

## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS OF FUNDING

#### 1. DEFINITIONS

In these Standard Terms and Conditions the following words and expressions have the following meanings:

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

**Availability Period** means as defined in paragraph 2.4 to this Agreement;

**Base Interest Rates** means the base rate of Barclays Bank plc<sup>2</sup> or such other rate as Homes England determines (acting reasonably);

**Building Lease** means a Disposal of the Site or part thereof to a developer on terms that require the development of the Site or part thereof for the delivery and sale of residential units which will contribute towards the total number of Outputs;

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

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

**Claim** means an application for Funding;

**Claim Form** means the document in the form of the template annexed as Appendix 3 to be completed and provided by the Local Authority to the nominated Homes England contact at agreed intervals to claim Funding;

**Clawback** means Homes England's right to recover the whole or any part of the Funding under paragraphs 6, 7, 8 and/or 18 of **Schedule 2** ;

**Disposal** means the transfer or grant of any legal or equitable interest in or over the Site or part thereof (other than the grant of a licence not creating exclusive possession terminable on 3 months' notice or less) including by way of lease and the terms "Dispose" and "Disposed" shall be construed accordingly;

**Disposal Proceeds** means the total amount of the gross proceeds received, including deposits to which the Local Authority is entitled, or the amount or value of all consideration received from time to time from a Disposal (excluding any overage);

**Dwelling** has the meaning given to "dwelling" in section 1(5) of the Housing Act 2004

**EU Procurement Regulations** means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 89/665/EEC, 2004/17/EC and 2014/24/EU, United Kingdom Statutory Instruments 1991/268, 1995/201,

1993/3228, 2006/6 and 2015/102 (Public Contracts Regulations 2015) insofar as the same are applicable

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

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

**Insolvency** means where the Local Authority is unable to pay its debts as they fall due or are insolvent (within the meaning of s.123(1) of the Insolvency Act 1986 in the case of a company, or s.268 of the Insolvency Act 1986 in the case of an individual) or the Local Authority enters into any arrangement with creditors, or a liquidator, trustee in bankruptcy, receiver, administrator, administrative receiver or similar is appointed, or possession or enforcement or any other similar process is taken against the Local Authority or any of its assets and Insolvent shall be interpreted accordingly.

**Monitoring and Progress Report** means a report prepared by the Local Authority in the online form available on and submitted to Homes England at the following website: <https://partners.hca-online.org.uk/> or by such other means and in such other form as Homes England shall notify the Local Authority of from time to time

**Milestones** means the key events and stages as agreed between the Local Authority and Homes England in relation to the Project as detailed in Schedule 3.

**Milestone Date** means the date set out in the definition of Milestones by which the relevant Milestone must have been achieved;

**Outputs** means the specific targets and objectives agreed between the Local Authority and Homes England as detailed in Schedule 3.

**Permitted Disposal** means the disposal:

- (a) of the whole or part or parts of the Site pursuant to a Building Lease, or licence and in an arm's length transaction; and/or
- (b) of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (c) made pursuant to a planning obligation pursuant to section 106 of the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the

Highways Act 1980 section (s) 38 and/or 278; and/or

- (d) of a Dwelling constructed on the Site
- (e) any other Disposal which Homes England agrees from time to time will become a Permitted Disposal, provided that in the case of a Disposal the contracted sale price is at Market Value..

**Project** means the project to which the Funding relates, details of which are set out in paragraph 2.4 to this Agreement;

**Project Completion Date** means the date by which the work on the Project is to be completed as defined in paragraph 2.4 to this Agreement;

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

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

**Site** means as defined in paragraph 2.4 to this Agreement;

**Start Date** means the date by which the work on the Project is to be started as defined in paragraph 2.4 to this Agreement;

**Total Commitment** means as defined in paragraph 2.4 to this Agreement;

## 2. PROVISION OF FUNDING

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

## 3. PRE-CONDITIONS OF FUNDING

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

## 4. WARRANTIES AND REPRESENTATIONS

- 4.1 By entering into this Agreement (and every time the Local Authority submits a claim form) the Local Authority warrants and confirms to Homes England that;
  - 4.1.1 it is a legally constituted body and has the full capacity and authority and all necessary consents (except planning consents) to enter into and perform the obligations under this Agreement; and
  - 4.1.2 it acknowledges that it constitutes valid, legal and binding obligations of and on the Local Authority which are enforceable against it;
  - 4.1.3 all information, documents and accounts provided by the Local Authority or on its

behalf, from time to time are and will be true, valid and correct; (minor errors and omissions as determined by Homes England in its absolute discretion excepted)

- 4.1.4 it is not in breach of any law or regulation agreement or obligation which affects or may affect its ability to commit to this Agreement;
- 4.1.5 it is not under any statutory obligation to carry out the Project or any part of it;
- 4.1.6 it is not to the best of its knowledge aware of any fact or circumstance that may affect the successful completion of the Project;
- 4.1.7 it will ensure that all the necessary consents and licences are in place and maintained for the duration of the Project without limitation.
- 4.1.8 it will ensure that all necessary planning consents and property licences for the Project will be in place to complete the Project. If any such consents or licences are varied in any way or revoked it must inform Homes England in writing immediately;
- 4.1.9 it has full legal control and good title to the Site and all other assets (including Intellectual Property Rights) necessary to enable completion of the Project and has all such further rights as are necessary to comply with its obligations in this Agreement.
- 4.1.10 it will comply with EU Procurement Regulations (to the extent that the same apply).
- 4.1.11 it will procure that all contractors comply with EU Procurement Regulations (to the extent that the same apply);
- 4.1.12 it will procure that the Project commences by the Start Date and will be completed in accordance with the terms of this Agreement

## 5. PAYMENT OF FUNDING

- 5.1 **Mechanics and payment of Funding**
  - 5.1.1 A Claim will not be regarded as having been validly made by the Local Authority unless:
    - (a) it is submitted on a Claim Form which must be signed by the Local Authority Senior Officer and it is:
      - i received by Homes England no later than twenty (20) Business Days prior to the proposed date the Funding will be made available to the Local Authority;
      - ii delivered during the Availability Period; and
    - (b) it relates to Development Costs relating to the Project and for which the Local Authority has not submitted any other Claim or received any other funding and it is accompanied by written evidence satisfactory to Homes England that the Development Costs have been incurred together with confirmation from the Local Authority Senior Officer that it has verified and approved the Claim;
    - (c) it accords with the Development Costs and each Milestone is met by the relevant Milestone Date or is accompanied by evidence satisfactory to Homes England (in its absolute discretion) to justify any deviation; and
    - (d) it is for an amount which (if paid) would not cause the Total Commitment to be exceeded.

- 5.1.2 Subject to the terms of this Agreement, Homes England will pay Funding to the Local Authority within twelve (12) Business Days of receipt of a valid Claim.
- 5.1.3 Any amount not drawn by the Local Authority under this Agreement during the Availability Period will be automatically cancelled.
- 5.1.4 The Local Authority may not make more than one Claim per calendar month.
- 5.1.5 Homes England may in its sole and absolute discretion pay the Local Authority Funding for Development costs incurred by the Local Authority after 1 May 2018 but before the Start Date.

**5.2 Use of Funding**

- 5.2.1 The Funding will be the sole property of the Local Authority and will be used by the Local Authority for Development Costs only in line with the Milestones and the Development Costs profile detailed in Schedule 3.
- 5.2.2 Without affecting the obligations of the Local Authority in any way, Homes England is not bound to monitor or verify the application of any amount provided pursuant to this Agreement.

**6. CLAWBACK AND REPAYMENTS (OTHER THAN ON DEFAULT)**

- 6.1 **Restriction On Disposal**  
The Local Authority shall not make any disposal of the whole or any part of its interest in the Site save for a Permitted Disposal.
- 6.1.1 The Local Authority will procure that a restriction in the following form against the registered title(s) to the Site is registered at the Land Registry within 20 Business Days of the date of this Agreement:-  
  

“No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a certificate signed by a conveyancer that the provisions of clause 6.1. of Schedule 2 of an Agreement dated.....and made between (1) Homes and Communities Agency, (2) .....have been complied with or that they do not apply to the disposition.”
- 6.1.2 The Local Authority will procure that the proprietor of any charge of the Site consents to the registration of such restriction referred to in Clause 6.1.1
- 6.1.3 Following payment of all monies referred to in paragraph 18.2 of Schedule 2 Homes England will agree to remove the restriction referred to in paragraph 6.1.1

**6.2 Statement of Project Expenditure, Receipts etc.**

- 6.2.1 The Local Authority shall within 60 Business Days after the Project Completion Date (or at any time throughout the life of the Project if Homes England has cause for concern and requests such information) provide to Homes England a detailed statement signed by the Local Authority’s auditors showing:
  - (a) the total of all Development Costs;
  - (b) the total of all other costs incurred by the Local Authority in delivering and completing the Project
  - (c) the total of all Disposal Proceeds; and
  - (d) a cashflow detailing all items of Development Costs and Disposal Receipts including the relevant dates of expenditure or receipts; together with full details (including appropriate plans) of any estate or interest in the Site which has not been disposed of by the Project Completion Date.
- 6.2.2 The detailed statement must be in a form produced by the Local Authority and approved by Homes England. The Local Authority’s auditor must be properly qualified.

**7. DEFAULT**

- 7.1 In the event that Homes England in its sole and absolute discretion determines that an event of default has occurred in respect of the events listed at paragraph 7.2 (**Event of Default**) Homes England has the right to serve notice of the Event of Default on the Local Authority.
- 7.2 An Event of Default arises where any of the following occurs :-
  - 7.2.1 any representation or warranty made by the Local Authority pursuant to paragraph 4 is materially incorrect when made or repeated;
  - 7.2.2 the Local Authority fails to achieve any Output or Milestone
  - 7.2.3 the Local Authority commits a breach of any of the terms and conditions of this Agreement and/or any other agreement the Local Authority has with Homes England (and fails to remedy such breach within 14 Business Days of Homes England asking it to do so);
  - 7.2.4 the Local Authority does not comply with paragraph 9.1.1;
  - 7.2.5 any of the pre-conditions detailed in Schedule 4 (if applicable for the purposes of this Agreement) are not satisfied (unless waived by Homes England) within the required period.
  - 7.2.6 assets resulting from the Funding and/or the Project are put to Unauthorised Use; and/or
  - 7.2.7 the Site is disposed of whether by transfer or lease (other than a Permitted Disposal) or otherwise before the End Date;

7.2.8 If a wrongful certification of a Permitted Disposal is made pursuant to the Restriction in clause 6.1.

### 7.3 Homes England's rights

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

7.3.1 consider and agree a revised Output or Milestone Date with the Local Authority in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Output or Milestone Date; or

7.3.2 Where the Event of Default is capable of remedy require the Local Authority to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the remediation plan to Homes England within fifteen (15) Business Days of such request for approval. If the remediation plan is not so prepared or complied with or if the remediation plan is not acceptable to Homes England then and in any such case Homes England may exercise its rights set out in paragraphs 7.3.3 or 7.3.4 below; or

7.3.3 Withhold the provision of further Funding and/or

7.3.4 Require the Local Authority to repay to Homes England the Funding or such proportion of the Funding as Homes England in its absolute discretion determines should be repaid.

7.3.5 In the event that the Local Authority certifies to Homes England in writing (with such supporting evidence as requested by Homes England) that (a) having used its best endeavours and efforts to do so, it is unable to meet the Outputs or Milestones and (b) such inability to meet the Outputs or Milestones results wholly and exclusively from a downturn in the housing market for the area in question and is therefore i) not specific to the Site and ii) beyond the control of the Local Authority,

then

Homes England may (but shall not be obliged to) take this into account when exercising its discretion and considering what action to take in respect of an Event of Default, including any decision about whether to agree revised proposals for Outputs or Milestones as set out in paragraph 7.3.1 above.

### 7.4 Suspension

On and at any time after the occurrence of an Event of Default which is continuing Homes England may by notice to the Local Authority suspend or withhold payment of Funding. .

## 8. WITHHOLDING PAYMENTS AND REPAYMENT

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

8.1 repayment or recovery is required under or by virtue of any European Union State aid laws (including without limitation under Article 107 of the

Treaty on the Functioning of the European Union and/or any applicable judgement, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) ("State Aid Law"); and/or

8.2 Homes England is otherwise required to repay or recover such Funding in whole or in part by or to the European Commission.

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

## 9. LOCAL AUTHORITY NOTIFICATION AND REPORTING OBLIGATIONS

### 9.1 Reporting

The Local Authority will:-

9.1.1 From the Start Date until the Project Completion Date, and no later than ten (10) Business Days following each Quarter Date, provide the Monitoring and Progress Report to Homes England save that the first Monitoring and Progress Report shall be the period commencing on the Start Date and ending on the next Quarter Date;

9.1.2 provide Homes England with such other information as Homes England may reasonably require in connection with the Project (including without limitation evidence that a Claim relates to Development Costs) and the Outputs and Milestones

9.1.3 procure that the Local Authority's representative and/or any other officers appointed by the Local Authority to deal with the Project will attend such meetings as Homes England may reasonably request to review progress in relation to the Project;

### 9.2 Inspection and Audit Facilities

The Local Authority will:

9.2.1 allow or procure access to its premises for Homes England, its internal auditors or its other duly authorised staff or agents or any Regulatory Body and will allow such persons to inspect and take copies of documents relating to the Project. Homes England will be entitled to interview the Local Authority's employees to obtain oral and/or written explanations of documents.

9.2.2 provide Homes England, in writing, with any such information about the Funding and/or the Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.

9.2.3 allow Homes England or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Funding and the Project provided that Homes England does not impede or obstruct the progress of the Project.



- 9.2.4 at all times retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purpose of this paragraph "Accounting Standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board.
- 10. TITLE TO THE LAND**
- 10.1 The Local Authority will procure that the Local Authority's solicitor provides a Title Letter in respect of the Site to Homes England in accordance with paragraph 1.4 of Schedule 4 to this Agreement
- 11. DISPOSALS**
- 11.1 The Local Authority will procure that the whole and any part or parts of the Site are disposed of by way of a Permitted Disposal only and will not make any other Disposal of the Site or any part thereof.
- 12. CONDUCT**
- 12.1 The Local Authority must comply with and assist and co-operate with Homes England in order that it can comply with (and require third parties who benefit from this Funding and any appointed contractors do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:-
- 12.1.1 EU and UK Planning and Environmental legislation
- 12.1.2 EU State Aid Law, including but not limited to N7471A/99 and N747/8/99 Partnership Support for Regeneration (1) Support for Speculative Developments and (2) Support for Bespoke Developments
- 12.1.3 Health and Safety Legislation
- 12.1.4 Employment legislation
- 12.1.5 CDM Regulations
- 12.1.6 Equal opportunities (in relation to race, sex, disability, faith and sexuality)
- 12.1.7 Financial regulations and legislation
- 12.1.8 Copyright and Data Protection legislation
- 12.2 The Local Authority must not grant any lender security over assets funded, or part-funded, by this Funding unless it has first obtained Homes England's written consent.
- 12.3 In carrying out the Project the Local Authority must not act directly or indirectly in any way that will bring Homes England into disrepute.
- 12.4 The Local Authority must inform Homes England immediately if any of its officers involved with the Project are subject to investigation or challenge which may have a detrimental effect upon Homes England and/or the Project.
- 12.5 The Local Authority must advise Homes England immediately of any threat of or any notice or any resolution in respect of any Insolvency.
- 12.6 The Local Authority will act in good faith to achieve the Outputs and will provide evidence of this to Homes England as required by Homes England.
- 12.7 The Local Authority will provide Homes England with such evidence that it requires that Development Costs has been incurred.
- 12.8 Homes England agrees, and the Local Authority accepts that the Local Authority:
- 12.8.1 is a "client" as defined by the CDM Regulations and warrants that it will make suitable arrangements for managing the Project and maintaining and reviewing these arrangements throughout, so the Project is carried out in a way that manages health and safety risks in accordance with applicable legislation including but not limited to the CDM Regulations;
- 12.8.2 will act as the only client in respect of the Development Works and the Local Authority hereby agrees to be the only client under the CDM Regulations for the for the Development Works ;
- 12.8.3 shall comply fully with all the duties of the client under the CDM Regulations.
- 12.9 The Local Authority will procure that all Contractors comply at all times with the Health and Safety Legislation and the CDM Regulations and the requirements of the Health and Safety Executive;
- 13. INSURANCE**
- 13.1 The Local Authority must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect for the Project.
- 13.2 The Local Authority must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to Homes England within 10 Business Days of any such request being made by Homes England.
- 14. CONFIDENTIALITY, FREEDOM OF INFORMATION, DATA PROTECTION, INTELLECTUAL PROPERTY, PUBLIC RELATIONS AND PUBLICITY**
- 14.1 **Definitions**  
In this paragraph the following words and expressions have the following meanings:
- Confidential Information** means any and all information whether disclosed or otherwise made available by one party to another (or otherwise obtained or received by a party) whether before or after the date of this Agreement including but not limited to:-
- (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
- (b) the existence or terms of this Agreement or other information relating to the Project; and
- (c) information relating to a party's business and affairs, its customers, employees and suppliers;
- in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any

information (in whatever form) derived from such information

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

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

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

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

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

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

**Information** means in relation to:

- (a) FOIA the meaning given under section 84 of the FOIA and which is held by Homes England at the time of receipt of an RFI; and
- (b) EIR the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by Homes England at the time of receipt of an RFI;

**Information Commissioner** has the meaning set out in section 6 of the Data Protection Act 1998 (DPA);

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

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

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

## 14.2 Confidentiality and freedom of information

### 14.2.1 Confidentiality

- (a) Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- (b) Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention

during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

- (c) The obligations of confidence referred to in paragraph 9.2.1(b) above will not apply to any Confidential Information which:
  - i is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
  - ii is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
  - iii is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
  - iv is independently developed without access to the Confidential Information of the other party.
- (d) Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
  - i to enable the disclosing party to perform its obligations under this Agreement; or
  - ii by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and each obligor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information; or
  - iii by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or 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.
- (e) The Local Authority will ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:
  - i is given only to such of its employees, professional advisors, Contractors 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;
  - ii is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors, Contractors or consultants otherwise

- than for the purposes of this Agreement;
- iii where it is considered necessary in the opinion of Homes England the Local Authority will ensure that such staff, professional advisors, contractors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- (f) Nothing in this paragraph 14.2.1 shall prevent Homes England:
- i disclosing any Confidential Information for the purpose of:
    - A the examination and certification of Homes England's accounts; or
    - B any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
  - ii disclosing any Confidential Information obtained from an Obligor:
    - A to any other department, office or agency of the Crown; or
    - B to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
  - iii provided that in disclosing information under paragraphs 1.1.1(f)ii(A) or 1.1.1(f)ii(B) above Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- (g) Nothing in this paragraph 14.2.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of this 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.

#### 14.2.2 Freedom of information<sup>3</sup>

- (a) The Local Authority acknowledges that Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.
- (b) Homes England shall be responsible for determining in its absolute discretion whether:
  - i any Information is Exempted Information or remains Exempted Information; or

- ii any Information is to be disclosed in response to a Request for Information.
- (c) Subject to paragraph 1.1.1(d) below, the Local Authority acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:
    - i without consulting the Local Authority; or
    - ii following consultation with the Local Authority and having taken (or not taken, as the case may be) its views into account.
  - (d) Without in any way limiting paragraphs 1.1.1(b) above, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Local Authority.
  - (e) The Local Authority will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, contractors and sub-contractors will), at their own cost:
    - i provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and
  - (f) Nothing in this Agreement will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and / or the EIR in relation to any Exempted Information.
  - (g) To the extent that the Local Authority becomes a FOIA Authority subject to the FOIA and the EIR during the course of this Agreement this paragraph will apply mutatis mutandis to both parties.
  - (h) The obligations in this paragraph 14.2.2 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.

#### 14.2.3 Publication of information before Parliament

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

#### Data Protection

For the purposes of this paragraph, "Personal Data" and "Process" shall have the meanings ascribed to them in the Data Protection Act 1998 and the Data Protection Act 2018 (DPA) as amended or re-enacted from time to time.

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

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

#### 14.3 Intellectual Property Rights

14.3.1 Homes England is entitled to make publicly available best practice arising from the Project ("Project Know-how") and (subject to Clause 14.3.2) the Local Authority hereby grant to Homes England a licence to use such Project Know-how in accordance with this Clause. Homes England will have the right to amend the Project Know-how or to combine with any other know how as it thinks fit when compiling and publishing what it regards as Best Practice.

14.3.2 If the Intellectual Property Rights in Project Know-how are owned by a third party, the Local Authority will use its reasonable endeavours to obtain a licence for Homes England to use such Project Know-how in accordance with this Clause. The Local Authority will notify Homes England where the Local Authority are unable to obtain such licence and will identify which parts of the Project Know-how Homes England is not licensed to use ("Excluded Know how").

14.3.3 Subject to Clause 14.3.2 the Local Authority will provide Homes England with complete copies of and access to all information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). The Local Authority will provide all assistance and explanation requested by Homes England to enable it to disseminate Best Practice.

#### 15. INDEMNITY

The Local Authority will be liable for and will indemnify Homes England in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to Homes England or otherwise) or any claim by any third party

arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Local Authority of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England.

#### 16. ACCESS TO INFORMATION

16.1 The Local Authority is required to provide Homes England, in writing, any such information about the Funding as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and / or compliance functions.

16.2 The Local Authority is required to record for Homes England any such information as may be required to monitor and evaluate the performance of this Agreement. The Local Authority is required to retain this information for access by Homes England or any Regulatory Body for a minimum period of 10 years from the Completion Date.

16.3 The Local Authority is required to provide to Homes England, at reasonable request, access to all and any information about the Project including the location(s) at which the Project will be/ has delivered, Outputs and / or beneficiaries of the Funding from the Start Date up to and including the End Date.

#### 17. TRANSFER

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

#### 18. Clawback

18.1 In this clause the following terms have the following meanings:-

**Clawback Percentage** means [ ] % [The percentage will be the equivalent proportion of the Funding provided in relation to the total Development Costs of the Project]

**Clawback Period** means a period commencing on the date of this Agreement and expiring at midnight on the End Date.

**Disposal** means a disposition, within the meaning of section 205 of the Law of Property Act 1925 except a charge, and the term "dispose" shall be construed accordingly

**Projected Land Value** means [ ]

**Site Disposal** means a Disposition of the whole or any part or parts of the Site.



**Site Disposal Price** means the monetary value of all consideration passing on each Site Disposal to the Local Authority or such other person as may be appointed by the Local Authority.

**Clawback** means a positive only sum calculated in accordance with the following formula:

$$\frac{((SDP + MV) - PLV) \times CP}{\text{Clawback}} =$$

Where :

MV = The Market Value of the whole Site or part of the Site the Local authority has not disposed of by the expiry of the Clawback Period on the assumption that the works required to complete the Project have been completed and Market Value shall have the meaning given in Schedule 1.

PLV = Projected Land Value  
CP = Clawback Percentage  
SDP = The cumulative total of all Site Disposal Prices for all Site Disposals

(such sum not to exceed the Funding)

**Independent Valuer** means a fellow of the Royal Institution of Chartered Surveyors, with at least ten years' post-qualification experience including experience in valuation of property as the same type as the Site.

18.2 **Clawback**

The Local Authority will agree with Homes England -

18.3 The amount of Clawback within twenty eight Business Days of expiry of the Clawback Period.

18.4 The benefit of the Homes England's covenant in relation to the Clawback is assignable by Homes England.

18.5 Where on expiry of the Clawback Period the Site or part of the Site has not been disposed of the Local Authority will provide (at its own expense) Homes England with a valuation from a reputable valuer setting out the Market Value of the Site (or part of the Site that remains unsold) on the assumption that all works required to complete the Project have been completed

18.6 If the Local Authority fails to agree on the amount of the Clawback within twenty eight (28) Business Days after it becomes due

either party may refer the matter to the Independent Valuer in accordance with the procedure set out in clause 18.7

18.7 The Independent Valuer shall act as an expert and shall give a written copy of the decision on the amount of the Clawback to both the Local Authority and Homes England within twenty Business Days after the date of the Independent Valuer's appointment.

18.8 The Local Authority and Homes England shall each be entitled to make submissions to the Independent Valuer and shall provide (or procure that others provide) the Independent Valuer with the assistance and documents that the Independent Valuer reasonably requires to reach a decision.

18.9 The Independent Valuer's written decision shall be final and binding in the absence of manifest error or fraud.

18.10 The Local Authority and Homes England agree to pay the Independent Valuer's costs in the proportions determined by the Independent Valuer within fifteen Business Days after a demand for payment. If they are not so paid, the party against whom the costs were not awarded shall be entitled to pay the Independent Valuer the sums due and recover the amount from the other party on demand.

18.11 In default of agreement pursuant to the terms of this Clause the Clawback shall be the amount determined by the Independent Valuer and the date of issue of the Independent Valuer's written decision shall be taken as the date of determination.

18.12 The Local Authority will pay to Homes England the Clawback within 21 Business days of the parties agreeing the amount of Clawback or the Independent Valuer's decision. The Local Authority will pay to Homes England interest at the rate of 3% above the Base Interest Rate if any monies are not paid within the timescale set out in this Clause 18.

**19. VAT**

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

**20. CHANGES**

The Local Authority must advise Homes England immediately if the Local Authority want or require to make any changes to the Project including, but not limited to, changes to any of the Outputs, Milestones,

Start Date, End Date, Project Completion Date, Project costs and/or funding of the Project. Any changes must be agreed, in writing, with Homes England before taking effect.

## **21. PUBLICITY**

- 21.1 The Local Authority will ensure that, where appropriate, publicity is given to the Project by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England the Local Authority must comply with any guidance on publicity provided by or on behalf of Homes England from time to time.
- 21.2 The Local Authority must not publicise or promote the Funding without Homes England's prior written agreement.
- 21.3 Any reference to Homes England or the Funding in any publicity and / or promotional material relating to the Project must be approved, in advance and in writing, by Homes England.
- 21.4 Homes England reserves the right to use all data provided by the Local Authority in relation to the Funding for publicity or promotional purposes.
- 21.5 Within three months of the date of this Agreement Homes England and the Local Authority shall consider and agree a signage strategy in relation to the Project to be displayed on the Site. It is agreed that all signage to be erected on the Site will include the name of Homes England in a prominent position and to a size not less than that of the Local Authority or its developer or contractor.

## **22. FEES AND EXPENSES- VARIATIONS AND ENFORCEMENT COSTS**

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

- 22.1.1 in connection with the variation or amendment of, or enforcement or preservation of any rights under, this Agreement; or
- 22.1.2 in investigating any Event of Default which has occurred.

## **23. ENTIRE AGREEMENT**

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

## **24. FURTHER ASSURANCE**

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

## **25. APPLICABLE LAW**

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