Bid pursuant to Condition 15.3 it will confirm its acceptance of such scheme to the Grant Recipient through IMS.
- 15.5 With effect from the Substitute Scheme Acceptance Date:
- 15.5.1 the Substitute Scheme shall constitute a Firm Scheme and shall be immediately subject to the whole terms and conditions of this Agreement; and
 - 15.5.2 the details set out by the Grant Recipient in respect of the Substitute Scheme in IMS and as confirmed by the Agency through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement.
- 15.6 It is agreed by the parties that any Firm Scheme Grant received by the Grant Recipient in relation to the Undeliverable Scheme shall be deemed to have been received by the Grant Recipient in relation to the Substitute Scheme.

- 15.7 The parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Approved Bid.
- 15.8 Where Condition 15.7 applies, the Grant Recipient shall submit to the Agency through IMS such details of the proposed Additional Scheme as the Agency may require. In submitting such details, the Grant Recipient makes the same representations and warranties in relation to the Additional Scheme as it makes to the Agency pursuant to Condition 6.2.
- 15.9 The Agency shall consider the Additional Scheme and if the Agency is satisfied that:
- 15.9.1 the Additional Scheme offers value for money
 - 15.9.2 the Grant Recipient's performance in respect of other Firm Schemes comprised within the Approved Bid has been of an acceptable standard and has satisfied the terms of this Agreement;
 - 15.9.3 the Additional Scheme can be fully delivered by 31 March 2018 or such earlier date as is submitted in IMS;
 - 15.9.4 no Default Event of the type described in any of Conditions 5.1.3, 5.1.4, 5.1.5, 5.1.7 to 5.1.10 or 5.1.15 subsists;
 - 15.9.5 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory;
 - 15.9.6 the Additional Scheme is consistent with the requirements of the affordable housing element of the CSSH; and
- the Agency shall be entitled (but not obliged) to accept the Additional Scheme into the Approved Bid.
- 15.10 Where the Agency accepts an Additional Scheme into the Approved Bid pursuant to Condition 15.10 it shall confirm such acceptance to the Grant Recipient through IMS.
- 15.11 With effect from the Additional Scheme Acceptance Date:
- 15.11.1 the Additional Scheme shall be deemed to be a Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;
 - 15.11.2 the details set out by the Grant Recipient in respect of the Additional Scheme in IMS and as confirmed by the Agency through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and
 - 15.11.3 the Grant Recipient must ensure that it complies with all of its obligations under this Agreement as they apply to such new Firm Scheme.
- 15.12 If the Agency agrees to make available any grant funding in relation to a Substitute Scheme or Additional Scheme, the Allocated Grant will (subject to Condition 15.6) be deemed to be increased by the Firm Scheme Grant agreed by the Agency in IMS in relation to the relevant Firm Scheme.

16 { TC "16 Open Book Obligations" \1 } **Open Book Obligations**

16.1 The Grant Recipient shall on an Open Book basis:

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

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

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

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

16.2.1 income (including Public Sector Subsidy and receipts);

16.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;

16.2.3 payments made to Subcontractors;

16.2.4 capital and revenue expenditure;

16.2.5 VAT incurred on all items of expenditure where the Grant Recipient has received grant under this Agreement in respect of such VAT, including the rate of such VAT and full details of the recovery (or not) by the Grant Recipient of such VAT as input tax from HM Revenue & Customs or other competent authority; and

16.2.6 such other item as the Agency may reasonably require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;

and the Grant Recipient shall have (and procure that to the extent expressly agreed the Subcontractors shall have) the books of account evidencing the items listed in this Condition 16 available for inspection by the Agency (and any person appointed pursuant to the dispute resolution provisions at Condition 25 to determine a dispute or otherwise authorised by the Agency) upon reasonable notice, and shall submit a report of these to the Agency as and when requested.

17 { TC "17 Transparency Obligations" \1 } **Transparency Obligations**

17.1 The Grant Recipient acknowledges that:

- 17.1.1 where the Allocated Grant exceeds £3,000,000, the Grant Recipient must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Firm Schemes by such means as ensures that such details can be accessed by the general public; and
- 17.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Grant Recipient hereby consents for the Agency to publish such information as it considers appropriate in relation to the CSSH, including, but not limited to, details of the Approved Bid, Development Costs and funding for Firm Schemes, including from time to time agreed changes to this information.
- 17.2 The Agency shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:
- 17.2.1 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account; or
- 17.2.2 without consulting the Grant Recipient.
- 17.3 The Grant Recipient shall assist and cooperate with the Agency to enable the Agency to publish the information referred to in Condition 17.1.2.
- 18 { TC "18 State Aid" \11 }**State Aid**
- 18.1 If the Agency is required pursuant to the Decision of the Commission of the European Communities published on 20 December 2011 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the Agency will be entitled to recover any such amount from the Grant Recipient.
- 19 { TC "19 Representations and Warranties" \11 }**Representations and Warranties**
- 19.1 Without prejudice to any other term of this Agreement, the Grant Recipient:
- 19.1.1 represents and warrants to the Agency on the date hereof and on each day until and including the date upon which the Grant Recipient receives the last payment of grant payable under this Agreement in the terms set out in Schedule 3 inclusive; and
- 19.1.2 acknowledges and agrees that the Agency is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.
- 20 { TC "20 Information and confidentiality" \11 }**Information and confidentiality**
- 20.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.

- 20.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 20.3 The obligations of confidence referred to in Condition 20.2 shall not apply to any Confidential Information which:
- 20.3.1 is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information;
 - 20.3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 20.3.3 is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
 - 20.3.4 is independently developed without access to the Confidential Information of the other party.
- 20.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- 20.4.1 to enable the disclosing party to perform its obligations under this Agreement or any loan agreement or proposed loan agreement or funding documentation with a commercial lender;
 - 20.4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information;
 - 20.4.3 by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - 20.4.4 in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- 20.5 The Grant Recipient shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:
- 20.5.1 is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;

- 20.5.2 is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
- 20.5.3 where it is considered necessary in the opinion of the Agency the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 20.6 Nothing in this Condition 20 shall prevent the Agency:
- 20.6.1 disclosing any Confidential Information for the purpose of:
- (a) the examination and certification of the Agency's accounts;
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources;
- 20.6.2 disclosing any Confidential Information obtained from the Grant Recipient:
- (a) to any other department, office or agency of the Crown; or
 - (b) to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
- 20.6.3 provided that in disclosing information under Condition 20.6.2(a) or 20.6.2(b) the Agency discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 20.7 Nothing in this Condition 20 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 20.8 The Grant Recipient acknowledges that the Agency is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.
- 20.9 The Agency shall be responsible for determining in its absolute discretion whether:
- 20.9.1 any Information is Exempted Information or remains Exempted Information; or
- 20.9.2 any Information is to be disclosed in response to a Request for Information;
- and in no event shall the Grant Recipient respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency unless otherwise expressly authorised to do so by the Agency.

- 20.10 Subject to Condition 20.11 below, the Grant Recipient acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:
- 20.10.1 without consulting the Grant Recipient; or
 - 20.10.2 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account.
- 20.11 Without in any way limiting Conditions 20.9 and 20.10, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Grant Recipient.
- 20.12 The Grant Recipient will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:
- 20.12.1 transfer any Request for Information received by the Grant Recipient to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
 - 20.12.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
 - 20.12.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five (5) Business Days (or such other period as the Agency may specify) of the Agency requesting that Information;
 - 20.12.4 permit the Agency to inspect such as requested from time to time.
- 20.13 Nothing in this Agreement will prevent the Agency from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.
- 20.14 The obligations in this Condition 20 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.
- 21 { TC "21 Intellectual Property" \1 } **Intellectual Property**
- 21.1 Subject to Condition 21.5 the Grant Recipient shall, to the extent that it is able to do so without incurring material cost, grant to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Grant Recipient or which are or become owned by the Grant Recipient and which relate to the Firm Schemes, for any purpose relating to this Agreement.
- 21.2 To the extent that any of the data, materials and documents referred to in Condition 21.1 are generated by or maintained on a computer or in any other machine readable format,

the Grant Recipient shall if requested by the Agency use its reasonable endeavours (without having to incur material cost) procure for the benefit of the Agency for the duration of this Agreement at the cost of the Grant Recipient the grant of a licence or sub-licence and supply any relevant software and/or database to enable the Agency making such request to access and otherwise use such data for the purposes referred to in Condition 21.1.

21.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.

21.4 The Grant Recipient shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 21.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this Condition 21, any breach by the Grant Recipient of this Condition 21 and against all costs and damages of any kind which the Agency may incur in connection with any actual or threatened proceedings before any court or adjudication body.

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

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

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

(a) Firm Schemes in respect of which Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Firm Scheme Grant has arisen; or

(b) Continuing Firm Schemes.

22 { TC "22 Grant Recipient's records and accounting" \1 } **Grant Recipient's records and accounting**

22.1 The Grant Recipient shall, as and when requested by the Agency whether before or after the date of payment of the Firm Scheme Grant, make available in a timely manner to the Agency where required in connection with this Agreement or the Approved Bid 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 and agrees that the Agency's auditors (including the Comptroller and Auditor General) shall have unrestricted 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 **{ TC "23 Health and Safety and Equality and Diversity" \1 }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 engaged in the delivery of the Approved Bid 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 such 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 { TC "24 Co-operation" \1 } **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 { TC "25 Dispute Resolution" \1 } **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 **Senior Executives**).

25.1.4 The Senior 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 Senior 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 Senior 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 { TC "26 Notices" \1 } **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 4.00 pm it is to be regarded as received at 9.00 am on the following Business Day.

27 { TC "27 No fetter on statutory functions" \1 } **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 { TC "28 No Agency" \1 } **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 { TC "29 Exclusion of third party rights" \1 } **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 { TC "30 Assignment and sub-contracting" \1 } **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 { TC "31 Construction Industry Scheme" \1 } **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 { TC "32 Data Protection" \1 } **Data Protection**

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

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

32.2.1 the Grant Recipient shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the Agency's Personal Data and any person it authorises to have access to any the Agency's Personal Data will respect and maintain the confidentiality and security of the Agency's

Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when performing its obligations under this Agreement on the Agency's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

- 32.2.2 the Grant Recipient shall only Process Personal Data for and on behalf of the Agency for the purpose of performing its obligations under this Agreement in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from the Agency to ensure compliance with the DPA;
 - 32.2.3 the Grant Recipient shall allow the Agency to audit the Grant Recipient's compliance with the requirements of this Condition 32 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Grant Recipient's compliance with the obligations within this Condition 32.
- 32.3 The Grant Recipient undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to Condition 32.2 the Grant Recipient shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Grant Recipient to 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 is 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 publishes, discloses or divulges any of the Personal Data to any third party unless directed in writing to do so by the Agency;
 - 32.4.4 provide a written description of the technical and organisational methods employed by the Grant Recipient for processing Personal Data (within the timescales required by the Agency); and
 - 32.4.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA 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) Business Days) about the receipt of any such request received by the Grant Recipient under Section 7 of the DPA (a **Section 7 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 a Section 7 DPA 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 or request made, including by:
 - (a) providing the Agency with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;
 - (c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
 - (d) providing the Agency with any information requested by the Agency.
- 32.6 The Grant Recipient shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.
- 32.7 The Grant Recipient shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Grant Recipient's destruction of and/or damage to any of the Agency's Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 32 by the Grant Recipient, its employees, agents or sub-contractors.
- 32.8 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Grant Recipient's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or

management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.

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

33 { TC "33 Further Assurance" \1 } **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 { TC "34 Entire agreement" \1 } **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 deed.

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 { TC "35 Severability" \1 } **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 { TC "36 Cumulative rights and enforcement" \1 } **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 { TC "37 Waiver" \1 } **Waiver**

37.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by the Agency of Firm Scheme Grant under Condition 11.1 in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

37.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.

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

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

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

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

38 { TC "38 Survival of this Agreement" \1 } **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 2.3, 5,7, 8, 9, 12, 13, 16, 17, 18, 20, 21, 22, 32.5, 32.7, 37 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 { TC "39 Execution" \1 } **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 { TC "40 Governing law" \1 } **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.

{ TC "Schedule 1 - Approved Bid" \1 }Schedule 1

Approved Bid

| | | | | | | | | | |
|---------------------------|--------|--|------|-----------------------|----|----|--|--|------------|
| | | | | | | | | | |
| | | | | | | | | | |
| ExtraCare Charitable (URB | NP0042 | Coldharbour Lane, Stoke Gifford, South Gloucestershire | 2139 | South Gloucestershire | 81 | 81 | | | £2,389,500 |
| | | | | | | | | | |

Officer's Certificate

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

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

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

- 1 all data or other information submitted on IMS in respect of the Approved Bid and any Additional Scheme and Substitute Scheme and each Firm Scheme is accurate and the Grant Recipient is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate;
- 2 all data or other information supplied to the Regulator in connection with, or related to the Approved Bid is accurate;
- 3 the Grant Recipient is not in breach of its Transparency Obligations;
- 4 save where expressly agreed by the Agency, no Firm Scheme which is the subject of a Section 106 Agreement is being subsidised by Rent Conversion, Firm Scheme Grant or DPF.
- 5 save where expressly agreed by the Agency, all CSSH Dwellings have been let or disposed of (as applicable) in accordance with the terms of the applicable Firm Scheme Details;
- 6 no Firm Scheme is being subsidised by Guarantee Funds or by Rent Conversion within the Grant Recipient's Social Housing stock.

This Certificate is given by virtue of my position as [] and is given on behalf of the Grant Recipient. I am not giving this Certificate in a personal capacity, nor do I accept any private or personal liability for any error or omission in it and the Agency, in relying on the contents of the Certificate, duly acknowledges that if any error or omission is later to be found, such error or omission will be deemed to be Default Event for the purposes of providing the Agency a remedy against the Grant Recipient.

Dated []

.....
Authorised signatory

[]

Schedule to Officer's Certificate

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

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 in relation to the Approved Bid or any Firm Scheme.
- 1.4 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 1.5 The execution, delivery and performance by it of this Agreement do not:
- 1.5.1 insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - 1.5.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
 - 1.5.3 contravene or conflict with its Memorandum and Articles of Association or Rules (as applicable) from time to time.
- 1.6 All consents, required by it in connection with the execution, delivery, issue, validity, 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 in relation to the Approved Bid or any Firm Scheme.
- 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 **Deliverability**

- 2.1 No person having any Security over the property or any other assets of the Grant Recipient has enforced or given notice of its intention to enforce such security.
- 2.2 It has obtained or will by Practical Completion of a Firm Scheme obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- 2.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.4 No Default Event 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 Approved 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 **Application of Approved Bid Capacity**

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

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

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

5 **Other funds**

- 5.1 No Firm Scheme is has been or will be financed in whole or in part by Guarantee Funds or by Rent Conversions within the Grant Recipient's housing stock.

Part 1

Development Costs

Heads of expenditure

1 Acquisition

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

2 Works Costs

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

3 On costs

- 3.1 Legal fees and disbursements.
- 3.2 Net gains/losses via interest charges on development period loans.
- 3.3 Building society or other valuation and administration fees.
- 3.4 Fees for building control and planning permission.
- 3.5 Fees and charges associated with compliance with European Community directives, and the Agency's requirements relating to energy rating of dwellings and Eco-Homes certification.
- 3.6 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 3.7 Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).
- 3.8 Contract performance bond premiums.

- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion of the Grant Recipient's development and administration costs.
- 3.11 Marketing costs – for sale schemes only.
- 3.12 Post-completion interest - for sale schemes only.
- 3.13 Irrecoverable VAT on the above.

Note 1

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

Note 2

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

Examples of these are as follows:

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

Note 3

Subject to the above, where any cost incurred or to be incurred by the Grant Recipient is common both to the development of the CSSH 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 CSSH Dwellings may be treated as a cost in respect of which grant under this Agreement may be paid.

Part 2

Costs which are not Development Costs

Capital costs incurred:

1 **Hidden text**

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

CSSH Standards

- 1 Every CSSH Dwelling must:
 - 1.1 be an individual dwelling with its own front door;
 - 1.2 be located within a Firm Scheme which affords easy access to residents to GP or equivalent health services and other local facilities appropriate to the needs of the Agreed Client Group served by the relevant Firm Scheme.
- 2 Each Firm Scheme which is designed for use by Older People must include communal areas for use by occupants of the CSSH Dwellings.
- 3 Each CSSH Dwelling and associated Firm Scheme must be constructed or capable of adaption, including through the installation of equipment or assistive technology, to permit their long term use by the members of the appropriate Agreed Client Group.

Recovery Principles

Part 1

- 1 Calculation of Recoverable Amount
 - 1.1 In the case of the Recovery Events listed in limbs (a), (c) and (d) of the definition of Recovery Event, the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant paid in relation to the affected Firm Scheme.
 - 1.2 In the case of the Recovery Events listed in limbs (b) and (e) of the definition of Recovery Event, the Recoverable Amount shall in the case of:
 - 1.2.1 limb (b) be a sum equivalent to the amount by which the amount of Firm Scheme Grant paid to the Grant Recipient exceeded the amount of grant necessary for the delivery of the relevant Firm Scheme;
 - 1.2.2 limb (e) be a sum equivalent to the amount overpaid by the Agency as a result of the incorrect information supplied or error made.
 - 1.3 In the case of the Recovery Events listed in limbs (f) to (j) of the definition of Recovery Event, the Recoverable Amount shall in the case of:
 - 1.3.1 outright sales (which shall be deemed to include those events listed in paragraphs 2, 3, 4.1, 4.2, 7, 9, 10, 11 and 12 of Part 2A of this Schedule) be calculated in accordance with the methodology set out in Part 3A of this Schedule save in the case of a change of use from supported housing to general needs in which case the Recoverable Amount shall be calculated in accordance with the terms of paragraph 11.2 of Part 2A of this Schedule;
 - 1.3.2 shared ownership staircasing disposals (including those events listed in paragraphs 4.3, 4.4 and 4.5 of Part 2A of this Schedule) be calculated in accordance with the methodology set out in Part 3B of this Schedule;
 - 1.3.3 Demolition be determined and applied in accordance with the terms of paragraph 13 of Part 2A of this Schedule;
 - 1.3.4 Deregistration by the Regulator be determined and applied in accordance with the terms of paragraph 14 of Part 2A of this Schedule
- and in employing the relevant methodology the Grant Recipient shall take into account and apply the provisions of Parts 2A and 2B of this Schedule to the extent relevant.
- 2 In circumstances where a Recovery Event occurs and the Agency is satisfied that the repayment of the Recoverable Amount would place the Grant Recipient in material financial difficulty, the Agency shall be entitled (at its absolute discretion and on such terms as it considers appropriate) to:
 - 2.1 defer repayment of the Recoverable Amount by the Grant Recipient;
 - 2.2 permit repayment of the Recoverable Amount by way of instalments; or

- 2.3 reduce the Recoverable Amount by such sum as the Agency considers appropriate.
- 3 In circumstances where a Recovery Event occurs in relation to a Firm Scheme and the Net Sale Receipt is insufficient to cover the whole of the Recoverable Amount due to the Agency in relation to that scheme, then unless:
 - 3.1 the Agency has (in its absolute discretion) consented to the writing off of any Shortfall; or
 - 3.2 Part 2A of this Schedule prescribes that a specific alternative cause of action be implemented,

the Grant Recipient shall pay such to the Agency in accordance with the requirements of Condition 13 such proportion of the Recoverable Amount as is covered by the Net Sale Receipt and repayment of the Shortfall may (with the Agency's consent) be deferred and repaid by the Grant Recipient out of subsequent income from Disposals.

Schedule 6

Part 2A

1 Deemed Loan Debt

1.1 For rented schemes Grant Recipient must apportion Deemed Loan Debt in the same way as they apportion Firm Scheme Grant between individual units (see Part 2B of this Schedule 6).

1.2 For shared ownership schemes Deemed Loan Debt is apportioned according to the market values of the dwellings at practical completion of the scheme.

2 Outright Sale of Land and Buildings

2.1 Outright sale includes both sale on a freehold or a leasehold basis. The gross sale receipt received by the Grant Recipient must not be below a valid valuation by an Independent Qualified Valuer.

2.2 The Net Sale Receipt is the Gross Sale Receipt less the eligible deductions, which are:

2.2.1 the Deemed Loan Debt

2.2.2 the reasonable valuation fees and expenses and

2.2.3 reasonable legal fees and expenses of the disposal.

2.3 Grant Recipients may not deduct any administration allowance nor the cost of demolition (if any) from gross sales receipts if it sells the site.

2.4 If the Net Sale Receipt is less than the attributable Firm Scheme Grant, the shortfall may (with the Agency's consent) be written off by the Grant Recipient.

2.5 Where grant is to be written off by the Grant Recipient, it must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

3 Sale under Compulsory Purchase Orders

3.1 If a property owned by a Grant Recipient is sold under a Compulsory Purchase Order or equivalent mandatory purchase order (CPO) (or where there is written evidence of the threat of a CPO), the amount of Firm Scheme Grant recovered will be calculated in the manner described in the preceding paragraph 2, EXCEPT:

3.1.1 the Gross Sales Receipts will be the HIGHER of either:

(a) the receipt from the disposal PLUS any compensation received PLUS any interest received as part of the CPO, or

(b) the amount obtained by a qualified valuer acting on behalf of the Grant Recipient in negotiation with the body exercising compulsory powers.

- 3.1.2 Eligible deductions will only include the Grant Recipient's valuation and legal fees & costs, and an administrative allowance if the body exercising the CPO has not paid them as part of the CPO process.
- 3.2 The amount of interest to be included in the calculation of the gross sales received will be the interest paid by the acquiring body, less any tax on that interest that the Grant Recipient may have to pay (if it is non-charitable).
- 3.3 The amount of Firm Scheme Grant recovered will not normally be reduced in respect of any costs incurred by a Grant Recipient in opposing a CPO.
- 3.4 If the Net Sale Receipts resulting from this calculation are insufficient to enable the recovery of all of the Firm Scheme Grant attributable to that property or land, the amount of Firm Scheme Grant recovered may, at the Agency's discretion, be reduced by the Shortfall. Grant Recipients should discuss such cases with the Agency's operational area. However, if the Grant Recipient makes net surpluses upon the sale of other Property or land within the same Compulsory Purchase Order, those surpluses must be used to cover the shortfall in whole or in part.
- 3.5 If a shortfall still remains, the amount of Firm Scheme Grant recovered will be reduced by the shortfall, which may (with the Agency's consent) be written off by the Grant Recipient. Where Firm Scheme Grant is to be written off, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

4 **Shared Ownership Sales**

4.1 **Shared Ownership: Voluntary sale of rented property**

- 4.1.1 Grant Recipients should note that this section covers voluntary sales on property on a shared ownership basis with no discount. The Gross Sale Receipts must not be below a Valid Valuation by an Independent Qualified Valuer .
- 4.1.2 The eligible deductions from the Gross Sale Receipts are:
- (a) the Deemed Loan Debt;
 - (b) valuation expenses; and
 - (c) legal expenses of the disposal
- but no administrative allowance.
- 4.1.3 If the net sale receipts are insufficient to enable the recovery of all of the attributable Firm Scheme Grant, then recovery of the shortfall may (with the Agency's consent) be deferred to the next staircasing sale.
- 4.1.4 Where recovery is deferred, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

4.2 **Shared Ownership: Sale of a Repurchased Property**

- 4.2.1 The eligible deductions from the Gross Sale Receipts are the valuation and legal expenses of the disposal.
- 4.2.2 If the Net Sale Receipts are insufficient to enable the recovery of all the attributable grant, then recovery of the shortfall may (with the Agency's consent) be deferred to the next staircasing sale.
- 4.2.3 Where recovery is deferred, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

4.3 **Protected Areas**

- 4.3.1 Upon the resale of a Protected Area Repurchased property, Firm Scheme Grant recovery as per the staircasing rules will apply (see below). However, the first sale of shares in a repurchased property will not be deemed an exempt disposal and Firm Scheme Grant will become recoverable immediately the share is sold and a sales receipt realised.
- 4.3.2 The resale of a Firm Scheme Grant funded Protected Area repurchased property must be at market value. Following the resale of the initial share, recoverable Firm Scheme Grant should be calculated according to the percentage of the share sold compared to the total grant/grant permitted to be applied under this Agreement used to fund the repurchase. From the gross sales receipt landlords can deduct staircasing allowance and any Deemed Loan Debt apportioned as appropriate as eligible deductions. For these purposes, Firm Scheme Grant funded property includes one in which the Grant Recipient was permitted to reapply grant which would otherwise have been repayable under this Agreement.
- 4.3.3 Upon staircasing the remaining Firm Scheme Grant is recoverable on the same basis and allowing for the same eligible deductions as in 4.1.2 above.

4.4 **Shared ownership: staircasing sales**

- 4.4.1 The Gross Sale Receipts must not be below the applicable proportion of a valid valuation by an Independent Qualified Valuer.
- 4.4.2 The eligible deductions from the Gross Sale Receipts are the Deemed Loan Debt attributable to the percentage sold, and the staircasing allowance. The valuation must be paid for by the prospective purchaser.
- 4.4.3 The Net Sale Receipts are used to recover the Firm Scheme Grant attributable to the staircased proportion of the dwelling plus any Firm Scheme Grant previously deferred on initial or subsequent staircasing sales in respect of other properties within the same scheme.
- 4.4.4 If the Net Sale Receipts are insufficient to enable the recovery of all the attributable and deferred Firm Scheme Grant, then the Shortfall of the recoverable Firm Scheme Grant may (with the Agency's consent) be deferred

until the sale of a further share of that dwelling or sales of shares of any other shared ownership dwellings within the same scheme.

- 4.4.5 If, when the final dwelling in a scheme is staircased to outright ownership (or the maximum percentage allowable for that scheme) the total Net Sale Receipts were less than the Firm Scheme Grant recoverable, the final shortfall will be written off by the Grant Recipient (subject to the Agency's consent).
- 4.4.6 Where there is a deferral or write off of Firm Scheme Grant, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require

4.5 **Shared Ownership: Repossessions**

- 4.5.1 Policy in respect of defaulting shared owners is contained in Housing Corporation Circular 26/86 (and any successor circular or like publication).
- 4.5.2 The basic approach to calculating recoverable Firm Scheme Grant, including any deferrals and any Firm Scheme Grant to be written off is the same as for any other shared ownership staircasing, although there are important differences:
 - (a) Grant Recipients may accept (for recovery purposes) the valuation by the mortgagee's valuer instead of one by an Independent Qualified Valuer;
 - (b) the gross sale receipt is the money received from the mortgagee, as stated in the mortgagee's statement of account for details.
- 4.5.3 The eligible deductions from the Gross Sale Receipts are:
 - (a) the Deemed Loan Debt attributable to the percentage sold. and
 - (b) the Staircasing Allowance.
- 4.5.4 Any shortfall on staircasing receipts remains a debt due to the Grant Recipient by the defaulting leaseholder.
- 4.5.5 Where the leaseholder's mortgagee has used the Mortgagee Protection Clause, and the Grant Recipient has suffered a shortfall on staircasing receipts recoverable Firm Scheme Grant may (with the Agency's consent) be written off by the Grant Recipient or deferred provided that the Grant Recipient confirms in supporting documentation to the written calculation that they:
 - (a) are in the process of obtaining legal advice, or have already obtained legal advice on prospect of recovering the money due from the leaseholder;
 - (b) will take all necessary steps to recover the money due; and
 - (c) undertake to pay the money to the Agency if applicable within fourteen days of receipt.

- 4.5.6 In deciding what action is reasonable to pursue the debt the Grant Recipient should obtain the written advice of its solicitors. A copy of the solicitor's advice must be kept with the written calculation for audit purposes.
- 4.5.7 If action is taken as advised by the Grant Recipient's solicitor, and no receipts are generated, any expenses or abortive costs will NOT be allowed against grant recovery UNLESS the surpluses from shared ownership staircasing sales completed in the previous twelve months are insufficient to cover the costs.
- 4.5.8 Where the Grant Recipient incurs such a loss, the Grant Recipient may (with the Agency's consent) deduct the costs that it has incurred from a future Firm Scheme Grant recovery on a shared ownership sale or staircasing in that scheme.
- 4.5.9 If the amount for which the defaulting leaseholder is liable under the Mortgagee Protection Clause would have left the Grant Recipient with a surplus after full grant recovery then it is a matter for the Grant Recipient to decide whether to seek to recover this amount when taking action to recover other monies due.
- 4.5.10 Where Firm Scheme Grant recovery is to be reduced or deferred, the supporting documentation to be provided to the Agency should include an appropriate certification signed by an authorised signatory of the Grant Recipient together with a copy of the completion statement provided by the leaseholder's mortgagee, and a copy of the mortgagee's explanation if the sale price is lower than the Valuer's valuation, etc.

5 Not used

6 Right To Buy¹

- 6.1 The sale price must not be less than the Cost Floor UNLESS the Cost Floor is greater than the valid valuation at the time of offer. Where the cost floor is greater than the valuation of the dwelling (without discount) the sale price should equal the valuation.

7 Right To Buy: Loans

- 7.1 The deductions to be offset against the gross sale receipt shall be:

- 7.1.1 the Deemed Loan Debt;
- 7.1.2 reasonable expenses being the valuation and legal expenses of the disposal;
- 7.1.3 the Right To Buy (RTB) sales allowance;
- 7.1.4 any abortive RTB sales expenses.

- 7.2 Reasonable expenses can also include deficits on RTB service charges in respect of repairs (see Housing Corporation circular 18/88 (and any successor circular or like publication)).

¹ The RTB provisions are only likely to be relevant to newbuild/refurbishment schemes by local authorities.

7.3 Abortive Sales: A copy of the completion notice or a signed statement by the tenant that he or she does not intend to proceed with the sale should be provided to the Agency with such other supporting evidence as the Agency may require.

7.4 These net sales receipts shall be used to recover the Firm Scheme Grant attributable to the dwelling in question. If the net sales receipt is insufficient to enable the recovery of all the attributable Firm Scheme Grant, then the shortfall may (with the Agency's consent) be written off by the Grant Recipient.

HOWEVER:

7.5 If a Grant Recipient wishes to use expenses of abortive or deferred sales when calculating the Net Sales Receipt, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonable require demonstrating that surpluses from RTB sales of Firm Scheme Grant funded property in the previous accounting period, and the current accounting period to date, are insufficient to cover these costs.

7.6 Further Firm Scheme Grant recovery may occur if an owner disposes of the property within the discount period and has to repay all or part of the discount.

7.7 Firm Scheme Grant recovery must not be deferred or grant written off by Grant Recipients to give discounts to sitting tenants greater than those provided for in Section 129 of the Housing Act 1985 and/or as subsequently amended.

8 **Not used**

9 **Voluntary sales to tenants not on Right to Buy terms**

9.1 When land and property is disposed of outright to a tenant on terms not identical to Right to Buy provisions, the calculation of recoverable Firm Scheme Grant will be as above, except that no allowances are available.

10 **Change to non-Affordable Housing use**

10.1 A change of use will be a Recovery Event if the property in the ownership of the Grant Recipient changes use to one which does not qualify for Firm Scheme Grant (at the time of the change of use).

10.2 Firm Scheme Grant will be recovered as if the property had been sold outright.

10.3 The Grant Recipient will not actually receive any payment from a purchaser, of course, so the calculation has to be based on notional figures. The Grant Recipient must obtain a valuation of the property from an Independent Qualified Valuer on the assumptions of:

10.3.1 vacant possession

10.3.2 existing use

to determine the notional "gross sales receipt".

10.4 Eligible deductions are:

- 10.4.1 the Deemed Loan Debt
- 10.4.2 reasonable valuation fees and expenses and
- 10.4.3 reasonable legal fees and expenses of the disposal.

A Grant Recipient may not deduct any administration allowance.

- 10.5 Firm Scheme Grant will not normally be recoverable where the primary need of an elderly resident changes from housing to nursing care and it is intended that the next letting will be to someone in housing need. Where there is any doubt about the future use of the property, the Grant Recipient should consult with the Agency's relevant operational area in advance.

11 **Change from supported housing to general needs use**

- 11.1 A change of use from Supported Housing to general needs is a Recovery Event
- 11.2 This is not treated as a "notional sale", and so there are no gross sales receipts (real or notional) or eligible deductions. Instead, the Grant Recipient will pay to the Agency 12% of all Firm Scheme Grant paid on the Supported Housing units (net of any Firm Scheme Grant previously recovered) subject to the exceptions set out immediately below.
- 11.3 If the Grant Recipient is providing a replacement Supported Housing service in units that form part of its general needs stock then grant recovery may be waived by the Agency, at the discretion of the relevant Agency operational area.
- 11.4 The Agency reserves the right to recover Firm Scheme Grant if, in the future, the replacement units ceased to be used for Supported Housing without further replacement units being made available.
- 11.5 Where a change of use of supported housing triggers Firm Scheme Grant recovery, this may (with the Agency's consent) be deferred until a further Recovery Event, when the amount to be recovered will be calculated on the original Firm Scheme Grant amount.
- 11.6 This deferral is at the discretion of the Agency (through agreement of the relevant Agency operational area). The Agency will consider:
 - 11.6.1 any changes in revenue sources and amounts;
 - 11.6.2 the future needs of the current client group;
 - 11.6.3 changes in methods of supplying support, e.g. to floating;
 - 11.6.4 other potential client groups;
 - 11.6.5 the nature, type and condition of the building, currently and in future.

12 **Cessation of use of land or property: Void properties**

- 12.1 Where a Grant Recipient has ceased to use land or Property for six months, the Agency must be notified.

12.2 The Grant Recipient must produce proposals for either bringing the property back into use, its demolition, or its disposal within 7 months of the property becoming void.

12.3 These proposals will be discussed with the Agency and a course of action agreed. If the Grant Recipient does not implement the agreed course of action within a timetable and any extensions to it set by the Agency, the Firm Scheme Grant will be recovered in accordance with the 'change to non Affordable Housing use' procedures above.

13 **Demolition**

13.1 The Agency's approval must be obtained prior to demolition of a property.

13.2 Demolition is a Recovery Event.

13.3 If the property is to be demolished because it had reached the end of its useful life (considering such factors as age, location, physical condition and property type in the context of current needs or market conditions) the Agency will not (subject to paragraph 13.6) normally recover Firm Scheme Grant at that time, but will defer it.

13.4 The Firm Scheme Grant liability is deferred until a future Recovery Event occurs, in which case the recovery policy and procedures in force at that time will apply.

13.5 In the meantime Firm Scheme Grant is treated as remaining in the land.

13.6 If the Grant Recipient demolishes property so that the resultant vacant site:

13.6.1 remains in the ownership of the Grant Recipient;

13.6.2 is to be used for non-income earning purposes (such as forming an open space or facilitating the realignment of roads) and

13.6.3 a compensation payment is received by the Grant Recipient

then Firm Scheme Grant will be recovered.

13.7 The eligible deductions from the Gross Sale Receipts (in this case the compensation payment) are the deemed loan debt and the reasonable expenses incurred (excluding the costs of demolition).

13.8 If the net sale receipt is insufficient to allow full grant recovery, the shortfall may not be written off by the Grant Recipient, but will remain dormant in the land concerned.

14 **Deregistration by the Regulator**

14.1 Where a Grant Recipient decides to deregister from the Regulator, this is a Recovery Event and all grant, previously paid (including Firm Scheme Grant) to the Grant Recipient is required to be repaid.

In this Part 2A, the following terms have the following meanings:

Cost Floor means in the context of the Right To Buy, those costs in respect of the Dwelling, which are treated as incurred after 31 March 1974 and relevant in accordance with the Secretary of State's Determinations made under Section 131 of the Housing Act

1985 as amended by Section 122 of the Housing Act 1988. In cases where the Landlord's notice under Section 125 of the 1985 Act is issued after 9 March 1989, the Secretary of State's Determination made in March 1989 shall apply;

Deemed Loan Debt (DLD) means the amount of the Total Scheme Costs of a Firm Scheme not funded by either:

- (a) public capital subsidy (Firm Scheme Grant/RCGF/DPF plus any Public Sector Subsidy);
- (b) sales receipts (if applicable); or
- (c) the Grant Recipient's own resources

if the project includes more than one property, the Deemed Loan Debt must be apportioned between them using the same formula as that used to apportion the Firm Scheme Grant pursuant to Part 2B of this Schedule. This formula must not be altered by adding, for example, any penalty charged by a lender for premature redemption of a loan, or substituting the actual loan debt should it be greater;

Gross Sales Receipt means the total consideration received or receivable (whether immediate deferred or contingent) in respect of any disposal of property funded pursuant to this Agreement including the monetary value of any non-monetary consideration;

Independent Qualified Valuer means the District or Borough Valuer or a professional associate or fellow of the Royal Institute of Chartered Surveyors or the Incorporated Society of Valuers and Auctioneers or any successor body or bodies thereof, who is not employed by, or acting on behalf of, or a member of the family of, the person or organisation selling or transferring or purchasing the property or land being valued. 'Member of the family' is defined in section 62 of the Housing Act 1996 (as amended by the Civil Partnership Act 2004) as spouse of that person, or living together as husband and wife, or that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece. A relationship by marriage is the same as by blood, half-blood as whole-blood, and stepchild as child;

Mortgagee Protection Clause means the mortgagee protection clause referred to in clause 8 of the Agency's model flat lease and clause 6 in the Agency's model house lease in relation to shared ownership disposals and as contained within the Capital Funding Guide (or any successor clause or form of lease from time to time);

Net Sales Receipt means the Gross Sales Receipt less any eligible deductions identified in this Schedule;

Protected Areas means a principle introduced by The Housing (Shared Ownership Leases (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 with effect from 7th September 2009, to assist the retention of shared ownership property in hard to replace areas (e.g. those exempted from the Right to Acquire) by either restricting staircasing or requiring the leaseholder to sell back to the landlord;

Protected Areas Repurchase (or any cognate term) means the repurchase of grant funded shared ownership property originally built subject to the Agency's Protected Areas

policy (please see Protected Areas above) by the landlord or a suitable nominated organisation. Where alternative means of funding have been robustly explored, the Agency will fund the repurchase of eligible Protected Area grant funded shared ownership property;

Shortfall means the difference between the relevant Recoverable Amount and the Net Sales Receipt;

Staircasing means the acquisition by the shared owner of further equity (beyond the first share) in the relevant dwelling in accordance with the terms of the Older People's Shared Ownership Lease or Shared Ownership Lease (as relevant);

Staircasing Allowance means the sum of £449 or such other sum as may be identified in the Capital Funding Guide as an administrative allowance for staircasing sales made pursuant to the AHP;

Supported Housing means accommodation provided for a specific client group to enable them to adjust to independent living or to enable them to live independently. The term supported housing applies to purpose-designed or designated supported housing. See Circular 03/04 (and any successor circular or like publication) for definitions of supported housing and housing for older people.

Valid Valuation means a valuation dated no more than three months before the date of exchange of contracts to sell CSSH Dwelling or land, or the period of validity stated in the valuation, or the shared ownership lease if applicable;

**Schedule 6
Part 2B**

Apportionment of Grant in Dwellings

1 Apportionment of Grant: Rented Properties

1.1 The Grant Recipient must apportion the Firm Scheme Grant on a reasonable basis to individual properties where a Recovery Event does not affect the whole Firm Scheme.

1.2 The Agency considers the following to represent a reasonable basis of apportionment to individual properties:

1.2.1 rents as charged on first letting;

1.2.2 floor area;

1.2.3 equal division where properties are similar in size;

1.2.4 rateable value where this has been used in previous disposals in the scheme;

1.2.5 any other method approved by the Agency's Operational Area in advance

1.3 The total amount of Firm Scheme Grant to be apportioned must include:

1.3.1 Funding (including new grant); and

1.3.2 grant paid on any previous scheme on the site which was demolished and whose recovery was deferred.

2 Apportionment of Grant: Shared Ownership Properties

For shared ownership schemes, the Firm Scheme Grant is apportioned according to the market values of the dwellings at practical completion of the scheme.

3 Shared ownership staircasing sales

A shared owner may 'staircase' by purchasing a further share, or shares, in the equity of the dwelling. The Firm Scheme Grant attributable to the staircased share will be the appropriate percentage of all the Firm Scheme Grant attributable to the property pursuant to paragraph 2, including that grant paid on interest arising after the relevant date. It will also include any recoverable grant deferred from previous staircasing within the same scheme.

4 Apportioning Grant on Land

4.1 Subject to the foregoing provisions, when a Grant Recipient:

4.1.1 sells the land or buildings that make up an entire Firm Scheme no apportionment of the Firm Scheme Grant is necessary, as the Recoverable Amount will be the entirety of the Firm Scheme Grant attributable to that Firm Scheme;

- 4.1.2 sells land or buildings that make up part of a Firm Scheme, the parties (acting reasonably) will seek to agree a reasonable basis for the apportionment of the Firm Scheme Grant. In default of agreement, the matter will be referred for determination by an independent surveyor agreed between the parties or, in default of agreement, a surveyor nominated by the President for the time being of the Royal Institution of Chartered Surveyors. Any surveyor so appointed shall use his professional skill and judgement in determining a fair and reasonable apportionment of the Firm Scheme Grant in relation to the land and buildings being disposed of.

Schedule 6

Part 3A

RECOVERY OF GRANT ON OUTRIGHT SALE OF PROPERTY

Calculation of grant to be recovered

The Agency is currently working on a pro forma calculation for use in this circumstance which will be provided shortly. In the interim Grant Recipients should note that the calculation will be based on the following:

- 1 Identification of net sale proceeds (i.e. sale receipt less allowable expenses and Deemed Loan Debt attributable to the property sold).
- 2 Identification of the Firm Scheme Grant allocated to the Affected CSSH Dwelling.
- 3 Recoverable Amount is the lower of the amounts identified in paragraphs 1 and 2 above.
- 4 If the amount in paragraph 2 is greater than the Recoverable Amount, the balance may be required by the Agency to be carried over to future disposals for future recovery.

Schedule 6

Part 3B

RECOVERY OF GRANT ON SHARED OWNERSHIP STAIRCASING SALES

Calculation of grant to be recovered

The Agency is currently working on a pro forma calculation for use in this circumstance which will be provided shortly. In the interim Grant Recipient's should note that the calculation will be based on the following:

- 1 Identification of net sale proceeds (re sale proceeds less allowable expenses and deemed loan attributable to the property sold).
- 2 Identification of the Firm Scheme Grant allocated to the percentage of equity sold in the Affected CSSH Dwelling.
- 3 Identification of any Firm Scheme Grant whose recovery was deferred from previous sales under the same Firm Scheme.
- 4 Recoverable Amount is the lower of:
 - 4.1 the amount identified in paragraph 1 above; and
 - 4.2 the aggregate of the amounts identified in paragraphs 2 and 3 above.

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 the
EXTRACARE CHARITABLE TRUST
Acting by a Director and a Director or Secretary.

Authorised signatory