



Homes &  
Communities  
Agency

**dated**

**Homes and Communities Agency**

and

**[Lead Partner]**

**And**

**[Other Original Consortium Members]**

**Grant Agreement (Private RP Consortium)**

in relation to the Affordable Homes Programme 2016-2021



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## Grant Agreement

dated

### Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (including any statutory successor) (the **Agency**);
- (2) [ ] [(a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014)] [(a company)] [(registered number)] whose registered office is at [ ] (the **Lead Partner**);
- (3) [ ] [(a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014)] [(a company)] [(registered number)] whose registered office is at [ ], [ ] [(a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014)] [(a company)] [(registered number)] whose registered office is at [ ] and [ ] [(a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014)] [(a company)] [(registered number)] whose registered office is at [ ] (together with the Lead Partner, each an **Original Consortium Member**) (and collectively the **Original Consortium Members**).

### Introduction

- (A) The Agency is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia, to make grants available to facilitate the development and provision of housing.
- (B) The Agency has agreed to advance grant funding to the Consortium (as subsequently defined) pursuant to the Agency's Shared Ownership and Affordable Homes Programme 2016-2021 (**SOAHP 2016/21**) to facilitate the delivery of certain affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (C) The Original Consortium Members have submitted a bid to the Agency for grant funding to assist them in the construction of affordable housing.
- (D) Grant paid by the Agency pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.
- (E) The grant funding provided under this Agreement is (at its date) made in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).

## 1 Definitions and interpretation

### 1.1 Definitions

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

**Acceptance Date** means the date upon which the Agency accepts a scheme for the delivery of SOAHP Housing in IMS pursuant to Condition 5.1 (*Firm Schemes*);

**Actual Development Costs** means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Relevant Consortium Member in acquiring, developing and/or Rehabilitating that Firm Scheme as such amount is warranted and certified by the Lead Partner pursuant to Condition 13.2.3 (*Grant Claim Procedures*) and Condition 13.4.3 (*Grant Claim Procedures*);

**Additional Scheme Acceptance Date** means the date upon which the Agency confirms acceptance of an Additional Scheme pursuant to Condition 8.11 (*Firm Scheme substitution and additions*);

**Additional Scheme** means a scheme for the delivery of SOAHP Housing proposed by the Lead Partner in addition to those comprised within the Original Approved Bid;

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

**Affordable Home Ownership** means low cost home ownership on Help to Buy: Shared Ownership Lease terms;

**Affordable Homes Guarantees Programme** means the programme described in the publication entitled "2013 - 2015 Affordable Homes Guarantee Programme Framework" issued by the Department for Communities and Local Government Agency in February 2013 (as the same may be amended or updated from time to time);

**Affordable Rent Dwelling** means a SOAHP Dwelling let or to be let at an Affordable Rent;

**Affordable Rent** means a rent which does not exceed eighty per centum (80%) of the market rent (inclusive of service charges) for an equivalent property of the relevant size and location such rent to be assessed and set in accordance with the applicable requirements of Legislation and of the Rent Standard;

**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 Principles** means the terms set out in Part 1 of Schedule 3 (*Agreed Principles*);

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

**Agreement Funding** means any funding given by the Agency to the Lead Partner on behalf of the Consortium under the provisions of this Agreement;

**Agreement** means this grant agreement (including its Schedules);

**AHP 2011/15** means the Affordable Homes Programme 2011-15 described in the AHP Framework Document and administered by the Agency outside London and by the Greater London Authority within London;

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

**AHP Framework Document** means the publication entitled "2011-15 Affordable Homes Programme - Framework" issued by the Department for Communities and Local Government and the Agency in February 2011 (as the same may be amended or updated from time to time);

**Allocated Grant** means [ ], being the maximum amount of grant payable by the Agency to the Lead Partner (on behalf of the Consortium) in respect of the Approved Bid (as the same may be amended from time to time in accordance with the terms of this Agreement);

**Allocation Change Notice** means a notification submitted by the Agency under Condition 11.3 (*Review, Monitoring and Reporting*);

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

**Approved Bid** means the aggregate of the New Schemes and Indicative Schemes (if any) accepted by the Agency in IMS as at the date of this Agreement and summarised in Schedule 1 (*Approved Bid*) (as the same may be amended, added to, supplemented, substituted 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 Relevant Consortium Member in relation to that Firm Scheme;

**Bid Default** means the Agency determines (acting reasonably) that proper progress against the Consortium's projections in the Approved Bid has not been made by the Consortium in delivering the Approved Bid;

**Building Contract** means a contract entered into between the Relevant Consortium Member and a Building Contractor relating to the construction and development and/or Rehabilitation of a Firm Scheme;

**Building Contractor** means any building contractor or developer appointed or to be appointed by the Relevant Consortium Member 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 guide of that name published on the GOV.UK website or any successor guide so published subject to such amendments variations or updates to the same may be published from time to time;

**Capital Grant** has the meaning set out in the Recovery Determination;

**Capital Grant Recoverable** means such amount of Capital Grant as the Agency is entitled to Recover under the Recovery Determination;

**Care and Support Specialised Housing Fund** means the Care and Support Specialised Housing Fund described in either of the Department of Health and Agency publications entitled "Care and Support Specialised Housing Fund - Prospectus - October 2012" or "Care and Support Specialised Housing Fund: Phase 2 - Bidding Prospectus - February 2015";

**CDM Regulations** means the Construction (Design and Management) Regulations 2015 S.I. No. 2015/51;

**CEDR** means the Centre for Effective Dispute Resolution;

**Competent Authority** means for the purposes of Condition 11 (*Review, Monitoring and Reporting*) and Condition 20 (*Data Protection*) any or all of:

- (a) a committee of the United Kingdom parliament;
- (b) a minister of the British Crown;
- (c) the Commission of the European Union; or
- (d) a court of England and Wales or the Court of Justice of the European Union;

**Completed Firm Scheme** means a Firm Scheme in relation to which the Agency has paid both First Tranche Grant and Second Tranche Grant;

**Completion Authority** means a written irrevocable authority from each Consortium Member authorising the Agency to complete a Deed of Release or a Deed of Adherence (as applicable) following the execution of such a deed by the Agency;

**Compliance Audit** means the procedure (in a form advised by the Agency from time to time) by which an auditor independent of the Consortium Members certifies (at the Consortium's cost) whether the Firm Schemes developed or Rehabilitated 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 any Consortium Member becomes aware in its capacity as a party to this Agreement or which is received by any Consortium Member 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 Consortium Members means such specific information as the Lead Partner 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;

**Consortium** means the Consortium Members jointly;

**Consortium Members** means subject to Conditions 6.9, 6.10 and 18.8 the Original Consortium Members and any New Consortium Member and Consortium Member shall be construed accordingly;

**Consortium Member Affiliate** means a third party whose relationship with a Relevant Consortium Member falls within limb (b) of the definition of Consortium Member Party;

**Consortium Member Party** means:

- (a) the applicable Consortium Member, the Building Contractor, any member of the Professional Team, agent, employee or Subcontractor of that Consortium Member and the Lead Partner's Representative;
- (b) any subsidiary or holding company of that Consortium Member or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006;

**Continuing Firm Scheme** means a Firm Scheme (other than one in relation to which a Removed Consortium Member is the Landlord) in respect of which:

- (a) the Start on Site Date has or will have occurred at the date of the expiry of the notice period referred to in Condition 18.4.2 (*Default Events and Termination*) or at the date of the expiry of the period referred to in Condition 18.6.2 (*Default Events and Termination*) (as applicable); and
- (b) the First Tranche Grant has been paid;

**Conversion Capacity** means the sum representing the aggregate of the Individual Conversion Capacities to be generated through the Permitted Conversions specifically to support the provision of SOAHP Rent Dwellings and identified in the relevant field in IMS;

**CORE** means the national information source "Continuous Recording" that records information on new occupiers of affordable housing and the properties they rent or buy;

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

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

**Decision Allowable Costs** means those costs incurred by the Relevant Consortium Member in providing the SOAHP Housing as specified in Schedule 1 (*Approved Bid*) (calculated using generally acceptable accounting principles) as follows:

- (a) the Development Costs;
- (b) all other direct costs of providing the SOAHP Housing;
- (c) a proper proportion of costs (including for common infrastructure) if these are shared between SOAHP Housing and other construction on sites where the SOAHP Housing is situated; and/or

- (d) other costs permitted under the SGEI Decision of operating the SOAHP Housing as affordable housing;

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

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

**Deed of Adherence** means the deed referred to in Condition 6.11 (*Changes to Firm Schemes or the Consortium*) and in the form set out in Schedule 5 (*Deed of Adherence*);

**Deed of Release** means the deed referred to in Condition 6.9 (*Changes to Firm Schemes or the Consortium*) and in the form set out in Schedule 6 (*Deed of Release*);

**Default Event** means any of a Scheme Default, a Specified Default, a Bid Default or a Fundamental Default;

**Deficit Sum** means (as the context requires) the difference (expressed as a positive sum) between:

- (a) the negative amount of the Second Tranche Grant referred to in Condition 6.5.1(b) (*Changes to Firm Schemes or the Consortium*) and zero, or
- (b) the negative amount of the Second Tranche Grant referred to in Condition 15.2.2(b) (*Adjustments to Second Tranche Grant*) and zero;

**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 Relevant Consortium Member in respect of the heads of expenditure set out in Part 1 to Schedule 4 (*Development Costs*) 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 (*Costs which are not Development Costs*) shall not be capable of being treated as Development Costs;

**Direction** means a direction to the Regulator in relation to rent given by the Secretary of State from time to time pursuant to Section 197 of the HRA 2008;

**Disposal** means a transaction the effect of which is that the legal or beneficial interest in any SOAHP 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 each Consortium Member 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;

**EU Procurement Regime** means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2014/24EU and 007/66/EC, United Kingdom Statutory Instrument 2015/12 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;

**Firm Scheme** means each scheme for the development of the SOAHP Dwellings as has been fully detailed in IMS and accepted by the Agency through IMS:

- (a) as a Firm Scheme as at the date hereof; or
- (b) in accordance with Condition 5.1 (*Firm Schemes*); or
- (c) in accordance with Condition 8.4 (*Firm Scheme substitution and additions*) or Condition 8.11 (*Firm Scheme substitution and additions*).

**Firm Scheme Completion Date** means the date set out in the Firm Scheme Delivery Timetable by which the Site acquisition (if applicable) and Practical Completion must have been achieved;

**Firm Scheme Delivery Timetable** means the timetable for the construction, development (and/or Rehabilitation) and delivery of each Firm Scheme as agreed by the Agency through IMS;

**Firm Scheme Details** means:

- (a) in respect of each Firm Scheme comprised within the Original Approved Bid, the descriptive and other details in respect of that scheme summarised in Schedule 1 (*Approved Bid*) but as more particularly described in IMS and as accepted by the Agency through IMS; or
- (b) in respect of any other Firm Scheme, the descriptive and other details in relation to that scheme set out (and as accepted by the Agency) in IMS,

in each case 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;

**First Tranche Grant** means subject to Condition 5.4 (*Firm Schemes*) 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 RCGF or DPF utilised by the Relevant Consortium Member in meeting in whole or in part the Development Costs;

**Fundamental Default** means any of a Fundamental (A) Default or a Fundamental (B) Default;

**Fundamental (A) Default** means the occurrence of any of the following:

- (a) an Insolvency Event has occurred in relation to a Consortium Member;
- (b) a Prohibited Act has been committed by or on behalf of a Consortium Member (in respect of which the Waiver Condition has not been satisfied);
- (c) any Consent necessary to the delivery of the Approved Bid is withdrawn or revoked;
- (d) a Consortium Member ceases operating or trading; or
- (e) a Consortium Member's status as a Registered Provider is lost, removed or relinquished;

**Fundamental (B) Default** means the occurrence of any of the following:

- (a) the Lead Partner's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that grant is not to be paid to the Lead Partner or to the Relevant Consortium Member; or
- (c) a Consortium Member (either by its own actions or omissions, or those of its contractors or agents) harms the Agency's reputation or brings the Agency or SOAHP 2016/21 into disrepute;

**Fundamental Termination Amount** means the amount calculated by deducting the aggregated amount of all Firm Scheme Grant paid to the Lead Partner pursuant to Condition 14.1 (*Payment of Grant*) in relation to all Completed Firm Schemes prior to the Notice Date from the aggregated amount of all Firm Scheme Grant paid to the Lead Partner pursuant to that Condition prior to such date;

**General Withholding Event** means a GW1 Event, GW2 Event or a GW3 Event;

**GW1 Event** means the occurrence of any of the following:

- (a) a failure by any Consortium Member to comply with any repayment or reporting obligation under this Agreement; or

- (b) a material breach by any Consortium Member of any obligation under this Agreement (other than one listed in sub-paragraph (a) of this definition) and such Consortium Member has not taken steps to remedy it to the Agency's satisfaction (acting reasonably);

**GW2 Event** means any of the following:

- (a) the Lead Partner's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that grant is not to be paid to the Lead Partner or to the Relevant Consortium Member; or
- (c) the Lead Partner fails to procure the delivery of all the SOAHP Housing which the Consortium was committed to deliver under this Agreement by 31 March 2022;

**GW3 Event** means any of the following:

- (a) an Insolvency Event occurs in relation to a Consortium Member;
- (b) a Prohibited Act has been committed by or on behalf of a Consortium Member (in respect of which the Waiver Condition has not been satisfied);
- (c) a Consortium Member ceases operating or trading;
- (d) a Consortium Member's status as a Registered Provider is lost, relinquished or removed or the Agency becomes aware that such status will be or is likely to be lost, relinquished or removed;
- (e) any Consent necessary to deliver the Approved Bid is withdrawn or revoked; or
- (f) a Consortium Member (either by its own actions or omissions, or those of its contractors or agents) harms the Agency's reputation or brings the Agency or SOAHP 2016/21 into disrepute;

**Help to Buy Agency Agreement** means an agreement (or any other formal arrangement) entered into between the Relevant Consortium Member 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;

**Help to Buy: 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

any applicable requirements of the Capital Funding Guide;

**HRA 2008** means the Housing and Regeneration Act 2008;

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

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

**Indicative Allocation** means in relation to each Indicative Scheme the amount of the Allocated Grant attributed to that scheme in the Indicative Scheme Details;

**Indicative Scheme** means each prospective scheme for the development of SOAHP Housing in respect of which the Lead Partner (on behalf of the Relevant Consortium Member) expects to secure Firm Scheme status by the Transition Date;

**Indicative Scheme Details** means

- (a) in respect of each Indicative Scheme comprised within the Original Approved Bid, the descriptive and other details in respect of that scheme summarised in Schedule 1 (*Approved Bid*) 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); or
- (b) in respect of any other Indicative Scheme, the descriptive and other details in relation to that scheme set out in (and accepted by the Agency) IMS,

in each case as the same may be varied from time to time in accordance with the terms of this Agreement.

**Individual Conversion Capacity** means in relation to each Firm Scheme the sum identified in the relevant field in IMS;

**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 any Consortium Member (as appropriate) at the time of receipt of an RFI; and
- (b) EIR, given under the definition of environmental information in Regulation 2 of the EIR and which is held by the Agency or any Consortium Member (as appropriate) at the time of receipt of an RFI;

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

**Insolvency Event** means the occurrence of any of the following in relation to any Consortium Member:

- (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 and/or any moratorium pursuant to Section 145 of the 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, housing administrator, administrator, compulsory manager or other similar officer;
  - iv enforcement of any Security over any of its assets;
  - 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 of its assets 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 an organisation which has been confirmed by the Agency as having "Investment Partner Status" under the Agency's Investment Partner qualification procedure from time to time;

**Landlord** means the Consortium Member that has the Secure Legal Interest and who will be the landlord of the tenants of the SOAHP Dwellings comprised in the relevant Indicative Scheme or Firm Scheme (as applicable);

**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;

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

**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;
- (d) any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972;  
  
in each case in the United Kingdom; and
- (e) any regulations, orders, bye-laws or codes of practice of any local or statutory or competent authority having jurisdiction over the territory in which the Firm Scheme is situated;

**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 Relevant Consortium Member;

**London** means the administrative area of the Greater London Authority from time to time;

**Material Adverse Effect** means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the any Consortium Member to deliver its element of the Approved Bid or any Firm Scheme (as the context requires) on the basis agreed under this Agreement 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 7.1 (*Time extensions*));

**Milestone Extension Event** means any of the following:

- (a) exceptionally adverse weather conditions;

- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Relevant Consortium Member 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 Relevant Consortium Member 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 Relevant Consortium Member's compliance with a Milestone Date and which did not result from the Relevant Consortium Member's failure effectively to manage the Building Contract

- (m) any impediment prevention or default whether by act or omission of the Agency except to the extent caused by or contributed to by any default, whether by act or omission of the Relevant Consortium Member;

unless:

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

**Milestone Failure** means a failure by the Relevant Consortium Member fully to achieve any Milestone by the relevant Milestone Date;

**New Consortium Member** means a person or body to which the provisions of Section 278(1)(a) of the HRA 2008 applies who delivers to the Agency a Deed of Adherence in accordance with the Condition 6.11 (*Changes to Firm Schemes or the Consortium*);

**New Scheme** means a named scheme for the delivery of SOAHP Housing accepted by the Agency as part of the Original Approved Bid;

**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 neither the Consortium nor the Relevant Consortium Member sought grant funding under this Agreement;

**Non Compliance Notification Date** means the date on which the Agency notifies the Lead Partner 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;

**Notice Date** means the date of the notice served in accordance with Condition 18.7 (*Default Events and Termination*);

**Notification Failure** means in relation to each of Conditions 6.3.1 (*Changes to Firm Schemes or the Consortium*), 6.3.3 (*Changes to Firm Schemes or the Consortium*), 6.5.1 (*Changes to Firm Schemes or the Consortium*) and 6.5.3 (*Changes to Firm Schemes or the Consortium*) a failure by the Lead Partner to advise the Agency within the period specified in the relevant Condition as to whether the Relevant Consortium Member wishes to proceed with a Firm Scheme or to withdraw it from the Agreement;

**Officer's Certificate** means a certificate in the form set out in Schedule 2 (*Officer's Certificate*) (or in such other form as the Agency may prescribe from time to time) signed by the Lead Partner's Representative or such other person may be agreed by the Agency from time to time;

**Open Book Basis** means the full and transparent disclosure and declaration of all information which is required to be maintained, kept or disclosed under this Agreement including all price components including profit margins, central office overheads, Site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts;

**Original Approved Bid** means the aggregate of the New Schemes and Indicative Schemes (if any) accepted by the Agency in IMS as at the date of this Agreement;

**Outgoing Consortium Member** means a Consortium Member complying with the provisions of Conditions 6.9 and 6.10 (*Changes to Firm Schemes or the Consortium*);

**Permitted Conversions** means the aggregate number of properties (other than the Affordable Rent Dwellings) identified in the Approved Bid which the Consortium proposes to let at an Affordable Rent or, as applicable, dispose of either on Affordable Home Ownership terms or on market sale terms to generate the Conversion Capacity;

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

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

**Post-Start Change** means a change to a Firm Scheme proposed by the Lead Partner pursuant to Condition 6.1 (*Changes to Firm Schemes or the Consortium* ) in the period after the payment of the First Tranche Grant in relation to that Firm Scheme but before the payment of the relevant Second Tranche Grant;

**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 SOAHP 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;

**Pre-Start Change** means a change to a Firm Scheme proposed by the Lead Partner pursuant to Condition 6.1 (*Changes to Firm Schemes or the Consortium*) prior to the payment of the First Tranche Grant;

**Previous Programme** means any of the AHP 2011/15, AHP 2015/18 the Affordable Homes Guarantees Programme or the Care and Support Specialised Housing Fund;

**Process** has the meaning ascribed to it in the DPA and **Processing** shall be construed accordingly;

**Professional Team** means (as applicable) the architect, civil & structural engineer, the mechanical & electrical engineer and any other consultant appointed by the Relevant Consortium Member 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 a Consortium Member 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;

**Projected Completion Date** means the date set out in IMS by which an Indicative Scheme is scheduled to reach Practical Completion (*mutatis mutandis*);

**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 Relevant Consortium Member 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;

**Purchase Point** means the date upon which an Affordable Home Ownership Dwelling is sold to its first purchaser or in relation to a Rent to Buy Dwelling a date which is not earlier than five years after the point at which the which such Rent to Buy Dwelling first becomes available for letting;

**Quarter** means the period between each Quarter Date;

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

**RCGF** means the Recycled Capital Grant Fund maintained by the Relevant Consortium Member in accordance with the Recovery Determination;

**Recover** has the meaning set out in the Recovery Determination;

**Recovery Determination** means the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2015 and any successor determination or other instrument;

**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 2015 described in "What is the Regulatory Framework" published by the Regulator in April 2015 (including any associated regulatory requirements, codes of practice and regulatory guidance issued by the Regulator) as amended or replaced from time to time;

**Rehabilitated or Rehabilitation or Rehabilitating**(or any cognate term) shall have the meaning ascribed to it in sub-section 3.3 (*Rehabilitation and Scheme Types*) of the section of the Capital Funding Guide entitled "General, procurement and scheme issues";

**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 Relevant Consortium Member's obligations under this Agreement;

**Relevant Consortium Member** has the meaning given to it in respect of each Condition as identified in Schedule 7 (*Relevant Consortium Member – obligations Matrix*);

**Relevant Event** has the meaning attributed to it in the Recovery Determination;

**Relevant Withholding Event** means either a GW2 Event or a GW3 Event;

**Remediation Period** means 30 Business Days from the date upon which the Agency serves notice on the Lead Partner pursuant to Condition 18.7 (*Default Events and Termination*);

**Removed Consortium Member** means a Consortium Member of the type referred to in Condition 18.9.1 (*Default Events and Termination*) or Condition 18.9.2 (*Default Events and Termination*);

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

**Rent to Buy** has the meaning set out in the Capital Funding Guide as at the date of this Agreement;

**Rent to Buy Dwelling** means a SOAHP Dwelling let or to be let on Rent to Buy terms;

**Rent to Buy Tenant** means an individual who fulfils the following criteria:

- (a) is at the time of letting in employment and has demonstrated an intention to buy his/her own home; and
- (b) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling a first time buyer; or
- (c) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling returning to the market following a relationship breakdown and does not own any other residential property;

**Replacement Lead Partner** means the Consortium Member that assumes the role of the Lead Partner under this Agreement where the provisions of Condition 18.9 (*Default Events and Termination*) apply;

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

**Resolution Period** means 30 Business Days from the date upon which the Agency notifies the Lead Partner of its awareness of the occurrence of the Relevant Withholding Event;

**Review Meeting** means a meeting held pursuant to Conditions 11.7 (*Review, Monitoring and Reporting*) and Condition 11.8 (*Review, Monitoring and Reporting*);

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

**Scheme Default** means in relation to any Firm Scheme the occurrence of any of the following:

- (a) the Relevant Consortium Member is unable to make the representations and give the warranties set out in Part 2 of Schedule 3 (*Representations and Warranties*) (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to that Firm Scheme;
- (b) the withdrawal or revocation of any Consent required to enable the Relevant Consortium Member to deliver that Firm Scheme;

- (c) a breach of the Relevant Consortium Member's obligations other than Condition 10.7 (*Operational Obligations* ) under any of Condition 9 (*Delivery Obligations* ) or Condition 10 (*Operational Obligations* ) in relation to that Firm Scheme;
- (d) the exercise by the Agency of its rights under Condition 15.1.2 (*Adjustments to Second Tranche Grant*) or a failure by the Relevant Consortium Member to agree any adjustment proposed by the Agency to the Firm Scheme Grant pursuant to Condition 15 (*Adjustments to Second Tranche Grant*);
- (e) the Relevant Consortium Member has breached or otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Firm Scheme;
- (f) a failure or inability by the Lead Partner or Relevant Consortium Member (as applicable) to comply with the requirements of Conditions 13.1 (*Grant Claim Procedures*) to 13.4 (*Grant Claim Procedures*) (as applicable);
- (g) the Start on Site Date is not attained and following discussions with the Lead Partner the Agency (acting reasonably) considers that the Firm Scheme is unlikely to reach Practical Completion by 31 March 2022;
- (h) the Relevant Consortium Member fails to deliver the Firm Scheme by 31 March 2022; or
- (i) a failure by the parties to agree a revised Firm Scheme Grant figure pursuant to Condition 17.3.3(a) (*Repayment of Grant*);

**Scheme Termination Event** means this Agreement is terminated in relation to one or more particular Firm Schemes pursuant to Condition 18.1 (*Default Events and Termination*);

**Scheme Withholding Event** means in relation to any Firm Scheme the occurrence of any of a SW1 Event, SW2 Event or a SW3 Event;

**Second Tranche Grant** means subject to Condition 5.4 (*Firm Schemes*) 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 SOAHP Dwelling (or prospective SOAHP 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;

**Section 106 Scheme** means a Firm Scheme where the development of SOAHP Housing is part of a larger non SOAHP Housing scheme and required pursuant to a Section 106 Agreement;

**Secure Legal Interest** means the Relevant Consortium Member has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has at least:
  - i 60 years unexpired duration; or
  - ii in the case of any Firm Scheme or Indicative Scheme comprising Affordable Home Ownership Dwellings or Rent to Buy Dwellings 99 years unexpired duration from the projected Purchase Point.
- (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 Relevant Consortium Member 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 Relevant Consortium Member;

**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 arrangement);

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

**SGEI Decision Overpayment** means the extent to which Public Sector Subsidy (including Agreement Funding) exceeds the Decision Net Costs;

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

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

**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;

**SOAHP 2016/21 Funds** means grant funding made available pursuant to the SOAHP 2016/21;

**SOAHP 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.

**SOAHP Housing** means housing provided or required to be provided by the Relevant Consortium Member pursuant to this Agreement that will be made available:

- (a) permanently on Affordable Home Ownership terms;
- (b) on Rent to Buy terms for a period of not less than five years from the point at which such housing first becomes available for letting;
- (c) permanently at an Affordable Rent; or
- (d) permanently at a Social Rent;

**SOAHP 2016/21** means the programme described in the publication entitled "Shared Ownership and Affordable Homes Programme 2016 to 2021 Prospectus" issued by the Agency on 13 April 2016 (as the same may be amended or updated from time to time);

**SOAHP 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.

**SOAHP Housing** means housing provided by the Relevant Consortium Member pursuant to this Agreement that will be made available:

- (a) permanently on Affordable Home Ownership terms;
- (b) on Rent to Buy terms for a period of not less than 5 years from the point at which such housing first becomes available for letting;
- (c) permanently at an Affordable Rent; or
- (d) permanently at a Social Rent.

**SOAHP Rent Dwelling** means an Affordable Rent Dwelling and/or a Social Rent Dwelling;

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

**Social Rent** means a rent calculated in accordance with the formula for calculating social rents set out in Legislation and (to the extent applicable) in the Rent Standard;

**Social Rent Dwelling** means a SOAHP Dwelling let or to be let at a Social Rent;

**Specified Default** means the occurrence of any of the following:

- (a) a failure by any Consortium Member to comply with its obligations in any of Conditions 10.7, 10.8.3 or 10.8.4 (*Operational Obligations*) or Condition 11 (*Review Monitoring and Reporting*) and/or any information supplied in connection with its obligations in Condition 11 (*Review Monitoring and Reporting*) (including that within the Officer's Certificate), is materially deficient, misleading or inaccurate;
- (b) any Consortium Member is unable to make the representations and give the warranties set out in Part 2 of Schedule 3 (*Representations and Warranties*) (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to the Approved Bid;
- (c) a failure by any Consortium Member to comply with any obligation to pay or repay the Agency any amount due under this Agreement; or
- (d) any other breach or failure to comply with any term of this Agreement where such breach or failure has or will have a Material Adverse Effect in relation to the Approved Bid;

**Start on Site Date** means the date identified in IMS on which:

- (a) the Relevant Consortium Member and Building Contractor have entered into the Building Contract;
- (e) the Building Contractor has taken possession of the Site; and
- (f) the Start on Site Works to the Site have commenced;

**Start on Site Works** means:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibrofloatation, piling, boring for piles or pile driving;
- (d) drainage works specific for the buildings forming part of the Firm Scheme; or
- (e) such works of demolition or service diversion as are expressly and strictly contemplated in the section of the Capital Funding Guide entitled "Finance – Grant Claims and Payments";

**State Aid** means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular

undertaking or the production of certain goods, in so far as such aid affects trade between European Union Member States; or

- (b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirements;

**Subcontractor** means any subcontractor appointed by the Relevant Consortium Member to undertake all or part of the Works;

**Submitted Standards** means in respect of each Firm Scheme the standards submitted by the Lead Partner and referenced in the Firm Scheme Details in IMS;

**Substitute Scheme** has the meaning ascribed to it in Condition 8.1 (*Firm Scheme substitution and additions*);

**Substitute Scheme Acceptance Date** means the date upon which the Agency confirms acceptance of a Substitute Scheme pursuant to Condition 8.4 (*Firm Scheme substitution and additions*);

**SW1 Event** means a failure by the Relevant Consortium Member to deliver the Firm Scheme (other than one comprised within an SW3 Event) in accordance with the Firm Scheme Details or to the Submitted Standards;

**SW2 Event** means the occurrence of any of the following:

- (a) the Relevant Consortium Member does not or is unable to authorise the Lead Partner to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Condition 13.2 (*Grant Claim Procedures*) or Condition 13.4 (*Grant Claim Procedures*) (in any case in whole or in part); or
- (b) a material breach by the Relevant Consortium Member or the Lead Partner (as applicable) of any obligation under this Agreement in relation to a Firm Scheme (other than those comprised within an SW1 Event or SW3 Event in relation to that Firm Scheme) and which:
  - i the Relevant Consortium Member or the Lead Partner (as applicable) has not taken steps to remedy to the Agency's satisfaction (acting reasonably); or
  - ii is incapable of remedy;
- (c) any Consent necessary to deliver the Firm Scheme is revoked or withdrawn;

**SW3 Event** means a failure by the Relevant Consortium Member to deliver a Firm Scheme in accordance with the Firm Scheme Delivery Timetable (in circumstances where the Agency did not agree revised Milestone Dates in accordance with Condition 7.2) (*Time extensions*);

**Tenancy Standard** means the tenancy standard published by the Regulator from time to time pursuant to its power under Section 193 of the HRA;

**Term** means the period of time from the date hereof until 31 March 2022 subject to earlier termination by the Agency of the entirety of this Agreement or any extension pursuant to Condition 7.1 (*Time extensions*);

**Total Termination Event** means this Agreement is terminated as a whole pursuant to Condition 18.3 (*Default Events and Termination*), Condition 18.5 (*Default Events and Termination*) or Condition 18.7 (*Default Events and Termination*);

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

**Transition Date** has the meaning attributed to it in column C in the undernoted table;

**Transition Window** means in relation an Indicative Scheme falling within column A of the undernoted table the period set out in column B of that table;

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
<b>Indicative Scheme with Projected Completion Date between:</b>	<b>Period between:</b>	<b>Transition Date</b>
1 April 2017 - 31 March 2018	Date of this Agreement to 31 March 2017	31 March 2017
1 April 2018 - 31 March 2019	Date of this Agreement to 31 May 2017	31 May 2017
1 April 2019 - 31 March 2020	Date of this Agreement to 31 May 2018	31 May 2018
1 April 2020 - 31 March 2022	Date of this Agreement to 31 May 2019	31 May 2019

**Transparency Obligations** means the obligations set out in Condition 12 (*Transparency Obligations*);

**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;

**United Kingdom Competition Requirement** means any Legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries;

**Unlawful State Aid** means (as the case may be):

- (a) State Aid which has been granted in contravention of Article 108(3) Treaty of the Functioning of the European Union (**TFEU**), does not benefit from an exemption from notification and has not been approved by a decision of the European Commission under Article 107(2) or (3) TFEU;
- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

**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 Relevant Consortium Member to the Agency that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Relevant Consortium Member;
- (g) a Subcontractor of any tier (or any employee of a Subcontractor not acting independently of the Subcontractor);
- (h) an employee of a Subcontractor of any tier acting independently of such Subcontractor; or
- (i) any person not specified in parts (a), (b) or (c)

and the Agency is satisfied that the Relevant Consortium Member 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 Relevant Consortium Member or relevant Subcontractor;

**Withdrawn Scheme** means a Firm Scheme withdrawn by the Lead Partner pursuant to Condition 6.3.1 or Condition 6.3.3 (*Changes to Firm Schemes*);

**Withholding Event** means a General Withholding Event or a Scheme Withholding Event;

**Works** means in relation to each Firm Scheme all of the works (including the Start on Site Works, the design, infrastructure works and all other works necessary for obtaining access to the SOAHP Dwellings) to be undertaken in order to ensure that the SOAHP Dwellings meet the Submitted Standards and are constructed, developed and/or Rehabilitated 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 or section heading is, except where it is expressly stated to the

contrary, a reference to such condition, sub-condition, paragraph, schedule 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, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination 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 shall be construed as reference to a paragraph in that particular Schedule.
- 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 Relevant Consortium Member.
- 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 terms "Site" and "Firm Scheme" include each and every part of it.
- 1.2.17 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.

- 1.2.18 Save where a contrary intention is shown, any reference to the Agency acting reasonably shall be interpreted as requiring the Agency to act in a commercially reasonable manner.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 Each Consortium Member 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 of its Consortium Member Parties as if they were the acts or omissions of the Relevant Consortium Member.
- 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 a Consortium Member 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 (*Approved Bid*) and the Firm Scheme Details set out in IMS (and accepted by the Agency through IMS) the Firm Scheme Details in 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.
- 1.2.24 Save where an obligation in this Agreement is expressed to be an obligation of the Consortium (in which case the Consortium Members shall be jointly liable for its discharge) liability for the discharge of such obligation will rest with each individual Consortium Member to whom the relevant obligation applies.
- 1.2.25 All confirmations, acknowledgements, submissions and representations made by the Lead Partner to the Agency are (unless made by the Lead Partner in relation to any Firm Scheme in respect of which it is or will be the Landlord) are deemed to be made on behalf of the Relevant Consortium Member or the Consortium as the context requires.

## 2 Purpose

- 2.1 The Agency has agreed to make the Allocated Grant available to the Consortium to provide the SOAHP Dwellings subject to and in accordance with the terms and conditions of this Agreement.
- 2.2 Each party undertakes to co-operate with the other to facilitate the proper performance of this Agreement and the delivery of the Indicative Schemes and the Firm Schemes.

- 2.3 Each Consortium Member acknowledges the content of the Approved Bid and:
- 2.3.1 shall use all reasonable endeavours to deliver that element of the SOAHP Housing comprised in the Approved Bid for which it is to be the Landlord; and
  - 2.3.2 shall co-operate with the Lead Partner in order to facilitate the Lead Partner's compliance with its obligations under this Agreement in relation to the delivery of the Approved Bid.
- 2.4 The Lead Partner shall use all reasonable endeavours to procure the delivery of the Approved Bid by the Consortium in accordance with the requirements of this Agreement.

### 3 **Acknowledgements, Representations and Warranties**

- 3.1 Without prejudice to any other term of this Agreement, each Consortium Member:
- 3.1.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;
  - 3.1.2 represents and warrants in the terms set out in Part 2 of Schedule 3 (*Representations and Warranties*) to the Agency on the date hereof and on each day during the currency of this Agreement; and
  - 3.1.3 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.
- 3.2 Without prejudice to any other term of this Agreement, the parties expressly acknowledge that any Rent to Buy Dwellings delivered pursuant to this Agreement constitute "intermediate rent accommodation" for the purposes of the Social Housing Rents (Exceptions and Miscellaneous Provisions) Regulations 2016.

### 4 **Indicative Schemes**

- 4.1 The Lead Partner confirms that such details of each Indicative Scheme comprised within the Original Approved Bid as the Agency requires, have been uploaded onto IMS by the date of this Agreement.
- 4.2 The Lead Partner shall be entitled to submit further Indicative Schemes to the Agency after the date of this Agreement and where it wishes to do so, it must submit to the Agency through IMS such details of such further Indicative Schemes as the Agency may require.
- 4.3 The Agency shall be entitled to accept or reject the details submitted for any further Indicative Scheme. Where the Agency accepts a further Indicative Scheme into the Approved Bid pursuant to Condition 4.2 (*Indicative Schemes*), it shall confirm its acceptance to the Lead Partner through IMS.
- 4.4 If an Indicative Scheme is accepted by the Agency in IMS, such scheme becomes subject to the terms of this Agreement from the date of that acceptance.

- 4.5 The Relevant Consortium Member must use all reasonable endeavours to ensure that each Indicative Scheme is worked up so that it is capable of being brought forward as a Firm Scheme within the applicable Transition Window (**Scheme Transition**).
- 4.6 The Lead Partner must use all reasonable endeavours to ensure that each Indicative Scheme is uploaded onto IMS in accordance with the procedure and timescale set out in Condition 5.1 (*Firm Schemes*).
- 4.7 The Relevant Consortium Member or the Lead Partner (as applicable) must notify the Agency in writing immediately upon becoming aware of any matter or circumstance which is likely to prejudice its ability to comply with the obligations under Condition 4.5 (*Indicative Schemes*) or Condition 4.6 (*Indicative Schemes*).
- 4.8 On receipt of a notice under Condition 4.7 (*Indicative Schemes*) or on otherwise becoming aware of any likely delay to the relevant Scheme Transition the Agency (acting reasonably) shall be entitled either:
- 4.8.1 to extend the applicable Transition Window by such period as it considers to be appropriate having regard to the circumstance giving rise to the anticipated delay; or
  - 4.8.2 to withdraw the Indicative Allocation
- and in determining which option to pursue the Agency shall be entitled to take into account such factors as it considers appropriate including:
- (a) the likely availability of Agency resources in relation to any delayed delivery of the prospective Firm Scheme resulting from any extension to the Transition Window; and
  - (b) the adequacy of the Relevant Consortium Member's performance to date in respect of other Indicative Schemes and Firm Schemes.
- 4.9 The Lead Partner shall be entitled to propose changes to any Indicative Scheme at any point prior to the date which is forty (40) Business Days before the relevant Transition Date. Any such changes must be communicated to the Agency in writing or by the Lead Partner proposing changes to the Indicative Scheme Details through IMS. The Agency shall have a period of ten (10) Business Days (from the date of notification of the proposed changes) to consider the proposal and respond to the Lead Partner. The Agency shall be entitled at its discretion to:
- 4.9.1 accept the proposed changes, in which case the Lead Partner must ensure that the accepted changes are correctly logged in IMS. The changes shall be deemed to be effective from the point at which they are formally accepted by the Agency in IMS; or
  - 4.9.2 reject the proposed changes, in which case the Lead Partner shall (subject to Condition 4.11 (*Indicative Schemes*)) have a period of twenty (20) Business Days (from the point of notification of the Agency's rejection of the proposed changes) to notify the Agency as to whether the Relevant Consortium Member wishes to proceed with the Indicative Scheme on the basis originally submitted or to withdraw the Indicative Scheme from the Approved Bid.

4.10 If the Lead Partner:

4.10.1 withdraws the Indicative Scheme from the Approved Bid; or

4.10.2 fails to notify the Agency within the period prescribed in Condition 4.9.2 (*Indicative Schemes*) as to which option it wishes to pursue

the Agency shall be entitled permanently to withdraw the Indicative Allocation and the Allocated Grant figure shall be reduced commensurately.

4.11 Notwithstanding any other term of this Agreement, all Indicative Schemes must (unless otherwise agreed) either have achieved Firm Scheme status or have been withdrawn from the Approved Bid by the Transition Date. If an Indicative Scheme has failed to achieve Firm Scheme status by such date the Agency shall be entitled permanently to withdraw the Indicative Allocation and the Allocated Grant figure shall be reduced commensurately.

## 5 Firm Schemes

5.1 The Lead Partner must:

5.1.1 not less than five (5) Business Days prior to the projected Start on Site Date upload such details of each New Scheme (other than an Indicative Scheme) comprised within the Approved Bid as are required onto the Agency's IMS;

5.1.2 (subject to Conditions 4.5 (*Indicative Schemes*) to 4.8 (*Indicative Schemes*) (inclusive)) not less than five (5) Business Days prior to the relevant Transition Date, upload onto the Agency's IMS (or amend through IMS) such details of each Indicative Scheme as are required in order for the Agency to consider the conversion of such Indicative Scheme to a Firm Scheme for the delivery of SOAHP Housing

and where in either case the relevant 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.

5.2 In permitting the Lead Partner to submit the details referred to in Condition 5.1 (*Firm Schemes*), the Relevant Consortium Member is deemed to represent and warrant to the Agency that:

5.2.1 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

(b) comprises no Public Sector Subsidy beyond that identified in the Firm Scheme Details;

5.2.2 it:

(a) possesses a Secure Legal Interest in the Site;

- (b) has obtained all Consents necessary for the lawful development and/or Rehabilitation 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; and
- (c) has complied with all applicable requirements of the Capital Funding Guide in relation to the Firm Scheme.

5.3 The Agency has no obligation to make any payment of grant to the Lead Partner in relation to anything other than a Firm Scheme.

5.4 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 in IMS and in relation to which the First Tranche Grant has been paid.

5.5 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 SOAHP 2016/21 or other programme commitments) to provide Firm Scheme Grant in relation to the relevant scheme.

## 6 **Changes to Firm Schemes or the Consortium**

6.1 The Lead Partner may propose changes to any Firm Scheme at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS.

6.2 Where a Pre-Start Change is proposed, the Agency will be entitled to accept or reject such change or to accept it subject to adjustment by the Agency in accordance with the procedure set out in Condition 6.3 (*Changes to Firm Schemes or the Consortium*).

6.3 If the Agency:

6.3.1 accepts the Pre-Start Change in principle, it shall be entitled to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Firm Scheme Grant figure than that set out in the Firm Scheme Details, the Agency will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of receipt of the Agency's notification to advise the Agency as to whether the Relevant Consortium Member wishes to withdraw the Firm Scheme from this Agreement or proceed with it on the basis of the recalculated Firm Scheme Grant figure or to withdraw the proposed Pre-Start Change. If:

- (a) the Firm Scheme is withdrawn by the Lead Partner, the Agency will (subject to any invocation by the Relevant Consortium Member and Lead Partner of Condition 8.1 (*Firm Scheme Substitution and Additions*) and any resulting operation of Condition 8 (*Firm Scheme Substitutions and Additions*)) withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Grant figure will be reduced commensurately;
- (b) the proposed Pre-Start Change is withdrawn by the Lead Partner, the Lead Partner shall reinstate in IMS the Firm Scheme Details ante the

date of the Pre-Start Change and, following the Agency's approval of such reinstated details in IMS, the Firm Scheme shall proceed on the basis of those reinstated Firm Scheme Details.

- (c) the Relevant Consortium Member wishes to proceed with the Firm Scheme, the Lead Partner must immediately amend the Firm Scheme Details in IMS to reflect both the Pre-Start Change and the recalculated Firm Scheme Grant figure. The amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by the Agency (through IMS); and if
- (d) a Notification Failure occurs, the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement.

6.3.2 accepts the Pre-Start Change (including any change to the Firm Scheme Grant figure) as proposed by the Lead Partner, it will accept the change through IMS and the relevant Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

6.3.3 rejects the Pre-Start Change, the Agency will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of the Agency's notification to advise the Agency as to whether the Relevant Consortium Member wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:

- (a) the Firm Scheme is withdrawn, the Agency will permanently withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Grant figure will be reduced commensurately;
- (b) a Notification Failure occurs, the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement

6.4 Where a Post-Start Change is proposed, the Agency will be entitled to accept or reject such change or to accept it subject to adjustment by the Agency in accordance with the procedure set out in Condition 6.5 (*Changes to Firm Schemes or the Consortium*).

6.5 If the Agency:

6.5.1 accepts the Post-Start Change in principle, it shall be entitled to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Firm Scheme Grant figure than that set out in the Firm Scheme Details, the Agency will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of receipt of the Agency's notification to advise the Agency as to whether the Relevant Consortium Member wishes to withdraw the Firm Scheme from this Agreement, proceed with the Firm Scheme on the basis of the recalculated Firm Scheme Grant figure or to retract the Post-Start Change. If:

- (a) the Relevant Consortium Member wishes to withdraw the Firm Scheme, the Agency will permanently withdraw the balance of the Firm Scheme

Grant allocated to such scheme and the Relevant Consortium Member must repay the Agency a sum equivalent to the First Tranche Grant received by it, such repayment to be made within fifteen (15) Business Days of receipt of the Agency's written demand for the same;

- (b) the Relevant Consortium Member wishes to proceed with the Firm Scheme, the Lead Partner must immediately amend the Firm Scheme Details in IMS to reflect both the Post-Start Change and the recalculated Firm Scheme Grant figure and the amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by the Agency (through IMS). The Second Tranche Grant figure will be adjusted downwards to take account of the recalculated Firm Scheme Grant figure. If such adjustment would result in the Second Tranche Grant being a negative amount, the Relevant Consortium Member must pay the Agency the Deficit Sum within fifteen (15) Business Days of receipt of the Agency's written demand for the same;
- (c) the Relevant Consortium Member wishes to retract the Post-Start Change, the Lead Partner must do so immediately via IMS and the Firm Scheme will proceed as contemplated ante the Lead Partner's submission of the Post-Start Change;
- (d) a Notification Failure occurs, the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement.

6.5.2 accepts the Post-Start Change (including any change to the Firm Scheme Grant figure) as proposed by the Lead Partner, it will accept the change through IMS and the relevant Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

6.5.3 rejects the Post-Start Change, the Agency will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of the Agency's notification to advise the Agency as to whether the Relevant Consortium Member wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:

- (a) the Relevant Consortium Member wishes to withdraw the Firm Scheme, the Agency will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Relevant Consortium Member must repay the Agency a sum equivalent to the First Tranche Grant received by it, such repayment to be made within fifteen (15) Business Days of receipt of the Agency's written demand for the same;
- (b) a Notification Failure occurs, the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement

6.6 The Agency will not be obliged to pay any Tranche to the Lead Partner in relation to any Firm Scheme unless any changes required to the Firm Scheme Details by Condition 6.3 (*Changes to Firm Schemes or the Consortium*) or Condition 6.5 (*Changes to Firm*

*Schemes or the Consortium*) have been made and have been accepted by the Agency in IMS or unless the Firm Scheme otherwise proceeds on the basis originally submitted.

6.7 The Agency will take reasonable steps to contact the Lead Partner during the period specified in each of Conditions 6.3.1 (*Changes to Firm Schemes or the Consortium*), 6.3.3 (*Changes to Firm Schemes or the Consortium*), 6.5.1 (*Changes to Firm Schemes or the Consortium*) and 6.5.3 (*Changes to Firm Schemes or the Consortium*) to remind the Lead Partner of the need for the appropriate notification, but any failure on the Agency's part to do so will not preclude the Agency from treating a Firm Scheme as withdrawn where there has been a Notification Failure under any of those Conditions.

6.8 Under no circumstances will the Agency be required to accept any Pre-Start Change or Post-Start Change which would have the result of increasing the amount of the Allocated Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme.

6.9 A Consortium Member shall be released as a party to this Agreement where:

6.9.1 a Deed of Release has been completed in accordance with the provisions of Condition 6.10 (*Changes to Firm Schemes or the Consortium*) and

6.9.2 either:

(a) following information supplied and/or representations made by the Consortium, the Agency is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to it; or

(b) any change to the Approved Bid as a result of the proposed withdrawal of the Outgoing Consortium Member requested by the Lead Partner does not materially and adversely affect the delivery of the Approved Bid and the Agency has given its prior written consent to such change.

**provided that** no Deed of Release may be completed where an Outgoing Consortium Member is to remain the Landlord of any Firm Scheme that is yet to reach Practical Completion and in respect of which the relevant Firm Scheme Grant is yet to be claimed.

6.10 Subject to the proviso in Condition 6.9.2 (*Changes to Firm Schemes or the Consortium*), on and from the date that the Outgoing Consortium Member provides to the Agency the Completion Authority and the Deed of Release duly executed by it and all other Consortium Members, the Outgoing Consortium Member shall no longer be a Party to this Agreement.

6.11 On and from the date that a New Consortium Member provides to the Agency the Completion Authority and the Deed of Adherence, duly executed by it and the other Consortium Members, the New Consortium Member shall become a party to this Agreement and be bound by the obligations of a Consortium Member as herein provided.

## 7 Time extensions

7.1 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 10.3 (*Operational Obligations*) or Condition 11 (*Review, Monitoring and Reporting*)) and such failure is

directly caused by a Milestone Extension Event, the Agency shall, subject always to Condition 7.3 (*Time extensions*), 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.

7.2 The Agency shall not be obliged to extend a Milestone Date:

7.2.1 unless a Milestone Extension Event exists; or

7.2.2 in circumstances where such extension would (when taken individually or together with other extensions granted under this Agreement) 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 granted under this Agreement or to other grant recipients of the SOAHP 2016/21) materially and adversely affect the Agency's projected expenditure profile in relation to any year of the SOAHP 2016/21 and in particular (but without limitation) such expenditure profile in relation to the last Quarter of the relevant Financial Year.

7.3 The Agency shall not under any circumstances be required or obliged to extend a Firm Scheme Completion Date beyond 31 March 2022, but may at its sole discretion elect to do so.

## 8 Firm Scheme substitution and additions

8.1 A Consortium Member may instruct the Lead Partner to request that the Agency accepts the substitution of a different scheme (a **Substitute Scheme**) in place of an Undeliverable Scheme or a Withdrawn Scheme.

8.2 Where Condition 8.1 (*Firm Scheme substitution and additions*) applies, the Lead Partner must submit to the Agency through IMS such details of the relevant Substitute Scheme as the Agency may require. In permitting the submission of or in submitting the details of the Substitute Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the Substitute Scheme as are given pursuant to Condition 5.2 (*Firm Schemes*) in relation to a Firm Scheme.

8.3 The Agency shall consider the submitted details and if the Agency is satisfied (a) with the information provided, (b) the level of grant funding requested and (c) that:

8.3.1 the Substitute Scheme offers value for money;

8.3.2 the Substitute Scheme is consistent with the Approved Bid (including the scheme cost information and information in relation to the level of the Relevant Consortium Member's contribution or that of the Consortium to the Substitute Scheme);

8.3.3 the Relevant Consortium Member's performance in respect of other Firm Schemes has satisfied the terms of this Agreement;

8.3.4 the Substitute Scheme can be fully delivered by 31 March 2022 (or such earlier date as is set out in IMS);

8.3.5 no Bid Default, Fundamental Default nor Specified Default subsists; and

8.3.6 the Submitted Standards submitted in respect of such scheme by the Lead Partner are satisfactory

the Agency shall be entitled (but not obliged) to accept the Substitute Scheme as a Firm Scheme.

8.4 Where the Agency accepts a Substitute Scheme into the Approved Bid pursuant to Condition 8.3 (*Firm Scheme substitution and additions*) it will confirm its acceptance of such scheme to the Lead Partner through IMS.

8.5 With effect from the Substitute Scheme Acceptance Date:

8.5.1 the Substitute Scheme shall constitute a Firm Scheme and shall be immediately subject to the whole terms and conditions of this Agreement; and

8.5.2 the details set out by the Lead Partner 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.

8.6 It is agreed by the parties that any Firm Scheme Grant received by the Relevant Consortium Member in relation to the Undeliverable Scheme shall be deemed to have been received by the Relevant Consortium Member in relation to the Substitute Scheme.

8.7 Each Consortium Member acknowledges and agrees that an Undeliverable Scheme constitutes a "project" for the purposes of and falls within Paragraph 7(e) of the Recovery Determination.

8.8 The parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Bid.

8.9 Where Condition 8.8 (*Firm Scheme substitution and additions*) applies, the Lead Partner shall submit to the Agency through IMS such details of the proposed Additional Scheme as the Agency may require. In permitting the submission of or in submitting the details of the Additional Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the Additional Scheme as are given pursuant to Condition 5.2 (*Firm Schemes*) in relation to a Firm Scheme.

8.10 The Agency shall consider the Additional Scheme and if the Agency is satisfied that:

8.10.1 the Additional Scheme offers value for money;

8.10.2 the Relevant Consortium Member'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;

8.10.3 the Additional Scheme can be fully delivered by 31 March 2022 (or such other date as is set out and agreed by the Agency in and through IMS);

8.10.4 no Bid Default, Fundamental Default nor Specified Default subsists; and

8.10.5 the Submitted Standards submitted in respect of such scheme by the Lead Partner are satisfactory;

the Agency shall be entitled (but not obliged) to accept the Additional Scheme into the Approved Bid.

8.11 Where the Agency accepts an Additional Scheme into the Approved Bid pursuant to Condition 8.10 (*Firm Scheme substitutions and additions*) it shall confirm such acceptance to the Lead Partner through IMS.

8.12 With effect from the Additional Scheme Acceptance Date:

8.12.1 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;

8.12.2 the details set out by the Lead Partner 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

8.12.3 each of the Lead Partner and the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such new Firm Scheme.

8.13 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 8.6 (*Firm Scheme substitution and additions*)) be deemed to be increased or decreased (as appropriate) by the Firm Scheme Grant agreed by the Agency in IMS in relation to the relevant Firm Scheme.

## 9 **Delivery Obligations**

9.1 The Relevant Consortium Member must in relation to each Firm Scheme:

9.1.1 carry out the acquisition of the Site, procure and diligently pursue the completion of the Works so that:

(a) the Firm Scheme is (subject to Condition 7.1 (*Time extensions*)) constructed, delivered and/or Rehabilitated (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 and of the Consents are satisfied;

9.1.2 actively market the SOAHP Dwellings with a view to ensuring (as far as practicable) the Disposal or letting of such dwellings to individuals as SOAHP Housing at Practical Completion (or as soon as reasonably possible thereafter);

9.1.3 promptly notify the Agency in writing of any failure to comply with Condition 9.1.1(a).

10 **Operational Obligations**

- 10.1 In delivering the Firm Scheme and in operating and administering the Firm Scheme after Practical Completion, the Relevant Consortium Member must observe and comply with Legislation, the applicable terms of the Capital Funding Guide, the Recovery Determination and the Consents.
- 10.2 The Relevant Consortium Member 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 Relevant Consortium Member with its obligations under this Agreement.
- 10.3 The Relevant Consortium Member must notify the Agency in writing (save in respect of Condition 10.3.1 (*Operational obligations*)), where notification is required to be given through IMS):
- 10.3.1 immediately once the Start on Site Date has occurred;
  - 10.3.2 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 the Firm Scheme (or any part of it) beyond any amount of Public Sector Subsidy notified to the Agency by the Lead Partner pursuant to Condition 5.1 (*Firm Schemes*), Condition 8.2 (*Firm Scheme substitution and additions*) or Condition 8.9 (*Firm Scheme substitution and additions*);
  - 10.3.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect;
  - 10.3.4 of any other event or circumstance in relation the Firm Scheme as the Agency may reasonably require from time to time and within such timeframes as the Agency may reasonably require.
- 10.4 Without prejudice to Condition 10.1 (*Operational Obligations*), the Relevant Consortium must in operating and administering the Firm Scheme after Practical Completion:
- 10.4.1 subject to Condition 17.1 (*Repayment of Grant*) not use the SOAHP Dwellings for any purpose other than the Agreed Purposes without the Agency's prior written consent;
  - 10.4.2 not charge a higher initial rent in relation to a SOAHP Rent Dwelling or a Rent to Buy Dwelling than set out in the relevant Firm Scheme Details;
  - 10.4.3 subject to any contrary requirement of the Legislation comply with the Rent Standard in respect of the SOAHP Rent Dwellings;
  - 10.4.4 comply with the Tenancy Standard in respect of the SOAHP Rent Dwellings and the Rent to Buy Dwellings;
  - 10.4.5 observe and comply with the requirements of the Capital Funding Guide in relation to:

- (a) any Disposal of the Affordable Home Ownership Dwellings and ensure that such Disposal takes effect only at arm's length and on market terms;
  - (b) the form and content of any Help to Buy: Shared Ownership Lease granted by or to be granted by the Relevant Consortium Member in relation to a SOAHP Dwelling; and
  - (c) the letting, management or Disposal of SOAHP Rent Dwellings;
  - (d) the purpose, client group, letting, rents, management and Disposals of Rent to Buy Dwellings;
  - (e) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement.
- 10.4.6 comply at its own cost with the Agency's requirements in relation to Compliance Audit;
- 10.4.7 in relation to SOAHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner) and complete the "Initial Sales" data screens on IMS promptly following the sale of any Affordable Home Ownership Dwelling or Rent to Buy Dwelling;
- 10.4.8 in relation to each SOAHP Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds.
- 10.4.9 ensure that it is party to a Help to Buy Agreement where any Firm Scheme includes Affordable Home Ownership Dwellings or Rent to Buy Dwellings;
- 10.4.10 not seek possession of any Affordable Home Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988; and
- 10.4.11 ensure that all Rent to Buy Dwellings are made available as Rent to Buy Dwellings for a period of not less than 5 years from the point at which they first becomes available for letting and ensure that prior to any change to that purpose or to any Disposal they are offered for sale to the then current Rent to Buy Tenant.
- 10.5 The Relevant Consortium Member 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 Lead Partner from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 10.6 Each Consortium Member shall:
- 10.6.1 use its reasonable endeavours to complete its proportion of the Permitted Conversions in accordance with the timescale projected for such Permitted Conversions in the Approved Bid; and

- 10.6.2 not convert more dwellings let at a Social Rent within its housing stock to Affordable Rent beyond the number required to create its Individual Conversion Capacity; and
- 10.6.3 not dispose of more dwellings let at a Social Rent within its housing stock on Affordable Home Ownership or market sale terms than are required to create its Individual Conversion Capacity **save that** nothing in this Condition 10.6.3 (*Operational Obligations*) is intended to preclude any Consortium Member from making such other disposals from its stock as:
- (a) are consistent with its corporate asset management strategies from time to time; and
  - (b) are consented to by the Regulator (where any such consent is required).
- 10.7 In discharging its obligations under this Agreement, each Consortium Member must act at all times with the utmost good faith, with the intent to deliver the Approved Bid and with proper regard to the need for efficiency in the use of public funds.
- 10.8 Each Consortium Member must:
- 10.8.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
  - 10.8.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 10.8.3 comply with the Agency's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as the Agency or the relevant industry body may update from time to time (**Relevant Policies**);
  - 10.8.4 have and maintain in place throughout the duration of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and Condition 10.8.2 (*Operational Obligations*), and will enforce them where appropriate;
  - 10.8.5 if required by the Agency, produce a written certificate to it signed by an officer of the Consortium Member, confirming compliance with this Condition 10.8 by the Consortium Member and all persons associated with it under 10.8.6. The Consortium Member shall provide such supporting evidence of compliance as the Agency may reasonably request.
  - 10.8.6 ensure that any person associated with the Consortium Member who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consortium Member in this Condition 10.8 (Relevant Terms). The Consortium Member shall be

responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Agency for any breach by such persons of any of the Relevant Terms.

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

and for the purpose of this Condition 10.8, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Condition **Error! Reference source not found.** a person associated with the Consortium Member includes any Subcontractor of the Consortium Member.

- 10.9 Where any Consortium Member is aware that it is in breach of an obligation under this Condition 10 (*Operational Obligations*) it must promptly notify the Agency of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

## 11 **Review, Monitoring and Reporting**

- 11.1 Each Consortium Member must comply fully with the contract management and reporting obligations set out in this Condition 11 (*Review, Monitoring and Reporting*).

- 11.2 Each Consortium Member acknowledges the high importance to the Agency of it being promptly advised when any circumstance occurs which may:

11.2.1 impact on its ability to deliver any Firm Scheme in accordance with the terms of this Agreement;

11.2.2 change any assumptions in relation to the Approved Bid or any Firm Scheme which would provide an opportunity for the Consortium or any Consortium Member to deliver more SOAHP Dwellings with the Allocated Grant or with the Firm Scheme Grant (as applicable);

11.2.3 indicates that the Agency is making available more grant than is required to deliver the Approved Bid or a Firm Scheme; or

11.2.4 without prejudice to the circumstances specified in Conditions 11.2.1 (*Review, Monitoring and Reporting*) to 11.2.4 (*Review, Monitoring and Reporting*) (inclusive), indicate that one or more Consortium Members will need to make more or fewer Permitted Conversions;

11.2.5 constitutes a breach of Condition 10 (*Operational Obligations*); or

11.2.6 constitutes a Default Event

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

- 11.3 Where the Agency becomes aware either via the Contract Monitoring Outputs or through other monitoring, that the Approved Bid has not been complied with or is unlikely to be

complied with, the Agency may in order to address such compliance failure issue an Allocation Change Notice requiring:

- 11.3.1 a reduction, increase or other change to the number of SOAHP Dwellings to be delivered or to the Conversion Capacity; and/or
- 11.3.2 a reduction or other adjustment to the Allocated Grant or to any Firm Scheme Grant; and/or
- 11.3.3 any other change to the Approved Bid the Agency deems reasonably necessary;

and such Allocation Change Notice shall be discussed as soon as reasonably practicable by the Agency and the Lead Partner and in any event within fifteen (15) Business Days of the date of issue of the Allocation Change Notice.

- 11.4 Nothing in Condition 11.3 (*Review, Monitoring and Reporting*) shall preclude the Agency and the Lead Partner from agreeing an alternative means of dealing with the failure to comply with the Approved Bid to that set out in the Allocation Change Notice **save that** unless such alternative is agreed and reflected in IMS by the end of the then current Financial Year, the change required by the Agency in the Allocation Change Notice shall take effect on the next following 1 April and the Agency shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Allocation Change Notice.
- 11.5 The Lead Partner 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.
- 11.6 The Officer's Certificate shall be signed by the Lead Partner's Representative or, where agreed in advance by the Agency, another specified member of the Lead Partner's executive management team.
- 11.7 Within ten (10) Business Days of receipt of the Officer's Certificate and the information required pursuant to Condition 11.5 (*Review, Monitoring and Reporting*) and Condition 11.12 (*Review, Monitoring and Reporting*) (or within such longer period as the Agency may at its absolute discretion agree), the Agency and the Lead Partner shall meet during the Term to discuss or review (without limitation):
  - 11.7.1 the Consortium's performance in delivering the Approved Bid (including the conversion of Indicative Schemes into Firm Schemes);
  - 11.7.2 progress in relation to each Indicative Scheme and Firm Scheme including delivery forecasts, lettings and sales forecasts and progress against previous such forecasts;
  - 11.7.3 the Contract Monitoring Outputs;
  - 11.7.4 the position on agreeing nomination arrangements in respect of SOAHP Rent Dwellings and Affordable Home Ownership Dwellings with relevant Local Housing Authorities;

- 11.7.5 any Pre-Start Changes or Post-Start Changes made during the immediately preceding Quarter or anticipated by the Lead Partner to be requested during the current Quarter; and
- 11.7.6 such other matters in relation to the performance or subject matter of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Review Meeting.
- 11.8 The Agency or the Lead Partner may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:
  - 11.8.1 gives reasonable prior written notice to the other of such meeting; and
  - 11.8.2 includes with that notice an agenda for such meeting.
- 11.9 At the Annual Review Meeting in addition to the matters to be addressed at each Review Meeting (as specified in Condition 11.7 (*Review, Monitoring and Reporting*)), the Agency and the Lead Partner shall also review:
  - 11.9.1 all changes made to any Firm Scheme or to the Approved Bid in the previous Financial Year;
  - 11.9.2 all withdrawals of Indicative Schemes during the immediately preceding year;
  - 11.9.3 the capacity of each Consortium Member to bring forward additional housing supply under SOAHP 2016/21; and
  - 11.9.4 the details of all Firm Scheme Grant transmitted by the Lead Partner to each Consortium Member in the preceding Financial Year.
- 11.10 The Agency's Representative and the Lead Partner's Representative (or, where agreed with the Agency in advance, such other member of the Lead Partner's executive management team) shall attend all Review Meetings. The parties agree that the Regulator shall also be entitled to send a representative to attend such meetings.
- 11.11 Save as otherwise agreed between the parties, any meeting under this Condition 11 (*Review, Monitoring and Reporting*) shall be minuted by the Lead Partner and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.
- 11.12 The Lead Partner shall:
  - 11.12.1 provide the Agency with such information as the Agency shall reasonably require to support or facilitate the discussions and monitoring referred to in this Condition 11 (*Review, Monitoring and Reporting*); and
  - 11.12.2 take all reasonable steps to ensure that any information provided to the Agency pursuant to this Condition 11 (*Review, Monitoring and Reporting*) is accurate in all material aspects

and each Consortium Member must provide the Lead Partner with such information as the Lead Partner requires in order to allow it to discharge its obligations under this Condition 11 (*Review, Monitoring and Reporting*).

11.13 The Lead Partner shall, as and when requested by the Agency (as required in connection with this Agreement, the Approved Bid or any Indicative Scheme or Firm Scheme) promptly provide to the Agency hard and/or electronic copies of:

11.13.1 any and all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of each Consortium Member (including where the source was created by and/or is held by any Consortium Member Party (or its consultants)) for the purposes of or in connection with this Agreement;

11.13.2 all such data, materials, documents and accounts created, acquired or brought into existence by each Consortium Member's officers, employees, agents or consultants relating to any Indicative Scheme or Firm Scheme and which have been supplied to each of them for the purposes of this Agreement; and

11.13.3 the elemental breakdown of the construction costs in relation to each Firm Scheme

and each Consortium Member shall co-operate with any request made by the Lead Partner for such data, materials, documents and accounts in order to facilitate the Lead Partner's compliance under this obligation.

11.14 On the expiry of this Agreement or (if earlier) upon its termination, each Consortium Member shall if requested to do so deliver up to the Agency all the data, materials, documents and accounts referred to in this Condition 11 (*Review, Monitoring and Reporting*) which it has in its possession, custody or control and shall procure the handing over to the Agency of such data, materials, documents and accounts referred to in Condition 11.13 (*Review, Monitoring and Reporting*) or as otherwise directed by the Agency.

11.15 Each Consortium Member 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 11 (*Review, Monitoring and Reporting*) and each Consortium Member may retain such data, documents, materials and accounts in electronic form only.

11.16 Each Consortium Member agrees that the Agency's auditors (including the Comptroller and Auditor General) shall have unrestricted rights of access to any and all information to which the Agency is entitled under this Agreement or to which the Agency's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.

11.17 Each Consortium Member must promptly and fully co-operate with any request for information or evidence from time to time of:

11.17.1 any auditor (whether internal or external) of the Agency; and/or

11.17.2 the Agency, to the extent such request relates to this Agreement (or any matter associated with it), or to SGEI Information and which the Agency is required to provide to any third party pursuant to Legislation or by any Competent Authority.

- 11.18 Each Relevant Consortium Member must ensure that for each Firm Scheme it and each Consortium Member Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the SOAHP Housing which identify items of Decision Revenue, the Firm Scheme Grant and Decision Allowable Costs and such other items required under this Condition 11 (*Review, Monitoring and Reporting*).
- 11.19 Each Relevant Consortium Member shall upon the Agency's written request:
- 11.19.1 make available upon reasonable notice for the Agency's inspection (and that of any person referred to in this Condition 11 (*Review, Monitoring and Reporting*) or in Condition 19 (*Information and Confidentiality*) or any person appointed pursuant to Condition 25 (*Dispute Resolution*)) the books of account referred to in Condition 11.18 (*Review, Monitoring and Reporting*) (together with, if specified, such supporting correspondence, agreements, orders, invoices, receipts and other documents) and shall submit a report in relation to the same to the Agency as and when requested to do so; and
- 11.19.2 procure that a representative of the Agency (or any of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Condition 11 (*Review, Monitoring and Reporting*) are held or maintained and examine such records or information.
- 11.20 Each Consortium Member shall ensure that it and any Consortium Member Affiliate (at its or their cost) co-operates with the Agency during an SGEI Review and it shall if requested promptly provide the Agency with SGEI Information and such other information, evidence and/or explanation as the Agency may reasonably require.

## 12 **Transparency Obligations**

- 12.1 Each Consortium Member acknowledges and agrees that:
- 12.1.1 where the proportion of the Allocated Grant received or to be received by that Consortium Member (whether by itself or if aggregated with other SOAHP 2016/21 Funds or funds made available under (i) any subsequent Agency capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, that Consortium Member 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
- 12.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, each Consortium Member hereby consents for the Agency to publish such information as it considers appropriate in relation to the SOAHP 2016/21, including, but not limited to, details of the Approved Bid, Development Costs, other costs and funding for Firm Schemes, including from time to time agreed changes to this information.
- 12.2 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:

- 12.2.1 following consultation with the Lead Partner and having taken (or not taken, as the case may be) its views into account; or
  - 12.2.2 without consulting the Lead Partner.
- 12.3 The Lead Partner shall assist and co-operate (and procure that the other Consortium Members assist and co-operate) with the Agency to enable the Agency to publish the information referred to in Condition 12.1.2 (*Transparency Obligations*).
- 13 **Grant Claim Procedures**
- 13.1 Subject to a Firm Scheme having reached the Start on Site Date, the Lead Partner may apply to the Agency for the First Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Lead Partner 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.
- 13.2 In permitting the Lead Partner to submit an application pursuant to Condition 13.1 (*Grant Claim Procedures*) the Relevant Consortium Member is deemed to:
- 13.2.1 repeat the representations and warranties set out in Condition 5.2 (*Firm Schemes*);
  - 13.2.2 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 in IMS;
  - 13.2.3 represent and warrant to the Agency that it is aware of the confirmations and certifications made or to be made by the Lead Partner on the Relevant Consortium Member's behalf (and has authorised the Lead Partner to make such confirmations and certifications) in IMS in relation to the Firm Scheme and such confirmation and certifications have been or will be correct in all material respects;
  - 13.2.4 represent and warrant to the Agency that it is a Registered Provider and retains its status as an Investment Partner; and
  - 13.2.5 represent and warrant to the Agency that no Withholding Event or Default Event has occurred or arisen.
- 13.3 Subject to a Firm Scheme having reached Practical Completion by the Firm Scheme Completion Date, the Lead Partner may apply to the Agency for the Second Tranche Grant payable in respect of that Firm Scheme to be paid to it. The Lead Partner 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.
- 13.4 In permitting the Lead Partner to submit an application pursuant to Condition 13.3 (*Grant Claim Procedures*) the Relevant Consortium Member is deemed to represent and warrant to the Agency that:
- 13.4.1 the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of this Agreement;

- 13.4.2 the Firm Scheme has reached Practical Completion;
  - 13.4.3 it is aware of the confirmations and certifications to be made by the Lead Partner on the Relevant Consortium Member's behalf (and has authorised the Lead Partner to make such confirmations and certifications) in IMS in relation to the Firm Scheme and such confirmation and certifications have been are or will be correct in all material respects;
  - 13.4.4 it is a Registered Provider;
  - 13.4.5 it 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 it 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;
  - 13.4.6 it possesses a Secure Legal Interest in the Site and for the purposes of this Condition 13.4.6 (*Grant Claim Procedures*) the parties acknowledge and agree that limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect;
  - 13.4.7 the Firm Scheme is covered by the terms of a current Help to Buy Agency Agreement (where applicable); and
  - 13.4.8 no Withholding Event or Default Event has occurred or arisen.
- 13.5 In submitting an application pursuant to Condition 13.2 (*Grant Claim Procedures*) or Condition 13.4 (*Grant Claim Procedures*) on its own behalf the Lead Partner is deemed to represent and warrant to the Agency:
- 13.5.1 in the terms set out in Conditions 13.2.1 (*Grant Claim Procedures*), 13.2.2 (*Grant Claim Procedures*), 13.2.4 (*Grant Claim Procedures*) and 13.2.5 (*Grant Claim Procedures*) (inclusive) for the purposes of an application made pursuant to Condition 13.1 (*Grant Claim Procedures*); and
  - 13.5.2 in the terms set out in Conditions 13.4.1 (*Grant Claim Procedures*), 13.4.2 (*Grant Claim Procedures*), 13.4.4 (*Grant Claim Procedures*), 13.4.5 (*Grant Claim Procedures*), 13.4.6 (*Grant Claim Procedures*), 13.4.7 (*Grant Claim Procedures*) and 13.4.8 (*Grant Claim Procedures*) (inclusive) for the purposes of an application made pursuant to Condition 13.3 (*Grant Claim Procedures*); and
  - 13.5.3 that all confirmations and certifications made or to be made by it in IMS in relation to the Firm Scheme have been are or will be correct in all material respects.
- 13.6 In submitting an application pursuant to Condition 13.2 (*Grant Claim Procedures*) or Condition 13.4 (*Grant Claim Procedures*) the Lead Partner is deemed to represent and warrant to the Agency that it retains its status as an Investment Partner.

## 14 **Payment of Grant**

### 14.1 Subject to:

14.1.1 the Agency (acting reasonably) being satisfied with the Lead Partner's application for payment (including the information warranted pursuant to Conditions 13.2 and 13.4); and

14.1.2 Condition 6.6 (*Changes to Firm Schemes*), Condition 14.3 (*Payment of Grant*), Condition 14.4 (*Payment of Grant*), Condition 15 (*Adjustments to Second Tranche Grant*) and Condition 16 (*Withholding of Grant*)

the Agency shall (resources permitting) pay the First Tranche Grant or the Second Tranche Grant (as applicable) to the Lead Partner within fifteen (15) Business Days of receipt of a relevant satisfactory application.

14.2 If the Agency is not satisfied with the Lead Partner's application for payment, it must notify the Lead Partner 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 Lead Partner 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 Condition 13 (*Grant Claim Procedures*) and this Condition 14 (*Payment of Grant*) (as applicable) will be reapplied to the Lead Partner's resubmitted or amended application for payment.

14.3 The Agency shall not be obliged to pay the Lead Partner:

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

14.3.2 the Second Tranche Grant before the Firm Scheme Completion Date (as confirmed by the Agency through IMS) has occurred;

14.3.3 any Tranche if the Firm Scheme has not been accepted by the Agency through IMS.

14.4 The Agency shall not be obliged to make any payment by way of First Tranche Grant or Second Tranche Grant (as applicable) or otherwise in respect of any Firm Scheme which has not reached:

14.4.1 the Start on Site Date; or

14.4.2 Practical Completion by 31 March 2022 (subject to any extension to such date pursuant to Condition 7.3 (*Time extensions*)).

14.5 Where the Agency pays Firm Scheme Grant to the Lead Partner, the Allocated Grant shall be reduced by a commensurate amount.

14.6 Each Consortium Member acknowledges and agrees that notwithstanding that Firm Scheme Grant is or will be paid to the Lead Partner, each Consortium Member is deemed to have received such Firm Scheme Grant as grant (for the purposes of Sections 19 and 31-34 of the HRA 2008) in relation to those Firm Schemes in relation to which it is or will be the Landlord.

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

15 **Adjustments to Second Tranche Grant**

15.1 If the Agency becomes aware (whether prior to or following receipt of the Lead Partner's application for payment pursuant to Condition 13.3) (*Grant Claim Procedures*) that the Relevant Consortium Member has failed to deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details (including the Submitted Standards), the Agency shall be entitled (at its discretion) either:

15.1.1 to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the Firm Scheme that has actually been delivered; or

15.1.2 to:

- (a) withhold and cancel the Second Tranche Grant payment in relation to the relevant Firm Scheme;
- (b) reallocate or redirect an amount equivalent to such Second Tranche Grant to such other person or purpose as the Agency in its discretion considers appropriate; and
- (c) recover from the Relevant Consortium Member a sum equivalent to any Firm Scheme Grant already paid to it in relation to the relevant Firm Scheme.

15.2 If the Agency exercises its right under Condition 15.1.1 (*Adjustments to Second Tranche Grant*), the Agency will notify the Lead Partner and the Lead Partner will have ten (10) Business Days from the date of receipt of the Agency's notification to advise the Agency as to whether the Relevant Consortium Member wishes to withdraw the Firm Scheme from this Agreement or to proceed with the Firm Scheme on the basis of the recalculated Firm Scheme Grant figure. If:

15.2.1 the Relevant Consortium Member wishes to withdraw the Firm Scheme, the Agency will permanently withdraw the Second Tranche Grant allocated to such scheme and the Relevant Consortium Member must repay the Agency a sum equivalent to the First Tranche Grant received by it, such repayment to be made within fifteen (15) Business Days of receipt of the Agency's written demand for the same;

15.2.2 the Relevant Consortium Member wishes to proceed with the Firm Scheme:

- (a) it must immediately amend the Firm Scheme Details in IMS to reflect the recalculated Firm Scheme Grant figure and the amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by the Agency (through IMS);
- (b) the Second Tranche Grant figure will be deemed to have been adjusted to take account of the recalculated Firm Scheme Grant figure. If such adjustment would result in Second Tranche Grant being a negative figure, the Relevant Consortium Member must pay the Agency the

Deficit Sum within fifteen (15) Business Days of receipt of the Agency's written demand for the same; and

- (c) the Agency will (resources permitting) pay the adjusted Second Tranche Grant (subject to it being a positive amount) to the Lead Partner within fifteen (15) Business Days of the date of the Agency's acceptance of the Lead Partner's amendments to the Firm Scheme Details referred to in Condition 15.2.2(a) (*Adjustments to Second Tranche Grant*);

15.3 If the Lead Partner fails to provide a definitive response to the Agency within the period prescribed in Condition 15.2 (*Adjustments to Second Tranche Grant*), the Agency shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement and the provisions of Condition 15.2.1 (*Adjustments to Second Tranche Grant*) shall take effect.

15.4 Under no circumstances will the Agency be required to accept or implement any recalculation pursuant to Condition 15.2 (*Adjustments to Second Tranche Grant*) which would have the result of increasing the amount of the Allocated Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme as reflected in the Firm Scheme Details ante the amendments referred to in Condition 15.2.2(a) (*Adjustments to Second Tranche Grant*).

15.5 If the Agency exercises its rights under Condition 15.1.2 (*Adjustments to Second Tranche Grant*), the Relevant Consortium Member must repay the Agency all sums due thereunder in accordance with the provisions of Condition 17.6 (*Repayment of grant*).

## 16 **Withholding of grant**

16.1 Notwithstanding any other term of this Agreement:

16.1.1 on or following the occurrence of a GW1 Event, the Agency:

- (a) shall be entitled to suspend any payment due to the Lead Partner (whether by way of First Tranche Grant or Second Tranche Grant or otherwise);
- (b) shall, as soon as reasonably practicable, notify the Lead Partner of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the GW1 Event (the **GW1 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the GW1 Failure has been remedied, notify the Lead Partner to that effect and shall (subject to Condition 16.3 (*Withholding of Grant*)) make such payment of First Tranche Grant or Second Tranche Grant as may then be due to the Lead Partner (assuming no other General Withholding Event subsists). Such payment shall be made within ten (10) Business Days of the date of the Agency's notification under this Condition 16.1.1(c) (*Withholding of Grant*); and
- (d) shall be entitled, if the GW1 Failure has not been remedied within the period prescribed pursuant to Condition 16.1.1(b) (*Withholding of Grant*)

or it is or becomes apparent that the GW1 Failure is incapable of remedy either within such period or at all, to exercise the same rights as are set out in Conditions 16.1.2(a) (*Withholding of Grant*) to 16.1.2(c) (*Withholding of Grant*) (inclusive).

16.1.2 on or following the occurrence of a GW2 Event, the Agency:

- (a) shall not be obliged to make any payment to the Lead Partner (whether by way of First Tranche Grant or Second Tranche Grant or otherwise);
- (b) shall (on giving the Lead Partner not less than ten (10) Business Days written notice) be entitled to cancel any further payment of Allocated Grant due to the Lead Partner under this Agreement; and
- (c) shall be entitled to reallocate or redirect such part of the Allocated Grant as has not yet been paid to the Lead Partner to such other person or for such purpose as the Agency in its discretion considers appropriate.

16.1.3 on or following the occurrence of a GW3 Event, the Agency:

- (a) shall not be obliged to make any payment to the Lead Partner (whether by way of First Tranche Grant or Second Tranche Grant or otherwise);
- (b) shall (on giving the Lead Partner not less than ten (10) Business Days written notice) be entitled to cancel any further payment of Allocated Grant due to the Lead Partner under this Agreement; and
- (c) shall be entitled to reallocate or redirect such part of the Allocated Grant as has not yet been paid to the Lead Partner to such other person or for such purpose as the Agency in its discretion considers appropriate.

16.1.4 on or following the occurrence of a SW1 Event, the Agency:

- (a) shall not be obliged to make any payment to the Lead Partner in relation to the relevant Firm Scheme pending the outcome of the procedure described in Condition 15 (*Adjustments to Second Tranche Grant*); and;
- (b) shall be entitled to exercise its rights under Condition 15 (*Adjustments to Second Tranche Grant*);
- (c) shall where the provisions of Condition 15.2.1 (*Adjustments to Second Tranche Grant*) have effect, be entitled to reallocate or redirect such part of the Firm Scheme Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as the Agency in its discretion considers appropriate.

16.1.5 on or following the occurrence of a SW2 Event, the Agency:

- (a) shall be entitled to suspend any payment due to the Lead Partner (whether by way of First Tranche Grant or Second Tranche Grant or otherwise) in relation to the relevant Firm Scheme;

- (b) shall, as soon as reasonably practicable, notify the Lead Partner of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the SW2 Event (the **SW2 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the SW2 Failure has been remedied, notify the Lead Partner to that effect and shall (subject to Condition 16.3 (*Withholding of Grant*)) make such payment of First Tranche Grant or Second Tranche Grant as may then be due to the Lead Partner (assuming no other General Withholding Event or Scheme Withholding Event (in relation to that Firm Scheme) subsists). Such payment shall be made within ten (10) Business Days of the date of the Agency's notification under this Condition 16.1.5(c) (*Withholding of grant*); and
- (d) shall be entitled, if the SW2 Failure has not been remedied within the period prescribed pursuant to Condition 16.1.5(b) (*Withholding of grant*) or it is or becomes apparent that the SW2 Failure is incapable of remedy either within such period or at all, to exercise the same rights as are set out in Conditions 16.1.6(a) to 16.1.6(c) (inclusive) (*Withholding of grant*);

16.1.6 on or following the occurrence of a SW3 Event, the Agency:

- (a) shall not be obliged to make any payment to the Lead Partner (whether by way of First Tranche Grant or Second Tranche Grant or otherwise) in relation to the relevant Firm Scheme;
- (b) shall (on giving the Lead Partner not less than ten (10) Business Days written notice) be entitled to cancel any Tranche available to the Lead Partner in relation to the relevant Firm Scheme; and
- (c) shall be entitled to reallocate or redirect such part of the Firm Scheme Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as the Agency in its discretion considers appropriate.

16.2 The Agency shall incur no liability of any description to any Consortium Member in or as a result of exercising its rights under this Condition 16 (*Withholding of Grant*).

16.3 The Agency's right to exercise its rights pursuant to:

16.3.1 Conditions 16.1.2(b) and 16.1.2(c) (*Withholding of grant*) in the circumstance of the loss or removal of the Lead Partner's Investment Partner; or

16.3.2 Conditions 16.1.3(b) and 16.1.3(c) (*Withholding of grant*) otherwise than in relation to the withdrawal or revocation of any Consent necessary to the delivery of the Approved Bid

shall be suspended for the duration of the Resolution Period.

16.4 Where on or before the expiry of the Resolution Period:

- 16.4.1 the Relevant Withholding Event related to or was committed or caused by a Consortium Member other than the Lead Partner, the Relevant Consortium Member has been removed from the Consortium;
- 16.4.2 the Relevant Withholding Event related to or was committed or caused by the Lead Partner and:
- (a) the Lead Partner has (save where the Relevant Withholding Event relates to the loss or removal of the Lead Partner's Investment Partner status) been removed from the Consortium; and
  - (b) the remaining Consortium Members have agreed with the Agency (acting reasonably (taking account of the requirement that the Replacement Lead Partner must have Investment Partner status)) the identity of the Replacement Lead Partner; and
- 16.4.3 the Removed Consortium Member has provided to the Agency a Deed of Release duly executed by it and the other Consortium Members together with the Completion Authority; and
- 16.4.4 either:
- (a) following information supplied and/or representations made by the Consortium (excluding the Removed Consortium Member) the Agency is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to it; or
  - (b) any change to the Approved Bid requested by the then Lead Partner as a result of the withdrawal of the Removed Consortium Member does not materially and adversely affect the delivery of the Approved Bid and the Agency has agreed such change in advance in writing

the Agency's right under Conditions 16.1.2 or 16.1.3(b) (*Withholding of grant*) shall lapse in respect of the particular Relevant Withholding Event which gave rise to the implementation of the Resolution Period.

- 16.5 The Agency shall not be obliged to make any payment of First Tranche Grant, Second Tranche Grant or otherwise to the Lead Partner where the due date for such payment falls after 31 March 2022 unless the Agency has in its absolute discretion permitted an extension to that date pursuant to Condition 7.3 (*Time extensions*).

## 17 **Repayment of grant**

- 17.1 The parties acknowledge and agree that:

- 17.1.1 the Recovery Determination has effect (*mutatis mutandis*) in respect of grant paid under this Agreement and that each party has the respective rights and obligations described in such determination;
- 17.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and

- 17.1.3 on the occurrence of a Relevant Event the Relevant Consortium Member must recycle or repay (if applicable) the Capital Grant Recoverable in accordance with the terms of the Recovery Determination
- 17.2 Without prejudice to any other term of this Agreement, the Agency reserves the right whether following termination of this Agreement or otherwise (which right each Consortium Member expressly acknowledges and agrees) at its discretion to recover from the Relevant Consortium Member the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Condition 17.3 (*Repayment of Grant*) (the **Recoverable Amount**) in circumstances where:
- 17.2.1 a Prohibited Act has occurred and the Relevant Consortium Member has not satisfied the Waiver Condition in respect of such Prohibited Act;
- 17.2.2 the relevant Tranche has been paid to the Lead Partner on the basis of a misrepresentation made by or on behalf of the Relevant Consortium Member other than in the circumstances specified in Condition 17.2.5 (*Repayment of Grant*);
- 17.2.3 the Agency has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Lead Partner;
- 17.2.4 a Balancing Sum has arisen;
- 17.2.5 the relevant Tranche has been paid to the Lead Partner but the Agency becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Relevant Consortium Member has failed to deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;
- 17.2.6 the Relevant Consortium Member has breached its obligations under any of Conditions 9 (*Delivery Obligations*), Condition 10 (*Operational Obligations*) or Condition 11 (*Review, Monitoring and Reporting*);
- 17.2.7 a Scheme Termination Event has occurred;
- 17.2.8 a Total Termination Event has occurred;
- 17.2.9 the Agency has exercised its rights under:
- (a) Condition 16.1.1 (*Withholding of Grant*) (and the GW1 Failure has not been remedied within the period prescribed in Condition 16.1.1(b) (*Withholding of Grant*)); or
- (b) Condition 16.1.2 (*Withholding of Grant*);
- 17.2.10 the Agency has exercised its rights under or Condition 16.1.3 (*Withholding of Grant*);
- 17.2.11 the Agency has exercised its rights under:
- (a) Condition 16.1.5 (*Withholding of Grant*) (and the SW2 Failure has not been remedied within the period prescribed in Condition 16.1.5(b) (*Withholding of Grant*)); or

(b) under Condition 16.1.6 (*Withholding of Grant*); or

17.2.12 the Agency has exercised its rights under Clause 15.1.2 (*Adjustments to Second Tranche Grant*) or Condition 15.3 (*Adjustments to Second Tranche Grant*).

17.3 In the circumstances set out in:

17.3.1 Conditions 17.2.1 (*Repayment of Grant*), 17.2.2 (*Repayment of Grant*), 17.2.6 (*Repayment of Grant*) or 17.2.7 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant for any and all affected Firm Schemes;

17.3.2 Conditions 17.2.3 (*Repayment of Grant*) and 17.2.4 (*Repayment of Grant*), 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;

17.3.3 Condition 17.2.5 (*Repayment of Grant*), subject always to Condition 17.4 (*Repayment of Grant*) the Recoverable Amount shall be determined in accordance with the following procedure:

(a) the Relevant Consortium Member and the Agency (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 14.1 (*Payment of Grant*) in respect of the relevant Firm Scheme; and

RFSG is the revised Firm Scheme Grant figure agreed pursuant to Condition 17.3.3(a) (*Repayment of Grant*);

(c) the Relevant Consortium Member must notify the Lead Partner of the revised figure for the Firm Scheme Grant and the Lead Partner shall immediately amend the relevant information on IMS to reflect any agreement reached made pursuant to Condition 17.3.3(a) (*Repayment of Grant*);

(d) where the Relevant Consortium Member and the Agency are unable to agree a revised Firm Scheme Grant figure in accordance with Condition 17.3.3(a) (*Repayment of Grant*) the Agency shall be entitled to terminate this Agreement in accordance with Condition 18.1 (*Default Events and Termination*) and the Recoverable Amount shall be an

amount equal to the Firm Scheme Grant paid pursuant to Condition 14.1 (*Payment of Grant*) in respect of the relevant Firm Scheme.

Under no circumstances will the Agency be required to make any payment to the Lead Partner if the application of the calculation in Condition 17.3.3(b) (*Repayment of Grant*) results in RA being a negative figure.

- 17.3.4 Condition 17.2.8 (*Repayment of Grant*), the Recoverable Amount shall:
- (a) where termination has arisen pursuant to a Fundamental (A) Default, be a sum equal to the aggregated amount of all Firm Scheme Grant already paid by the Agency to the Lead Partner under this Agreement; and
  - (b) where the termination has arisen pursuant to a Specified Default, a Bid Default or a Fundamental (B) Default, be a sum equal to the Fundamental Termination Amount.
- 17.3.5 Condition 17.2.9 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to the Fundamental Termination Amount;
- 17.3.6 Condition 17.2.10 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to the aggregated amount of all Firm Scheme Grant already paid by the Agency to the Lead Partner under this Agreement;
- 17.3.7 Condition 17.2.11 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to any Firm Scheme Grant already paid by the Agency in relation to the relevant Firm Scheme.
- 17.3.8 Condition 17.2.12 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to any Firm Scheme Grant already paid in relation to the relevant Firm Scheme.

17.4 In the circumstances contemplated in Condition 17.2.8 (*Repayment of Grant*) and Condition 17.3.4 (*Repayment of Grant*), the parties agree that the Agency is entitled to recover the Recoverable Amount from:

- 17.4.1 any single Consortium Member;
- 17.4.2 all Consortium Members in such proportions as the Agency (acting reasonably) shall determine; or
- 17.4.3 such Consortium Members and in such proportions as the Agency (acting reasonably) shall determine

**provided that** nothing in this Condition 17.4 (*Repayment of Grant*) shall entitle the Agency to recover (in aggregate) more than the sum of the Recoverable Amount determined in accordance with Condition 17.3.4<sup>1</sup> (*Repayment of Grant*).

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<sup>1</sup> It is assumed that the Consortium will make arrangements for the allocation between Consortium Members of liability for repayment of the Recoverable Amount under its own Consortium arrangements.

- 17.5 Where the Agency (acting reasonably) considers that the Relevant Consortium Member acted fraudulently or dishonestly in claiming (or permitting the Lead Partner to claim) the Firm Scheme Grant for the relevant Firm Scheme, such claim shall be deemed to be a Prohibited Act and the Agency will not be bound by the terms of Condition 17.3.3 (*Repayment of Grant*).
- 17.6 The Relevant Consortium Member must pay the Recoverable Amount to the Agency within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof) overpayment or payment in error was paid to the Lead Partner until the date upon which the Agency receives the repayment required from the Relevant Consortium Member under this Condition 17 (*Repayment of Grant*).
- 17.7 Each Consortium Member acknowledges and agrees that the Disposal or letting of an SOAHP Dwelling to any person for any purpose other than the relevant Agreed Purpose constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 17.8 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 17.9 Notwithstanding any other term of this Condition 17 (*Repayment of Grant*), where a payment has been made following an administrative error by the Agency, the Relevant Consortium Member shall not be liable for interest on the amount repayable under Condition 17.6 (*Repayment of Grant*).
- 17.10 If the Agreement Funding gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the Agency shall be entitled to recover from the Relevant Consortium Member the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is required by Law to recover and the Relevant Consortium Member must pay such amount(s) within ten (10) Business Days of the Agency requesting repayment.

## 18 **Default Events and Termination**

- 18.1 On the occurrence of a Scheme Default, the Agency shall (subject to Condition 18.2 (*Default Events and Termination*)) be entitled immediately upon serving written notice to:
- 18.1.1 terminate this Agreement insofar as it relates to the Firm Scheme to which the Scheme Default relates;
  - 18.1.2 withhold and cancel any further payment of Firm Scheme Grant due to the Lead Partner in relation to the Firm Scheme; and
  - 18.1.3 reallocate or redirect such part of the Firm Scheme Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as the Agency in its discretion considers appropriate.
- 18.2 Where the Scheme Default is of a type described in limb (a), (c) or (e) of the definition of "Scheme Default", the Agency:

- 18.2.1 must notify the Lead Partner of the Scheme Default and of the period within which it (acting reasonably) requires the Scheme Default to be remedied;
- 18.2.2 shall be entitled, if the Scheme Default has not been remedied within the period prescribed pursuant to Condition 18.2.1 (*Default Events and Termination*) or it is or becomes apparent that the Scheme Default is incapable of remedy either within such period or at all, to exercise the rights set out in Condition 18.1 (*Default Events and Termination*).
- 18.3 On the occurrence of a Specified Default, the Agency shall (subject to Condition 18.4 (*Default Events and Termination*)) be entitled to:
- 18.3.1 terminate this Agreement in its entirety;
- 18.3.2 withhold and cancel any further payment of Allocated Grant due to the Consortium under this Agreement (other than any payments payable in relation to Continuing Firm Schemes); and
- 18.3.3 reallocate or redirect such part of the Allocated Grant (which has not yet been paid to the Lead Partner and which is not payable in relation to Continuing Firm Schemes) to such other person or for such purpose as the Agency in its discretion considers appropriate.
- 18.4 The Agency's entitlement to exercise the rights set out in Condition 18.3 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:
- 18.4.1 The Agency must serve written notice on the Lead Partner requiring the Lead Partner to procure the remedy of the Specified Default;
- 18.4.2 If within a period of thirty (30) Business Days following service of such notice:
- (a) the Specified Default has not been remedied; or
- (b) where so permitted by the Agency, the Lead Partner or (at the Agency's discretion) the Relevant Consortium Member has not given an undertaking to remedy the Specified Default on terms satisfactory to the Agency; or
- (c) it becomes apparent that the Specified Default is incapable of remedy either within such period or at all;
- the Agency shall be entitled immediately to exercise its rights under Condition 18.3 (*Default Events and Termination*).
- 18.5 On the occurrence of a Bid Default, the Agency shall (subject to Condition 18.6 (*Default Events and Termination*)) be entitled to:
- 18.5.1 terminate this Agreement in its entirety;
- 18.5.2 withhold and cancel any further payment of Allocated Grant due to the Consortium under this Agreement (other than any payments payable in relation to Continuing Firm Schemes); and

- 18.5.3 reallocate or redirect such part of the Allocated Grant (which has not yet been paid to the Lead Partner and which is not payable in relation to Continuing Firm Schemes) to such other person or for such purpose as the Agency in its discretion considers appropriate.
- 18.6 The Agency's entitlement to exercise the rights set out in Condition 18.5 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:
- 18.6.1 the Agency must notify the Lead Partner in writing of its intention to call a Bid Default and to exercise its rights under Condition 18.5 (*Default Events and Termination*);
- 18.6.2 the Lead Partner and the Agency (both acting in good faith) shall meet within ten (10) Business Days of the date of the notice referred to in Condition 18.6.1 (*Default Events and Termination*) to seek to agree adjustments to the Approved Bid and/or the Allocated Grant to reflect any demonstrable underperformance by the Consortium Members against their delivery projections as set out in the Approved Bid;
- 18.6.3 where adjustments are agreed, the Lead Partner shall promptly (and in any event within fifteen (15) Business Days of the date of the above meeting) make all such amendments to the information contained in IMS in respect of the Approved Bid as are necessary to reflect the agreement made pursuant to Condition 18.6.2 (*Default Events and Termination*) and in that case the Agency's rights under Condition 18.5 (*Default Events and Termination*) shall lapse in respect of the Bid Default which gave rise to the implementation of the procedure under this Condition 18.6 (*Default Events and Termination*);
- 18.6.4 if the Lead Partner and the Agency are unable to agree adjustments to the Approved Bid pursuant to Condition 18.6.2 (*Default Events and Termination*) within fifteen (15) Business Days of the date of the meeting or the Lead Partner fails correctly to amend the information contained in IMS in accordance with Condition 18.6.3 (*Default Events and Termination*), the Agency shall be entitled immediately and without any liability to any Consortium Member to exercise its rights under Condition 18.5 (*Default Events and Termination*).
- 18.7 On the occurrence of a Fundamental Default, the Agency shall on the service of written notice be entitled forthwith to:
- 18.7.1 terminate this Agreement in its entirety;
- 18.7.2 withhold and cancel any further payment of Allocated Grant due to the Consortium under this Agreement; and
- 18.7.3 reallocate or redirect such part of the Allocated Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as the Agency in its discretion considers appropriate.
- 18.8 The Agency's right to terminate this Agreement pursuant to Condition 18.7 (*Default Events and Termination*) shall be suspended for the duration of the Remediation Period. Where on or before the expiry of the Remediation Period:

- 18.8.1 the Fundamental Default related to or was committed or caused by a Consortium Member other than the Lead Partner, the Relevant Consortium Member has been removed from the Consortium;
- 18.8.2 the Fundamental Default related to or was committed or caused by the Lead Partner and:
  - (a) the Lead Partner has (save where the Fundamental Default relates to the loss or removal of the Lead Partner's Investment Partner status) been removed from the Consortium; and
  - (b) the remaining Consortium Members have agreed with the Agency (acting reasonably (taking account of the requirement that the Replacement Lead Partner must have Investment Partner status)) the identity of the Replacement Lead Partner; and
- 18.8.3 the Removed Consortium Member has provided to the Agency a Deed of Release duly executed by it and the other Consortium Members together with the Completion Authority; and
- 18.8.4 either:
  - (a) following information supplied and/or representations made by the Consortium (excluding the Removed Consortium Member) the Agency is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Bid without the need for a change to it; or
  - (b) any change to the Approved Bid requested by the then Lead Partner as a result of the withdrawal of the Removed Consortium Member does not materially and adversely affect the delivery of the Approved Bid and the Agency has agreed such change in advance in writing.

the Agency's right under Condition 18.7 (*Default Events and Termination*) shall lapse in respect of the particular Fundamental Default which gave rise to the implementation of the Remediation Period.

18.9 Where Condition 18.3 (*Default Events and Termination*) or Condition 18.5 (*Default Events and Termination*) applies and:

- 18.9.1 there are no Continuing Firm Schemes, the Agency may terminate this Agreement in its entirety in accordance with the terms of Condition 18.3 (*Default Events and Termination*) or Condition 18.5 (*Default Events and Termination*) (as applicable);
- 18.9.2 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 in accordance with the timescales specified in Condition 18.4 (*Default Events and Termination*) or Condition 18.6 (*Default Events and Termination*) as applicable.

18.10 Each Consortium Member agrees that the Agency shall not be liable for any costs, claims, expenses, demands or losses suffered or incurred by it as a result of the exercise of the

exercise of the Agency's rights under Condition 17 (*Repayment of Grant*) or Condition 18 (*Default Events and Termination*)

**19 Information and Confidentiality**

19.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to another party.

19.2 Each party agrees to treat all Confidential Information belonging to another party 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 relevant party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

19.3 The obligations of confidence referred to in this Condition 19 (*Information and Confidentiality*) shall not apply to any Confidential Information which:

19.3.1 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;

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

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

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

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

19.4.1 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;

19.4.2 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 each Consortium Member 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;

19.4.3 by any Regulatory Body (including any investment exchange and the Regulator) acting in the course of proceedings before it or acting in the course of its duties; or

- 19.4.4 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.
- 19.5 Each Consortium Member must ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:
- 19.5.1 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;
- 19.5.2 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;
- 19.5.3 where it is considered necessary in the opinion of the Agency or affected Consortium Member (as applicable) the disclosing Consortium Member shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 19.6 Nothing in this Condition 19 (*Information and Confidentiality*) shall prevent the Agency:
- 19.6.1 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;
- 19.6.2 disclosing any Confidential Information obtained from any other party:
- (a) to any other department, office or agency of the Crown; or
  - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (c) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Agreement;
  - (d) 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;
- 19.6.3 provided that in disclosing information under any of Conditions 19.6.2(a) (*Information and Confidentiality*) to Condition 19.6.2(d) (*Information and Confidentiality*) inclusive 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.

- 19.7 Nothing in this Condition 19 (*Information and Confidentiality*) shall prevent any 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.
- 19.8 Each Consortium Member 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.
- 19.9 The Agency shall be responsible for determining in its absolute discretion whether:
- 19.9.1 any Information is Exempted Information or remains Exempted Information; or
- 19.9.2 any Information is to be disclosed in response to a Request for Information;
- and in no event shall any Consortium Member 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.
- 19.10 Subject to Condition 19.11 (*Information and Confidentiality*) below, each Consortium Member acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:
- 19.10.1 without consulting the Consortium Members (or any one of them); or
- 19.10.2 following consultation with them (or any one of them) and having taken (or not taken, as the case may be) their (or its) views into account.
- 19.11 Without in any way limiting Condition 19.9 (*Information and Confidentiality*) or Condition 19.10 (*Information and Confidentiality*), in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the other parties via the Lead Partner.
- 19.12 Each Consortium Member must 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:
- 19.12.1 transfer any Request for Information received by it to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
- 19.12.2 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;
- 19.12.3 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;
- 19.12.4 permit the Agency to inspect such as requested from time to time.

- 19.13 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.
- 19.14 The obligations in this Condition 19 (*Information and Confidentiality*) 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.
- 19.15 Each Consortium Member must regularly review its security arrangements in relation to its access (if any) to and operation (if any) of IMS and in particular it must:
- 19.15.1 notify the Agency immediately if there is any change in the identity of the individual discharging the role of the security administrator on its behalf or if such person leaves its employment or relinquishes that role;
  - 19.15.2 maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
  - 19.15.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
  - 19.15.4 ensure that systems are in place to prevent any person accessing IMS under a User ID other than his own.

## 20 **Data Protection**

- 20.1 Each Consortium Member 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.
- 20.2 Each Consortium Member undertakes that to the extent that it and/or any of its employees receives, has access to and/or is required to Process Personal Data on behalf of the Agency (the **Agency's Personal Data**) for the purpose of performing its obligations under this Agreement it will at all times 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, it 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:
- 20.2.1 It will 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;

20.2.2 it 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;

20.2.3 it will permit the Agency to audit its compliance with the requirements of this Condition 20 (*Data Protection*) on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of its compliance with the obligations within this Condition 20 (*Data Protection*).

20.3 Each Consortium Member 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 20.2 (*Data Protection*) it shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for it to perform its obligations under this Agreement, or to the extent required under a court order.

20.4 Each Consortium Member shall:

20.4.1 take reasonable steps to ensure the reliability of each of its Consortium Member Parties who has access to the Personal Data;

20.4.2 ensure that any of its Consortium Member Parties 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 20 (*Data Protection*);

20.4.3 ensure that none of its Consortium Member Parties publishes, discloses or divulges any of the Personal Data to any third party unless directed in writing to do so by the Agency;

20.4.4 provide a written description of the technical and organisational methods employed by it for processing Personal Data (within the timescales required by the Agency); and

20.4.5 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.

20.5 Each Consortium Member 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:

- 20.5.1 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;
- 20.5.2 provide the Agency with reasonable assistance in complying with any Request for Information served on the Agency under Section 7 of the DPA;
- 20.5.3 notify the Agency (within five (5) Business Days) about the receipt of any such request received by it 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;
- 20.5.4 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.
- 20.6 Each Consortium Member 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.
- 20.7 Each Consortium Member 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 its destruction of and/or damage to any of the Agency's Personal Data processed by such Consortium Member, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 20 (*Data Protection*) by it, its employees, agents or sub-contractors.
- 20.8 Each Consortium Member shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the its 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.

20.9 Each Consortium Member undertakes to include obligations no less onerous than those set out in this Condition 20 (*Data Protection*), in all contractual arrangements with agents engaged by it in performing its obligations under this Agreement to the Agency.

## 21 **Intellectual Property**

21.1 Subject to Condition 21.5 (*Intellectual Property*) each Consortium Member 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 it or which are or become owned by it and which relate to the Firm Schemes for which it is the Landlord, 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 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, each Consortium Member 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 that Consortium Member 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 (*Intellectual Property*).

21.3 No party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.

21.4 Each Consortium Member shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 21.4 (*Intellectual Property*) 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 (*Intellectual Property*), any breach by that Consortium Member of this Condition 21 (*Intellectual Property*) 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 Each Consortium Member shall only be entitled to revoke the licence granted to the Agency under Condition 21.1 (*Intellectual Property*) 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 Lead Partner; 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 Lead Partner **provided that** nothing in this Condition 21.5.2 (*Intellectual Property*) shall entitle a Consortium Member 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 Health and Safety

- 22.1 The Consortium will comply in all material respects with all relevant Legislation including but not limited to Legislation relating to health and safety, welfare at work, equality and diversity, modern slavery and other relevant employment matters and will use reasonable endeavours to procure that all Relevant Consortium Member Parties engaged in the delivery of the Approved Bid do likewise.
- 22.2 Each Consortium Member 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 or which is made on any other unjustifiable basis 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.
- 22.3 Each Consortium Member 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.
- 22.4 To the extent that the Agency is a 'client' for the purposes of the CDM Regulations:
- 22.4.1 where the Relevant Consortium Member is engaging consultants and a contractor or contractors as Subcontractors to deliver the Firm Scheme the Relevant Consortium Member elects to be the only client in relation to such Firm Scheme; or
- 22.4.2 where the Relevant Consortium Member is contracting with a developer as a Subcontractor to deliver a Firm Scheme the Relevant Consortium Member 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.
- 22.5 The Relevant Consortium Member shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Condition 22.4.1 (*Health and Safety*) or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to Condition 22.4.2 (*Health and Safety*) without the Agency's prior written consent, which the Agency may in its absolute discretion withhold.
- 22.6 Each Consortium Member 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.
- 22.7 Each Consortium Member 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.
- 22.8 Each Consortium Member shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme.
- 22.9 Without prejudice to any other provision of this Agreement, each Consortium Member 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:

- 22.9.1 a fatal accident to any worker or a member of the public;
- 22.9.2 any injury to a member of the public requiring reporting under RIDDOR;
- 22.9.3 any dangerous occurrence, as defined by RIDDOR;
- 22.9.4 the service of any improvement or prohibition notice under the HS Act;
- 22.9.5 any incident having health and safety implications which attracts the attention of the police and/or the media;
- 22.9.6 the commencement of any criminal prosecution under the HS Act.

22.10 Each Consortium Member will procure that all its Subcontractors and Professional Team comply at all times with the HS Act and the CDM Regulations and will procure that:

- 22.10.1 where for the purposes of the Works a Subcontractor or member of the Professional Team (as applicable) is a Client, Designer, Principal Contractor or Principal Designer, the Subcontractor or member of the Professional Team (as applicable) will comply with the obligations imposed on such role(s) under the CDM Regulations;
- 22.10.2 each Subcontractor and member of the Professional Team co-operates fully with the Principal Designer and the Principal Contractor appointed under the CDM Regulations (whether or not either of these roles are carried out by the relevant contractor);
- 22.10.3 each Subcontractor and member of the Professional Team allocates adequate resources to enable it to comply with its obligations under the relevant Works contract and the CDM Regulations;
- 22.10.4 each Subcontractor and member of the Professional Team 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;
- 22.10.5 no Subcontractor nor member of the Professional Team will by any act or omission do anything that would cause that Consortium Member to breach or be prosecuted under the HS Act and/or the CDM Regulations; and
- 22.10.6 it and each Subcontractor and member of the Professional Team 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.

## 23 **Construction Industry Scheme**

For such time as:

- 23.1 the Relevant Consortium Member continues to be a Registered Provider; and
- 23.2 the provisions of paragraph 13040 of Chapter 1 of HM Revenue & Customs' CIS Reform Manual remain in effect as published at July 2009,

the Relevant Consortium Member 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 23.1 (*Construction Industry Scheme*) or Condition 23.2 (*Construction Industry Scheme*) ceases to hold true at a time when monies remain outstanding from the Agency to the Lead Partner pursuant to this Agreement then the Lead Partner 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.

## 24 **Assignment and sub-contracting**

- 24.1 The Agency will be entitled to transfer or assign all or part of this Agreement.
- 24.2 No Consortium Member will be entitled to transfer or assign all or part of this Agreement.

## 25 **Dispute Resolution**

- 25.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 25 (*Dispute Resolution*).
- 25.1.1 In the event that a Consortium Member (the **Disputing Member**) or the Agency consider that a Dispute exists between them in relation to this Agreement, 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 (*Dispute Resolution*).
- 25.1.2 Representatives of the Disputing Member and the Agency shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as those parties may agree) of receipt of a Notice of Dispute.
- 25.1.3 Where either no representatives of such parties are available to meet within the period set out in Condition 25.1.2 (*Dispute Resolution*) 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 Disputing Member 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 disputing 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 those 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 (*Dispute Resolution*).

25.2 In the circumstances contemplated in Condition 25.1.5 (*Dispute Resolution*), the disputing parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the disputing 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 **Further assurance**

At any time upon the written request of the Agency each Consortium Member:

26.1 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 each Consortium Member hereby irrevocably appoints the Agency as its attorney solely for that purpose; and

26.2 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.

## 27 **No fetter on statutory functions**

Notwithstanding anything apparently or impliedly to the contrary in this Agreement or any of the deeds and documents referred to herein, in carrying out its statutory duties or functions the discretion of the Agency shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Agreement or any such other deed or document.

## 28 **No agency**

28.1 Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties.

28.2 Nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Agency and any Consortium Member. Neither the Consortium

Member nor any of their employees shall at any time hold itself or themselves out to be employees of the Agency.

29 **Exclusion of third party rights**

Except as otherwise expressly provided no person who is not a party to this Agreement shall be entitled to enforce any terms of this Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

30 **Entire Agreement**

30.1 This Agreement and the conditions herein contained together with the Schedules constitute the entire agreement between the parties and may only be varied or modified in writing by deed.

30.2 Each Consortium Member 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 it is entering into this Agreement.

31 **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.

32 **Cumulative rights and enforcement**

32.1 Any rights and remedies provided for in this Agreement whether in favour of the Agency or any Consortium Member are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

32.2 The parties acknowledge that money damages alone may not properly compensate the Agency for any breach of any Consortium Member'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.

33 **Waiver**

33.1 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 14.1 (*Payment of Grant*) 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.

33.2 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.

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

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

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

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

## 34 **VAT**

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

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

34.1.2 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.

## 35 **Survival of this Agreement**

35.1 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.

35.2 Insofar as any of the obligations of any Consortium Member 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.

35.3 Without limitation the provisions of Conditions 1 (*Definitions and interpretation*), 2 (*Purpose*), 3 (*Acknowledgements, Representations and Warranties*), 5.3 (*Firm Schemes*), 6 (*Changes to Firm Schemes or the Consortium*), 8.7 (*Firm Scheme substitution and additions*), 9 (*Delivery Obligations*), 10 (*Operational Obligations*), 11 (*Review, Monitoring or Reporting*), 13 (*Grant Claim Procedures*), 14 (*Payment of Grant*), 15 (*Adjustments to Second Tranche Grant*), 16 (*Withholding of Grant*), 17 (*Repayment of Grant*), 18 (*Default Events and Termination*), 19 (*Information and Confidentiality*), 20 (*Data Protection*), 21 (*Intellectual Property*), 25 (*Dispute resolution*), 33 (*Waiver*), 34 (*VAT*), 37 (*Governing Law*) this Condition 35 (*Survival of this Agreement*) and Schedule 7 (*Relevant Consortium Member*) 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.

## 36 **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.

## 37 **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 (*Dispute Resolution*) the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**Schedule 1**  
**Approved Bid**

## Schedule 2

### Officer's Certificate

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

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

As an authorised signatory of the Lead Partner, 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, any Indicative Scheme, Substitute Scheme, Additional Scheme, Indicative Scheme and each Firm Scheme is accurate and the Lead Partner 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 Agency and/or Regulator in connection with, or related to the Approved Bid (including that submitted pursuant to Condition 11) is accurate (including, inter alia, details of any Permitted Conversions);
- 3 no Consortium Member is in breach of its Transparency Obligations;
- 4 save where expressly agreed by the Agency, no Firm Scheme which is a Section 106 Scheme is being subsidised by Conversion Capacity, Firm Scheme Grant, RCGF or DPF;
- 5 save where expressly agreed by the Agency, all SOAHP Dwellings have been let or disposed of (as applicable) in accordance with the terms of the applicable Firm Scheme Details;
- 6 the Conversion Capacity will not be used nor has it been used for any purpose other than to deliver the SOAHP Rent Dwellings referenced in this Agreement;
- 7 all Permitted Conversions made by the Consortium Members are consistent with the information supplied to the Agency in relation to the Approved Bid (whether on IMS or otherwise);
- 8 so far as the Lead Partner is aware (having made all reasonable enquiries) each Firm Scheme (including, inter alia, all projected Start on Site Date and Practical Completion date) is capable of being delivered without the need for a change to the Firm Scheme Details; and
- 9 no part of the Conversion Capacity is being generated by or applied to properties within London.

This Certificate is given by virtue of my position as [ ] and is given on behalf of the Consortium. 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 a Specified Default for the purposes of providing the Agency a remedy against the Consortium Member.

Dated [ ]

.....

Authorised signatory

[ ]

**Schedule to Officer's Certificate**

<b>Paragraph Number</b>	<b>Disclosure</b>

## Schedule 3

### Acknowledgements, Representations and Warranties

#### Part 1

#### Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which the Agency makes the Allocated Grant available to the Consortium Members for the purposes of Sections 19 and 31 HRA 2008;
- 2 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 SOAHP Dwellings which are to be let or sold to individuals as SOAHP Housing;
- 3 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;
- 4 The Public Sector Subsidy in respect of a Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Relevant Consortium Member 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 incurred by the Consortium in respect of the delivery of the Approved Bid;
- 5 All Firm Scheme Grant paid under this Agreement is:
  - 5.1 social housing assistance as defined in Section 32(13) of the HRA 2008; and
  - 5.2 subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 6 The provisions of Condition 17 (*Repayment of Grant*) represent events and principles determined by the Agency for the purposes of Sections 32-34 of the HRA 2008;
- 7 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 and are subject to the terms of the Recovery Determination;
- 8 Any failure by a Consortium Member to comply with the terms of this Agreement or the occurrence of a Default Event or Withholding Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 9 Each Consortium Member must hold Registered Provider status at the point at which any SOAHP Rent Dwelling or Rent to Buy Dwelling or Nil Grant Unit in respect of which it is the Landlord and provided pursuant to this Agreement is made available for rent.
- 10 The SOAHP Rent Dwellings provided with the benefit of the Allocated Grant shall be deemed to have been provided with public money for the purposes of Section 180 HRA 2008.

11 The terms of the Capital Funding Guide are incorporated within this Agreement (mutatis mutandis).

## Part 2

### Representations 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 or performance or enforceability of this Agreement have been obtained and have not been withdrawn.
- 1.7 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.8 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect 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 its property or any of its other assets 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 Consortium'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:
- 2.6.1 the date of submission of the Approved Bid prior to the date of this Agreement;  
and
- 2.6.2 the Approved Bid, as the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation 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 it through the terms of the Approved Bid is being and will be applied by it to the delivery of new SOAHP Rent Dwellings under this Agreement.
- 3.2 No part of the Conversion Capacity is being generated by or applied to properties within London.
- 3.3 None of the SOAHP Dwelling to be provided pursuant to this Agreement have received or are intended to receive funding from the Agency nor have they been included amongst the projected units to be delivered under any Previous Programme.
- 3.4 None of the Conversion Capacity has been generated under or pursuant to or is intended to support housing delivery under any Previous Programme.

#### 4 **Authority of Lead Partner's Representative**

The Lead Partner's Representative is empowered to act on behalf of each Consortium Member for all purposes connected with this Agreement.

#### 5 **Propriety**

5.1 No member, employee, agent or consultant of the Consortium Member or of any partner organisation of the Consortium Member has any personal, proprietary or pecuniary interest in:

5.1.1 any person from whom the Consortium Member is purchasing land or property for the purposes of or in connection with this Agreement;

5.1.2 any contractor engaged or to be engaged by the Consortium Member in connection with this Agreement;

5.1.3 any land or other property to be acquired or developed refurbished or improved by the Consortium Member for the purposes of or in connection with this Agreement.

5.2 No member, employee, agent or consultant of the Consortium Member or any partner organisation of the Consortium Member is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:

5.2.1 access to properties developed, Rehabilitated or disposed of pursuant to this Agreement; or

5.2.2 the prices at which such properties are let or disposed of.

## Schedule 4

### Development Costs

#### 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 Relevant Consortium Member's development and administration costs.
- 3.11 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 Relevant Consortium Member 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 a Relevant Consortium Member is common both to the development of the SOAHP Dwellings within any Firm Scheme and to any other activity, asset or property of the Relevant Consortium Member, only such part of that cost as is attributable to the development of the SOAHP 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:

- 1.1 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; and
- 1.11 on separate commercial laundry blocks and related equipment.

## Schedule 5

### Deed of Adherence

This deed is made the                    day of                    20[ ]

#### Parties

- (1) [ ] ("Incoming Consortium Member")
- (2) [ ], [ ], [ ] ("Original Consortium Member")
- (3) **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**)

#### WHEREAS

- (A) The Original Consortium Members entered into a grant agreement with the Agency dated [ ] (the **Grant Agreement**) as the same may be varied amended or supplemented in accordance with its terms in connection with inter alia the delivery of affordable housing pursuant to the Shared Ownership and Affordable Homes Programme 2016-2021.
- (B) The Incoming Consortium Member has agreed to assume and be bound by the same obligations liabilities and duties of the Consortium Members under the Grant Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

#### 1. Interpretation

Capitalised terms defined in the Grant Agreement shall have the same meaning in this Deed unless the context shall admit otherwise.

#### 2. Observance

2.1 The Incoming Consortium Member confirms that it has been given a copy of the Grant Agreement.

2.2 With effect from the date of this Deed (the **Effective Date**) the Incoming Consortium Member agrees to observe adhere to perform and be fully bound by all of the provisions of the Grant Agreement in all respects as if it were an original party to the Grant Agreement and was referred to therein as a Grant Member [and as the Incoming Consortium Member will assume the role of Lead Partner, it also agrees to observe adhere to perform and be fully bound by the obligations of the Lead Partner under the Grant Agreement].

#### 3. Further assurance

The Parties shall do all such acts and things as shall be necessary to give effect to this Deed.

4. **Governing Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and the parties submit themselves to the exclusive jurisdiction of the English Courts.

5. **Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**In witness** whereof this Deed has been executed the day and year set out above.

[EXECUTION CLAUSES]

## Schedule 6

### Deed of Release

This deed is made the                    day of                    20[ ]

#### Between

- (1) [                    ] ("**Outgoing** **Removed** Consortium Member")
- (2) [                    ], [                    ], [                    ] ("**Remaining Consortium Members**")
- (3) **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**)

#### WHEREAS

- (A) Together, the Remaining Consortium Members and the [Outgoing] [Removed] Consortium Member entered into a grant agreement with the Agency dated [                    ] (the **Grant Agreement**) as the same may be varied amended or supplemented in accordance with its terms in connection with inter alia the delivery of affordable housing pursuant to the Shared Ownership and Affordable Homes Programme 2016 – 2021.
- (B) It has been agreed that the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member and Party to the Grant Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

#### 1. **Interpretation**

Capitalised terms defined in the Grant Agreement shall have the same meaning in this Deed unless the context shall admit otherwise.

#### 2. **Release**

With effect from the date of this Deed (the **Effective Date**) the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member for the purposes of, and a Party to, the Grant Agreement.

The Remaining Consortium Members agree that from the Effective Date they shall continue to be liable for each of their obligations under the Grant Agreement.

#### 3. **Allocation of Grant**

The [Outgoing] [Removed] Consortium Member acknowledges that the amount of grant allocated in respect of each Firm Scheme where it is the Landlord is as follows:

***[Insert Relevant Details]***

#### 4. **Continuing Obligations/Rights of the [Outgoing] [Removed] Consortium Member**

4.1 Notwithstanding the fact that the [Outgoing] [Removed] Consortium Member shall from the Effective Date no longer be a Consortium Member nor a Party to the Grant Agreement:

4.1.1 the [Outgoing] [Removed] Consortium Member shall continue to be bound by:

- (a) [the terms of the Grant Agreement insofar as there are any Firm Schemes of the type described in Condition 18.9.2 of the Grant Agreement;]
- (b) Conditions 3, 9, 10, 11.12 to 11.19 (inclusive), 12, 13, 17, 18 to 23 (inclusive), 25, 26, 32.2, 33 to 35 and 37 of the Grant Agreement;

4.1.2 the [Outgoing] [Removed] Consortium Member shall, until such time as the Regulator prescribes otherwise, be entitled to continue to charge an Affordable Rent in respect of those Affordable Rent Dwellings where it is the Landlord and in respect of those of its properties which formed part of the Permitted Conversions agreed by the Agency to support the delivery of the SOAHP Rent Dwellings.

**5 Further assurance**

The Parties shall do all such acts and things as shall be necessary to give effect to this Deed.

**6 Governing Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and the Parties submit themselves to the exclusive jurisdiction of the English Courts.

**7 Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**In witness** whereof this Deed has been executed the day and year set out above.

[EXECUTION CLAUSES]

## Schedule 7

### Relevant Consortium Member – Obligations Matrix

Where the term **Relevant Consortium Member** is used in the Agreement, that obligation attaches to the Consortium Member specified in the matrix below.

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
<b>Condition 1.1:</b>				
"Actual Development Costs"	✓			
"Balancing Sum"	✓			
"Building Contract"	✓			
"Building Contractor"	✓			
"Consortium Member Affiliate"	✓			
"Decision Allowable Costs"	✓			
"Decision Revenue"	✓			
"Development Costs"	✓			
"Fund Proceeds"	✓			
"Fundamental (B) Default"	✓			
"GW2 Event"	✓			
"Help to Buy Agency Agreement"	✓			
"Indicative Scheme"	✓			
"Local Housing Authority"	✓			

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
"Milestone Extension Events"	✓			
"Milestone Failure"	✓			
"Nil Grant Unit"	✓			
"Notification Failure"	✓			
"Professional Team"	✓			
"Public Sector Subsidy"	✓			
"RCGF"	✓			
"Relevant Authority"	✓			
"Scheme Default"	✓			
"Secure Legal Interest"				<p>✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute</p>

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
				Scheme or Additional Scheme
"SOAHP Housing"	✓			
"Start on Site Date"	✓			
"Subcontractor"	✓			
"SW1 Event"	✓			
"SW2 Event"	✓			
"SW3 Event"	✓			
"Waiver Condition"	✓			
Condition 1.2.13				✓  The Consortium Member seeking the relevant consent or approval
Condition 1.2.20	✓			
Condition 1.2.25	✓			
Condition 4.5				✓  The Consortium Member who

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
				holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme
Condition 4.7				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context</p>

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
				requires, Substitute Scheme or Additional Scheme
Condition 4.8				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p>

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Condition 4.9				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p>
Condition 5.2	✓			
Condition 6.3	✓			
Condition 6.5	✓			

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Condition 8.2	✓			<p data-bbox="1241 577 1423 1415">           ✓             The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme         </p>

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Condition 8.3				<p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p>
Condition 8.6	<p style="text-align: center;">✓</p> <p>(in relation to the Undeliverable Scheme)</p>			

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Conditions 8.9 – 8.10 (inclusive)				<p style="text-align: center;">✓</p> <p style="text-align: center;">The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the SOAHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p>
Condition 8.12.3	✓			
Condition 9.1	✓			
Conditions 10.1-10.5 (inclusive)	✓			
Condition 11.18	✓			
Condition 11.19	✓			
Condition 13.2	✓			

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Condition 13.4	✓			
Condition 15.1	✓			
Condition 15.2	✓			
Condition 15.3	✓			
Condition 15.5	✓			
Condition 16.4.1 (in the circumstances of a GW2 Event)	✓			
Condition 16.4.1 (in the circumstances of a GW3 Event)		✓		
Condition 17.1.3	✓			
Condition 17.2				✓  To be determined in accordance with the allocation of responsibility in relation to conditions 17.2.1 to 17.2.12 below
Condition 17.2.1		✓		

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
Condition 17.2.2		✓		
Condition 17.2.3	✓  (in circumstances where the Firm Scheme Grant has been received by the Landlord from the Lead Partner)			✓  Lead Partner (in circumstances where the Firm Scheme Grant has not been received by the Landlord from the Lead Partner)
Condition 17.2.4	✓			
Condition 17.2.5	✓			
Condition 17.2.6	✓			
Condition 17.2.7	✓			
Condition 17.2.8  (in the circumstances of a Specified Default)		✓		
Condition 17.2.8  (in the circumstances of a Bid Default)			✓  (liability is determined in accordance with Condition	

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
			17.4)	
Condition 17.2.8 (in the circumstances of a Fundamental Default)		✓		
Condition 17.2.9		✓		
Condition 17.2.10		✓		
Condition 17.2.11	✓			
Condition 17.2.12	✓			
Condition 17.3.3	✓			
Condition 17.5	✓			
Condition 17.6				✓  The Consortium Member to which Condition 17.2 allocates responsibility for payment of the Recoverable Amount
Condition 17.9				✓  The Consortium Member to

Condition Number	Landlord of Firm Scheme	Applicable to Consortium Member responsible for the act, omission, event or default giving rise to the Agency's rights/remedies in respect thereof	Applicable to all Consortium Members	Other
				which Condition 17.2 allocates responsibility for payment of the Recoverable Amount
Condition 17.10	✓			
Condition 18.4.2		✓		
Condition 18.8.1		✓		
Condition 22.1	✓			
Condition 22.4.	✓			
Condition 22.5	✓			
Condition 23	✓			
Schedule 3	✓			
Schedule 4	✓			

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

Print name:

**EXECUTED** as a **DEED** by affixing the  
common seal of [**CONSORTIUM MEMBER**]  
in the presence of:

Authorised signatory

Authorised signatory

**EXECUTED** as a **DEED** by affixing the  
common seal of [**CONSORTIUM MEMBER**]  
in the presence of:

Authorised signatory

Authorised signatory

**EXECUTED** as a **DEED** by affixing the  
common seal of [**CONSORTIUM MEMBER**]  
in the presence of:

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in the presence of:

Authorised signatory

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