

**dated**

**2015**

**Homes and Communities Agency**

and

## **Rent to Buy Facility Agreement**

*[This is a template agreement which will form the contractual basis of each Rent to Buy loan. It may be revised and/or amended at the discretion of the HCA to reflect scheme-specific or other provisions pertaining to particular circumstances.]*

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**DRAFT**

# Development Facility Agreement

dated 2015

## Parties

- (1) **Homes and Communities Agency** of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH, (the **Agency**); and
- (2) [ [a **Registered Provider**] (registration number [ ]) (the **Provider**).

## Introduction

- (A) The Agency is empowered under the Act to make available the Funding.
- (B) The Provider has submitted proposals to the Agency in respect of the proposed construction and marketing of certain affordable dwellings.
- (C) The Agency has agreed to make the Funding available to the Provider on the terms of this Agreement.
- (D) The Provider is a Registered Provider and inter alia is entrusted to provide Affordable Housing in England.
- (E) It is a condition precedent to the Agency providing the Funding that the Provider enters into the Legal Charge which secure(s), amongst other things, the obligations under this Agreement.
- (F) The Funding provided under this Agreement is 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).

## Agreed terms

### 1 Definitions

- 1.1 In this Agreement (including in the Introduction and schedules) the following words and expressions have the following meanings:

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

**Affordable Housing** means any use of the Dwellings to provide housing to households whose needs are not adequately met on the open market, and shall include use as social, affordable or intermediate housing;

**Agency Senior Officer** means the person notified as such by the Agency to the Provider;

**Associated Person** means in relation to a company, a person who performs or has performed services for or on that company's behalf;

**Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration, or any other similar permission;

**Availability Period** means the period from the date of this Agreement until the date which is [ ] years after the date of this Agreement;

**Bid** means the submission by the Provider of its proposal for the development of the Dwellings and any supporting information entered into the IMS;

**Building Contract(s)** means the contract(s) to be entered into by the Provider with Contractor for or in relation to the Works;

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

**Cash Grant Equivalent** means the sum calculated (in accordance with the EU Commissions guidance on calculating aid from soft loans) as the monetary value of aid being provided through the Interest Subsidy;

**Capital Funding Guide** means:

- (a) the "Affordable Housing Capital Funding Guide" published on the website of the Agency from time to time or any successor guide so published subject to such amendments, variations or updates to the same as the Agency may publish on its website from time to time; or
- (b) any guide, instrument or document published by the Agency on its website as a replacement or substitute for the guide referred to in sub-paragraph (a) (as such guide, instrument or document may be updated, amended or replaced from time to time);

**CDM Regulations** means the Construction (Design and Management) Regulations 2007;

**Certificate of Title** means a certificate of title in relation to the Charged Property in the form approved by the Agency;

**Charged Property** means the property or properties over which the Agency has been granted a Legal Charge by the Provider shown for identification purposes edged red on the Plan;

**Claim** means an application for Funding submitted within the IMS;

**Competent Authority** means for the purposes of clauses 10, 15 and 25 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

a court of England and Wales or the Court of Justice of the European Union;

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

**Confidential Information** means all information relating to the existence or terms of this Agreement or any Finance Document in respect of which a Party becomes aware in its capacity as a party to the Finance Documents or which is received by that Party in relation to this Agreement or any Finance Document (including all financial information provided by the other party) from either the other Party or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the other Party or any of its advisers 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);

**Consents** means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or other authority, the local planning authority, landlord, funder, adjoining land owner or any other person required to undertake the Works or deliver the Scheme;

**Considerate Constructors Scheme** means the Code of Considerate Practice promoted by the construction industry a copy of which is to be found on the Considerate Constructors Scheme website;

**Constitutive Documents** means, at the relevant time, the Provider's then current Memorandum and Articles of Association or Rules;

**Contractor** means each contractor or other party (however described) engaged by the Provider (or on behalf of the Provider) for the delivery of Works;

**Development Costs** means the costs relating to the development of a Scheme incurred or to be incurred in respect of such Scheme by the Provider in respect of the heads of expenditure set out in Part 1 to Schedule 2 or such other heads of expenditure as the Agency may in its absolute discretion agree in respect of any Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 2 shall not be capable of being treated as Development Costs;

**Disposal** means a disposal of the whole or any part of the Site or the Charged Property including any Dwelling by the Provider in accordance with clause 3.6.2;

**DPA** means the Data Protection Act 1998 as amended or updated from time to time;

**Dwelling** means each residential unit, the construction of which is intended to be partially funded under this Agreement;

**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 legislation;

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

**Eligible Persons** means persons ordinarily resident in United Kingdom who have been assessed as failed by the Housing Market;

**Encumbrance** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or

other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

**EU Procurement Requirements** means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2014/24/EC and 2007/66/EC , United Kingdom Statutory Instruments 2015/102 (The Public Contracts Regulations);

**EUV-SH** means EUV-SH (existing use value for social housing) in accordance with the guidance set out in the Royal Institution of Chartered Surveyors Appraisal and Valuation Manual (as amended from time to time);

**Event of Default** means any of the events set out at clause 11;

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

**FA** means the Finance Act 2004;

**Facility** means the facility made available under this Agreement as described in clause 2;

**Final Repayment Date** means the earlier of:

- (d) 16 years from the date the first Claim is paid pursuant to clause 5.3.2; and
- (e) the date of the Refinancing of the last Dwelling.

**Finance Document** means:

- (a) this Agreement;
- (b) the Legal Charge;
- (c) any other document designated as such by the Provider and the Agency; and
- (d) any document entered into, pursuant to, or which amends or varies any document referred to in paragraphs (a) to (e) (inclusive) above;

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

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

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

**Funding** means funding made or to be made under the Facility or the principal amount of each advance of funding made by the Agency under the Facility or the aggregate amount of all advances of funding which have been made by the Agency and which remain outstanding from time to time;

**Group** means, at any time, the Provider and its Holding Company and Subsidiaries (as applicable) for the time being;

**HMRC** means Her Majesty's Revenue & Customs;

**Holding Company** means, in relation to a person, any other person in respect of which it is a Subsidiary;

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

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

**Individual** means one or more individuals (not being a partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association) who intends or intend to occupy the relevant Dwelling for his, her or their sole or main residence;

**Information** means:

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

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

**Initial Valuation** means the Valuation of the Charged Property supplied to the Agency as a condition precedent under this Agreement on or before the first Claim;

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

- (a) it is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness or the Agency receives a notice under Section 145(2) of the Act;
- (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;



- ii a composition, compromise, assignment or arrangement with any creditor;
- iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency, receiver, administrative receiver, administrator, compulsory manager or other similar officer);
- iv enforcement of any Security over any assets of the Provider;
- v any analogous procedure or step is taken in any jurisdiction; or

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or

- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Provider;

**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;

**Interest Period** means each period for which interest is calculated and payable in accordance with clause 6 of this Agreement;

**Interest Subsidy** means the interest charged under this Agreement where such interest rate is less than a market rate;

**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;

**Legal Charge** means the legal charge granted by the Provider to the Agency over the Charged Property [on the date upon which the Provider acquires the Charged Property];

**Legislation** means:

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

in each case in the United Kingdom;

**Loan to Cost** means, at Start on Site and Practical Completion, the proportion (expressed as a percentage) which the Funding bears to the latest estimate of the costs and expenses relating to the Scheme incurred at that time.

**Market Value** means in relation to a Dwelling, the Site or any part thereof (including in each case the Works (or the relevant part thereof) thereon) or the Charged Property the Market Value as defined in The Red Book 9<sup>th</sup> Edition (of 6 January 2014) published by RICS, being "the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion" as varied from time to time BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions:

- (a) the Site or the Charged Property or the relevant part of it is sold (where applicable) subject to and with the benefit of any subsisting leases or tenancies granted as Permitted Disposals or agreements therefor but otherwise sold with vacant possession free from all charges and other encumbrances;
- (b) the Provider has a good and marketable title to the Site or the Charged Property or relevant part thereof;
- (c) all necessary Consents for any Dwelling or the Works on the Site have been obtained and the same can be lawfully used;
- (d) any damage to the Site or the Charged Property or buildings on it caused by fire or any other insurable risk has been made good; and
- (e) the Site or the Charged Property or the relevant part of it has the benefit of all easements and rights necessary for the beneficial use and occupation of it;

**Material Adverse Effect** means any present or future event or circumstances which could, in the reasonable opinion of the Agency:

- (a) materially impair the ability of the Provider to perform and comply with its obligations under any Finance Document;
- (b) have a material adverse effect on the business, assets or financial condition of the Provider;
- (c) have a material adverse effect on the validity or enforceability of, or the effectiveness or ranking of the Legal Charge or any other security granted or purporting to be granted pursuant to any Finance Document or the rights or remedies of the Agency under any Finance Document; or
- (d) materially impair the Provider's ability to deliver the Scheme in accordance with the Scheme Details and the Milestones;

**Maximum Rent Level** means 80% (eighty per cent) of the rent (inclusive of any service charges) which the relevant Dwelling would achieve if let on the open market at that time;

**Milestones** means Start on Site, Practical Completion, [each of the repayment dates set out in the Repayment Profile] and the Final Repayment Date;

**Milestone Date** means the date set out in the Scheme Details by which the relevant Milestone must have been achieved (as the same may be revised by the Agency in accordance with clause 3.7) otherwise an Event of Default will occur;

**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 Provider 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 Scheme by restricting the availability or use of labour which is essential to the proper carrying out of such works or preventing the Provider 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 disputegenerally affecting the house building industry or a significant sector of it;
- (k) the appointment of the Contractor under the Building Contract has been terminated or the Contract has been terminated; or

- (l) any material failure by the Contractor under the terms of the Building Contract which has the direct result of delaying the Provider's compliance with a Milestone Date and which did not result from the Provider's failure effectively to manage the Building Contract

unless:

- (m) any of the events arises (directly or indirectly) as a result of any wilful default or wilful act of the Provider or, save in respect of the event referred to in (k) above, any of its Subcontractors of any tier; or
- (n) in respect of the event referred to in (f) above, such event arises as a result of any failure by the Provider (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 Provider to complete the Scheme by the Works Target Date;

**Milestone Failure** means a failure by the Provider or the Provider (as relevant) to achieve any Milestone by the relevant Milestone Date;

**Open Book** means the transparent and full disclosure of information to be undertaken in utmost good faith and to include the declaration of all information which the Provider is required to maintain keep or disclose under this Agreement including the SGEI Decision Information and other financial components such as price, profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of these items with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

**Permitted Disposal** means:

- (a) the grant of a Tenancy Agreement in respect of a Dwelling; and/or
- (b) the disposal of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (c) disposals made pursuant to a planning obligation pursuant to section 106 the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the Highways Act 1980 section (s) 38 and/or 278; and/or
- (d) a disposal of a Dwelling at not less than at Market Value to an [Eligible Person] who is occupying that Dwelling at the end of the Rental Period;

and any other Disposal which the Agency agrees from time to time will become a Permitted Disposal;

**Permitted Encumbrance** means:

- (a) any lien arising solely by operation of law in the ordinary course of the Provider's business in respect of any obligation which is not more than 30 days overdue for settlement;
- (b) any Encumbrance arising out of title retention provisions in a supplier's standard conditions of supply in respect of goods supplied to the Provider in the ordinary course of its business;
- (c) any Encumbrance created pursuant to this Agreement; and
- (d) any Encumbrance granted with the prior written consent of the Agency;

**Plan** means the plan showing the Charged Property annexed to this Agreement at Annexure 1;

**Practical Completion** means that stage in the execution of a Scheme when the Works have been completed in accordance with the terms of the relevant Contract and/or the terms of this Agreement such that the Dwellings comprised within the 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 Scheme and which would be reasonable to include in a snagging list, and Practically Complete shall be construed accordingly;

**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 a Finance Document; or
  - ii for showing or not showing favour or disfavour to any person in relation to a Finance Document;
- (b) entering into a Finance Document in connection with which commission has been paid or has been agreed to be paid by the Provider 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 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 the Prevention of Corruption Acts 1889-1916; or

- (d) defrauding or attempting to defraud or conspiring to defraud the Agency or the Regulator;

**Provider Affiliate** means, in relation to the Provider, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company;

**Provider Party** means:

- (a) the Provider, the Contractor, any member of the professional team, any agent, employee or Subcontractor of the Provider and the Provider's Representative; and
- (b) any Subsidiary or Holding Company of the Provider;

**Provider's Representative** means the Provider's [Finance Director] or such other person agreed by the Agency;

**Public Sector Subsidy** means any non-repayable grant received or receivable by the Provider 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;

**Quarter Day** means 31 March, 30 June, 30 September and 31 December;

**Quarterly Officer's Certificate** means a report required on each Quarter Day pursuant to clause 10.3 in the form specified by the Agency from time to time;

**Refinancing** means the refinancing of a Dwelling or a number of Dwellings;

**Registered Provider** means a body entered on the statutory register of providers of social housing as a non-profit or a profit-making organisation (as such terms are defined in Section 115 the Housing and Regeneration Act 2008);

**Regulator** means the Homes and Communities 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;

**Rental Period** means the longer of (a) a period of seven years from the date of Practical Completion (b) the period from the date upon which the first Tenancy Agreement is granted in respect of a Dwelling up to and including the date upon which all amounts due under this Agreement have been repaid in full and no obligations remain outstanding on the part of the Provider pursuant to this Agreement;

**Repayment Profile** means the repayment profile contained within the cashflow submitted as part of the Scheme Budget (as updated from time to time with the prior written consent of the Agency);

**Request for Information/RFI** shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Scheme, any Finance Document or any activities or business of the Agency;

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

**Scheme** means the scheme for the development of the Dwellings, associated infrastructure and any other construction on the Site in respect of which the Agency has agreed to provide the Funding in accordance with this Agreement (as such Scheme may be varied from time to time with the prior written consent of the Agency);

**Scheme Budget** means the financial budget for the Scheme as included in the Bid, including a cashflow, as updated and agreed by the Agency and as amended only in accordance with this Agreement;

**Scheme Details** means information provided by the Provider in relation to the Scheme, which shall include:

- (a) the descriptive and other details in respect of the Scheme as set out in Schedule 1;
- (b) the Works required to complete the Scheme; and
- (c) the Scheme Budget

all in accordance with the Bid and each as varied from time to time in accordance with the terms of this Agreement;

**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 sale or lease and leaseback, a blocked account, set-off or similar “flawed asset” arrangement);

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

**SGEI Decision Information** means evidenced information about costs, revenue, the SGEI Decision Net Costs and such other information as the Agency may reasonably request in relation to ensuring compliance with the SGEI Decision;

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

**SGEI Decision Overpayment** means the extent to which the Interest Subsidy (calculated as a Cash Grant Equivalent) together with any other Public Subsidy exceeds the SGEI Decision Net Costs;

**SGEI Review** means a review undertaken periodically by the Agency to monitor that the Interest Subsidy and the operation of this Agreement continue to comply with the requirements of the SGEI Decision and that no SGEI Decision Overpayment has or will arise;

**Significant Event** means an event which might prejudice the reputation of the Agency or the programme pursuant to which the Facility is made available to the Provider;

**Site** means the site identified to the Agency as being the area of land, buildings or Dwellings comprised or to be comprised in the Scheme as identified in IMS;

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

- (a) the Provider and the Contractor have entered into the Building Contract;
- (b) the Contractor has taken possession of the Site; and
- (c) 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; or
- (d) drainage works specific for the buildings forming part of the Scheme.

**State Aid** means any aid granted by a Member State of the European Union or through the resources of such Member State which distorts or threatens to distort competition by favouring a particular undertaking, in so far as such aid affects trade between European Union Member States;

**State Aid Cap** means the SGEI Decision Net Costs;

**State Aid Compliance Report** or **SACR** shall have the meaning given to those terms in clause 25;

**Submitted Standards** means those standards submitted and accepted at Bid stage, all Consents and Legislation;

**Subcontractor** means any Subcontractor appointed by the Provider to undertake all or part of the Works;

**Subsidiary** means a subsidiary undertaking within the meaning of section 1162 the Companies Act 2006;

**Tax** means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and Taxation or taxation and Taxes or taxes shall be construed accordingly;

**Tenancy Agreement** means an assured shorthold tenancy agreement or such other letting document;

**Total Commitment** means £[ ] being no more than 50% (fifty per cent) of Total Scheme Costs;

**Total Scheme Costs** means the actual and forecasted value (as relevant) of the scheme costs at Practical Completion each as such costs are identified in the Scheme Budget;

**Unlawful State Aid** means State Aid which has been granted in contravention of Article 107(1) of the Treaty of the Functioning of the European Union and which does not qualify



for an exemption pursuant to any of the provisions of the Treaty of the Functioning of the European Union or any of its subsidiary instruments or a decision of the Commission of the European Union;

**Valuation** means a valuation of the Provider's interest in the Charged Property by the Valuer, supplied at the request of the Agency, addressed to the Agency and prepared on the basis of the EUV-SH as that term is defined in the then current Statements of Asset Valuation Practice and Guidance Notes issued by the Royal Institution of Chartered Surveyors;

**Valuer** means [ ] or any other surveyor or valuer;

**VAT** means Value Added Tax as presently charged under the Value Added Tax Act 1994 or any tax of similar nature;

**Verification** means a verification from HMRC under Regulation 6 of the 2005 Regulations;

**Waiver Condition** means provision of satisfactory evidence by the Provider to the Agency that the relevant Prohibited Act was committed by:

- (a) an employee acting independently of the Provider and such employee's employment is terminated within twenty (20) Business Days of the Agency serving notice on the Provider of such Prohibited Act; or
- (b) the Provider, the Contractor or a Subcontractor (or any employee of a Subcontractor not acting independently of the Subcontractor) and the relevant subcontract is terminated within twenty (20) Business Days of the Agency serving notice on the Provider of such Prohibited Act; or
- (c) an employee of a Subcontractor acting independently of such Subcontractor and such employee's employment is terminated within twenty (20) Business Days of the Agency serving notice on the Provider of such Prohibited Act; or
- (d) any person not specified in paragraphs (a), (b) or (c) and the Provider (or the Provider, the Contractor or any Subcontractor) has severed links with such person (whether his employment, appointment or any other link) within twenty (20) Business Days of the Agency serving notice on the Provider of such Prohibited Act;

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Provider or relevant Subcontractor; and

**Works** means all the works (including design, infrastructure works and all other works necessary for obtaining access to the Dwellings or the Site) to be undertaken in order to ensure that the Dwellings meet the Submitted Standards and that all aspects of the Scheme are constructed in accordance with the Scheme Details; and

**Works Target Date** means the date on which the Works are to be completed, such date not to be later than [insert relevant date].

## 1.2 Interpretation

1.2.1 The masculine includes the feminine and vice versa.

- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A time of day shall be a reference to London time.
- 1.2.9 A party means a party to this Agreement.
- 1.2.10 The words includes or including are to be construed without limitation.
- 1.2.11 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 to this Agreement.
- 1.2.12 A paragraph in a schedule shall be construed as references to a paragraph in that particular schedule.
- 1.2.13 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.
- 1.2.14 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 or to 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 to the other parties from time to time.
- 1.2.15 An obligation to do anything includes an obligation to procure its being done.
- 1.2.16 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.17 The term Site includes each and every part of it and any estate or interest in it.

- 1.2.18 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.
- 1.2.19 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 No review comment or approval by the Agency under the provisions of this Agreement shall operate to exclude or limit the Provider's obligations or liabilities under this Agreement save where the Agency have confirmed the said review comment or approval in writing.
- 1.2.21 The Provider shall be responsible as against the Agency for the acts or omissions of any Contractor as if they were the acts or omissions of the Provider.
- 1.2.22 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Agency shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Agency, relieve the Provider of any of its obligations under any Finance Document 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.
- 1.2.23 An Event of Default is continuing if it has not been remedied or waived.
- 1.2.24 A reference to any power of the Regulator shall be construed as a reference to the relevant power of the Regulator under the Housing and Regeneration Act 2008.

## **2 Provision of Funding**

The Agency (in exercise of its powers under the Act) agrees to make available to the Provider during the Availability Period a loan facility in an aggregate principal amount equal to the Total Commitment on the terms set out in this Agreement.

## **3 Representations, warranties and covenants**

As at the date of this Agreement, on the date of each Claim and the date of delivery of each Quarterly Officer's Certificate (by reference to the facts and circumstances then existing) the Provider makes the representations and warranties set out in clauses 3.1 to 3.4 (inclusive) to the Agency.

### **3.1 Powers, vires and consents**

- 3.1.1 It is a corporate entity 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 and [is a Registered Provider][will become a Registered Provider no later than 31 December 2016].

- 3.1.2 It:
- (a) has the power to enter into and to exercise its rights and perform its obligations under the Finance Documents (to which it is a party); and
  - (b) has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under the Finance Documents (to which it is a party) (or, in the case of any other Finance Document to be executed by it after the date hereof, such action will be taken before such execution).
- 3.1.3 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.
- 3.1.4 Its obligations under the Finance Documents (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 3.1.5 The execution, delivery and performance by it of the Finance Documents (to which it is a party) do not:
- (a) insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;
  - (b) 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
  - (c) contravene or conflict with its Constitutive Documents.
- 3.1.6 All consents, required by it in connection with the execution, delivery, issue, validity or enforceability of the Finance Documents (to which it is a party) have been obtained and have not been withdrawn.
- 3.1.7 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.
- 3.1.8 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.
- 3.1.9 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.
- 3.1.10 It will procure that all Works have been and will be undertaken:
- (a) in a way to ensure that the Dwellings meet the Submitted Standards; and

(b) in accordance with the terms of the Bid.

3.1.11 It has not committed any Prohibited Act.

3.1.12 It is not classified as a public body for accounting purposes.

3.1.13 It has not and will not receive any Public Sector Subsidy or other funding from the Agency in respect of the Scheme.

## 3.2 **Scheme success**

3.2.1 No person having any Security over the Site or the Charged Property or any part of it or any other assets of the Provider has enforced or given notice of its intention to enforce such Security.

3.2.2 All Consents have been obtained and have not been withdrawn.

3.2.3 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.

3.2.4 The Provider has the full legal control of the Site to enable Practical Completion of all Works and has all such further rights as are necessary to comply with its obligations in this Agreement.

3.2.5 The Site is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Works or achieve Practical Completion of all Works.

3.2.6 It shall take all reasonable steps to satisfy the Agency that its employees and any Contractors employed in connection with the Works are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Works.

It shall in carrying out the Works comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail.

3.2.7 Save as disclosed in the Certificate of Title the Provider has:

(a) good title to the Charged Property and all other assets (including, but not limited to, intellectual property rights) free from Encumbrances other than a Permitted Encumbrance or freedom to use those assets for that purpose under all applicable laws; and

(b) access to and freedom to use under all applicable laws:

i the Charged Property and the Site;

ii any buildings or fixtures on the Site, or the Charged Property;

iii any easement, wayleaves or other rights necessary for access to and use of the Site and the Dwellings.

3.2.8 The Provider is in compliance with all applicable Environmental Laws.

### 3.3 Operational issues

3.3.1 No Event of Default has occurred and is continuing or would result from the making of any Funding.

3.3.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could be expected to constitute a default by it under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could be expected to have a Material Adverse Effect.

3.3.3 The Provider is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

3.3.4 It has filed all necessary Tax returns with the relevant authorities and is not in default in the payment of any Tax taking into account any grace period and all claims for payment of Tax which might have a Material Adverse Effect have been disclosed to the Agency.

3.3.5 Other than the registration of the Finance Documents at Companies House, the Financial Conduct Authority, the Land Registry and the Land Charges Registry (as appropriate), it is not necessary that any Finance Document to which it is a party be filed, recorded or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to any Finance Document to which it is a party or the transactions contemplated by the Finance Documents.

### 3.4 Information

3.4.1 All information supplied by or on behalf of it to the Agency or its agents or employees in connection with the Provider's initial application for funding or in the course of the subsequent negotiations 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.

3.4.2 It has informed the Agency of any material change that has occurred since the date of submission 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.

3.4.3 It is not aware of any fact or circumstance that has not been disclosed to the Agency and which is likely to, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.

3.4.4

(a) The Regulator has not directed the Agency that the Funding or any part thereof should not be made available to the Provider or a member of its

Group nor has the Regulator issued any regulatory judgment or assessment of the Provider's or a member of its Group viability which might have a Material Adverse Effect.

- (b) The Bid and the Scheme Budget supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

### 3.5 Valuation

3.5.1 All information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given.

3.5.2 Any financial projections contained in the information referred to in paragraph 3.5.1 above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions.

3.5.3 It has not omitted to supply any information to the Valuer which, if disclosed, would adversely affect the Valuation.

3.5.4 As at the date of the first Claim, nothing has occurred since the date the information referred to in paragraph 3.5.1 above was supplied which, if it had occurred prior to the Initial Valuation, would have adversely affected the Initial Valuation.

### 3.6 Covenants

The covenants in this clause 3.6 shall remain in force from the date of this Agreement for so long as any amount remains outstanding.

#### 3.6.1 Negative pledge

The Provider shall not except with the prior written consent of the Agency:

- (a) create or permit to subsist any Encumbrance (other than a Permitted Encumbrance) on the whole or any part of the Charged Property; or
- (b) incur any financial indebtedness (other than the Funding) in relation to the Charged Property.]

#### 3.6.2 Asset disposal

- (a) The Provider shall not, without the prior consent of the Agency, dispose of the whole or any part of the Site, or the Charged Property.

Clause 3.6.2(a) does not apply to:

- i a Permitted Disposal; or
- ii a Permitted Encumbrance

provided that the relevant Permitted Disposal or relevant Permitted Encumbrance does not materially prejudice the value of the Site which is not the subject of the relevant disposition and so that (for the avoidance of doubt and without limitation) such retained parts of the Site remain (or are granted pursuant to the disposal) all necessary rights so that such retained parts of the Site remain suitable for development pursuant to the Scheme Details.

- (b) The Provider shall procure that no Dwelling is disposed of other than by way of a Tenancy Agreement at no higher a rent than the Maximum Rent Level and in accordance with the terms of this Agreement during the Rental Period.
- (c) Following the end of the Rental Period the Provider shall not dispose of a Dwelling before first offering to sell that Dwelling to the [Eligible Person] residing at the Dwelling and giving that said [Eligible Person] a period of [60 days] to exercise such option.
- (d) The Provider shall not dispose of the Site or any part thereof to any person connected with the Provider.
- (e) For the avoidance of doubt, nothing in this clause shall have the effect of removing or in any way reducing the Provider's obligation to obtain statutory consent from the Regulator to disposals pursuant to section 172 of the Act (or any replacement provision).

### 3.6.3

#### **Priority**

The Provider shall ensure that its payment obligations under this Agreement rank and will always rank:

- (a) to the extent that they are secured, in all respects in priority to all its other indebtedness relating to the Charged Property other than indebtedness preferred by operation of law in the event of its winding up or any Permitted Encumbrance; and
- (b) to the extent that they are not so secured, at least equally and rateably in all respects with all its other unsecured and unsubordinated indebtedness other than indebtedness preferred by operation of law in the event of its winding up.

### 3.6.4

#### **Works**

The Provider shall procure that the Works are:

- (a) conducted and completed in accordance with, all Consents and the technical specifications and to the Submitted Standards; and
- (b) carried out in compliance with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail.



### 3.6.5 **Amendments**

The Provider may not make any amendment to the Scheme or the Scheme Details without the prior written consent of the Agency.

## 3.7 **Financial Covenants**

### 3.7.1 **Loan to Cost**

The Provider must ensure that the Loan to Cost does not, at any time, exceed 50 per cent of the Total Scheme Costs forecast at Start on Site and at Practical Completion.

## 3.8 **Milestone Date Amendments**

3.8.1 If a Milestone Failure occurs or is in the reasonable opinion of the Agency likely to occur (having regard to the information supplied in each Quarterly Officer's Certificate) and such Milestone Failure is not the result of a Milestone Extension Event the Agency shall be entitled (but not obliged) and in its absolute discretion to:

- (a) exercise the rights described under clause 11; or
- (b) agree a revised Milestone Date with the Provider in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone Date.

3.8.2 Where any Milestone Failure occurs or is in the opinion of the Agency likely to occur (having regard to the information supplied in each Quarterly Officer's Certificate) and the Agency determines that such failure is the result of a Milestone Extension Event the Agency shall extend the relevant Milestone Date by such reasonable period as it considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.

## 4 **Other**

4.1 The Provider shall maintain full and proper insurance sufficient to ensure compliance with clause 9.11.

4.2 The Provider will act at all times with the utmost good faith.

4.3 The covenants given by the Provider shall remain in force from the date of this Agreement for so long as any amount remains outstanding.

4.4 The Provider shall ensure that at all times the value of the Charged Property as set out in the most recent Valuation shall be equal to or greater than 105% of the total Funding outstanding at that time.

## 5 Payment of Funding

### 5.1 Initial Conditions Precedent

5.1.1 The Agency's obligations under this Agreement are subject to the condition precedent that it has confirmed to the Provider that it has received all of the following in form and substance satisfactory to the Agency:

- (a) a certified copy of a resolution of the board of the Provider:
  - i approving the terms of, and the transactions contemplated by, the relevant Finance Documents and resolving that it executes the relevant Finance Documents to which it is a party;
  - ii authorising its Senior Officer or other specified person or persons to execute each relevant Finance Document and to which it is a party on its behalf;
  - iii authorising its seal to be affixed to those relevant Finance Documents to be executed by it under seal; and
  - iv authorising its Senior Officer or other specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under, or in connection with, the relevant Finance Documents to which it is a party;
  - v certifying that the Provider will have sufficient funding (whether from its own resources or otherwise) to meet each Milestone Date in accordance with the Scheme Budget and Scheme Details;
- (b) a copy of the Scheme Budget and the Bid;
- (c) counterparts of each Finance Document (other than this Agreement) executed by the Provider;
- (d) a Certificate of Title in a form acceptable to the Agency in respect of the ownership of the Charged Property and the Provider's estate or interest in it (being either the freehold estate or a lease for a term of 99 years or more on terms acceptable to the Agency) issued to the Agency by a firm of solicitors certifying among other things that: (a) the Charged Property is free from any conditions, restrictions, covenants or third party interests;
- (e) a letter of undertaking relating to the title and other deeds to the Charged Property and the registration of the Finance Documents duly signed by a firm of solicitors in favour of the Agency;
- (f) evidence that all Consents and all other Authorisations the Agency considers necessary have been obtained to ensure that each Milestone is met by the relevant Milestone Date;
- (g) the Agency has received a copy of the Initial Valuation in form and substance satisfactory to it and

- (h) *[any other scheme specific or property specific conditions].*

## 5.2 **Conditions Precedent to each Claim for Funding**

5.2.1 The obligation of the Agency to make available any Funding is subject to the further conditions precedent that, at the time a Claim is submitted and at the time of making such Funding:

- (a) a valid Claim has been made in accordance with clause 5.3;
- (b) no Event of Default has occurred and is continuing or would result from the proposed Funding;
- (c) the Agency has received such evidence as the Agency may require that all matters represented and warranted by the Provider under clause 3 are true and correct as if made at the date of each Claim and would be true and correct immediately after the making of any such Funding; and
- (d) the Agency has received confirmation that the Provider has retained its Investment Partner status.

## 5.3 **Mechanics and payment of Funding**

5.3.1 A Claim will not be regarded as having been validly made by the Provider unless:

- (a) it is submitted via IMS; and
  - i is received by the Agency no later than [twenty (20) Business Days] prior to the proposed date the Funding will be made available to the Provider;
  - ii is delivered during the Availability Period; and
- (b) it accords with the Scheme Budget or is accompanied by evidence satisfactory to the Agency (in its absolute discretion) to justify any deviation; and
- (c) it is for an amount which (if paid) would not cause the relevant Total Commitment to be exceeded; and
- (d) the conditions at clauses 5.1 and 5.2 have been satisfied.

5.3.2 Subject to the terms of this Agreement, the Agency will pay Funding to the Provider within twenty (20) Business Days of receipt of a valid Claim.

5.3.3 Any amount not drawn by the Provider under a Facility during the Availability Period will be automatically cancelled.

5.3.4 The Provider may not make more than two Claims, being 50% (fifty per cent) of the Total Commitment to be paid no earlier than the Start on Site date and 50% (fifty per cent) of the Total Commitment to be paid no earlier than the Practical Completion date.

## 5.4 Use of Funding

5.4.1 The Funding will be the sole property of the Provider and will be used by the Provider for Development Costs only.

5.4.2 Without affecting the obligations of the Provider in any way, the Agency is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## 6 Repayment

6.1 Interest on any Funding outstanding from time to time to the Agency under this Agreement shall accrue at the rate of:

6.1.1 1% (one per cent) of the total Funding outstanding from time to time from the date of the first Claim until the 8th anniversary of the first Claim;

6.1.2 1.25% (one point twenty five per cent) of the total Funding outstanding from time to time for the following year;

6.1.3 An additional 0.25% above the previous year's interest rate of the total Funding outstanding from time to time for each year thereafter until the Final Repayment Date.

6.2 All interest shall accrue from day to day and be calculated on the basis of a 365 day year and for the actual number of days elapsed.

6.3 Interest on the Funding will capitalise and be added to the Funding on the last day of each Interest Period (as defined below) until the date of Practical Completion and thereafter shall be paid to the Agency on each Quarter Date.

6.4 Capitalised interest shall be paid in accordance with the provisions of clause 6.6 and paid in full no later than the Final Repayment Date.

6.5 Each Interest Period shall be a period of three months ending on a Quarter Day save that the first Interest Period in relation to each advance of Funding shall be the period commencing on the date when that advance of Funding is paid to the Provider and ending on the next Quarter Day. Each subsequent Interest Period shall start on the day following the last date of the previous Interest Period.

6.6 The Provider shall repay the Funding [in accordance with the Repayment Profile][on the Final Repayment Date].

6.7 If at any time following the expiry of the Rental Period a Dwelling is sold pursuant to clause 3.6.2, the Provider shall within 10 Business Days from the date of completion of the said sale repay to the Agency a pro rata sum per Dwelling calculated by dividing the total amount of Funding outstanding by the total number of Dwellings at the Scheme;

6.8 The Provider may, on giving not less than fifteen (15) Business Days' prior written notice to the Agency, repay all or any part of the Funding at any time.

6.9 No amount repaid or prepaid may be redrawn.

- 6.10 The Provider must immediately repay the Funding and all other amounts due up to the date repayment falls due:
- 6.10.1 at any time it becomes illegal for the Agency to continue to perform its obligations or enjoy its rights under this Agreement; or
  - 6.10.2 if an Event of Default occurs and is continuing.
- 6.11 All payments to be made by the Provider under this Agreement shall be paid in Sterling in immediately available cleared funds to the Agency into such bank account as the Agency shall notify to the Provider from time to time.
- 6.12 If the Provider does not pay any amount it is obliged to pay under this Agreement when it is due, the Provider shall pay default interest on such outstanding amount from the due date until the date of actual payment (both before and after judgment) at a rate per annum equal to 5% (five per cent) above the base rate from time to time of The Royal Bank of Scotland plc.
- 6.13 All payments by the Provider under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by law.
- 6.14 If the Provider is required by law to make any deduction or withholding the Provider shall:
- 6.14.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
  - 6.14.2 pay to the Agency such additional amount as may be determined by the Agency to be necessary to ensure that after making any required deduction or withholding the Agency receives and retains a net amount equal to the full amount which would have been received had no deduction or withholding been required;
  - 6.14.3 pay to the applicable taxation or other authorities within the period for payment permitted by law the full amount of the deduction or withholding; and
  - 6.14.4 supply to the Agency, within the period for the payment permitted by law, an official receipt of the applicable taxation or other authorities for all amounts deducted or withheld.
- 6.15 Without prejudice to any other provisions of this Agreement, if:
- 6.15.1 the Agency is required by law to make any payment on account of taxes (other than taxes on its overall net income) on or in relation to any sum received or receivable by the Agency under or pursuant to this Agreement; or
  - 6.15.2 any liability in respect of any such payment is imposed, levied or assessed against the Agency
- the Provider shall on demand by the Agency indemnify the Agency against such payment or liability together with any interest, penalties and expenses payable or incurred in connection with it.

## 7 **Delivery obligations**

### 7.1 **Scheme commencement and completion**

The Provider will procure that the Scheme commences by the Start on Site date and is carried out and completed in accordance with the Scheme Details and the Milestone Dates and by the date of Practical Completion.

### 7.2 **Contractors and employees**

The Provider will procure that each Contractor complies with each and all of its Contracts which relate to the Scheme and the Provider will enforce and procure the enforcement of the terms of those contracts.

## 8 **Regulatory obligations**

### 8.1 **Consents**

The Provider will procure that no Works are commenced and/or continued without all necessary Consents being received and in particular will procure that no work constituting development for which planning permission is required under the Town and Country Planning Act 1990 is carried out without having obtained detailed planning consent and will provide such documents as the Agency requires to demonstrate compliance with this clause 8.1.

### 8.2 **Public procurement**

The Provider shall comply with all applicable EU Procurement Requirements in connection with the procurement of the Works or any services relating to the Scheme.

## 9 **Health and Safety**

9.1 The Provider will comply in all material respects with all relevant Legislation relating to health and safety, equality and relevant employment matters and will use reasonable endeavours to procure that all parties engaged in the delivery of the Bid do likewise.

9.2 The Provider confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by the Agency.

9.3 The Provider 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.

9.4 To the extent that the Agency is a 'client' for the purposes of the CDM Regulations:

9.4.1 where the Provider is engaging consultants and a contractor or contractors as Subcontractors to deliver the Scheme the Provider elects to be the only client in relation to such Scheme; or

9.4.2 where the Provider is contracting with a developer as a Subcontractor to deliver a Scheme the Provider shall procure that such developer shall elect to be the

only client in relation to the Scheme on or before the date that such scheme becomes a Scheme;

and the Agency hereby agrees to such election.

- 9.5 The Provider shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to this clause 9 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to this clause 9 without the Agency's prior written consent, which the Agency may in its absolute discretion withhold.
- 9.6 The Provider 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.
- 9.7 The Provider 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.
- 9.8 The Provider shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with each Scheme.
- 9.9 Without prejudice to any other provision of this Agreement, the Provider 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 Scheme:
- 9.9.1 a fatal accident to any worker or a member of the public;
  - 9.9.2 any injury to a member of the public requiring reporting under RIDDOR;
  - 9.9.3 any dangerous occurrence, as defined by RIDDOR;
  - 9.9.4 the service of any improvement or prohibition notice under the HS Act;
  - 9.9.5 any incident having health & safety implications which attracts the attention of the police and/or the media;
  - 9.9.6 the commencement of any criminal prosecution under the HS Act.
- 9.10 The Provider will procure that all its Subcontractors comply at all times with the HS Act and the CDM Regulations and will procure that:
- 9.10.1 where for the purposes of the Works a Subcontractor is a client, designer, principal contractor or CDM coordinator, the Subcontractor will comply with the obligations imposed on such role(s) under the CDM Regulations;
  - 9.10.2 each Subcontractor co-operates fully with the CDM coordinator and the Principal Contractor appointed under the CDM Regulations (whether or not either of these roles are carried out by the relevant contractor);
  - 9.10.3 each Subcontractor allocates adequate resources to enable it to comply with its obligations under the relevant Works contract and the CDM Regulations;

- 9.10.4 each Subcontractor co-operates with all other persons involved in the Works to consider the prevention of risks and protection of persons who may be exposed to risks;
- 9.10.5 no Subcontractor will by any act or omission do anything that would cause the Provider to breach or be prosecuted under the HS Act and/or the CDM Regulations; and
- 9.10.6 the Provider and each Subcontractor at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

## 9.11 Insurance

- 9.11.1 The Provider shall procure that at all times during the carrying out of the Scheme there shall be maintained full and proper insurance policies including policies in respect of all buildings upon the Site and the Charged Property and all works undertaken in carrying out the Works and all unfixed goods and materials in connection with such works for, in every case, the full reinstatement or replacement costs of them from time to time including professional fees.
- 9.11.2 The Provider shall supply evidence of such insurance policies (satisfactory to the Agency) within five (5) Business Days of written request from the Agency.
- 9.11.3 If any building upon the Site or the Charged Property or any works forming part of the Works or the Scheme or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of the Works), the Provider shall procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable. If the insurance proceeds shall be insufficient the Provider shall make up any deficiency out of its own monies.
- 9.11.4 The Provider shall not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

## 10 Notifications, reporting and audit

- 10.1 The Provider shall notify the Agency:
  - 10.1.1 immediately, in the event of receipt by it or any Contractor of any Public Sector Subsidy or guarantee of it, or the offer of same in respect of the Scheme (or any part of it);
  - 10.1.2 immediately upon any change (whether actual or estimated) required to the Scheme Details other than any change permitted under this Agreement;



10.1.3 immediately upon becoming aware of any event which might have a Material Adverse Effect on:

- (a) the Provider; or
- (b) any aspect of the Scheme including, but not limited to, any Milestone Failure;

10.1.4 as soon as reasonably practicable on becoming aware of any claim brought against the Provider arising out of or relating to the activities of the Provider and/or the Funding;

10.1.5 immediately upon the occurrence of an Event of Default;

10.1.6 immediately upon becoming aware of any requirement for the Scheme to become part of a wider publically funded regeneration scheme;

10.1.7 immediately upon becoming aware that the Total Scheme Costs are 5% (five per cent) or more higher or lower than the Total Scheme Costs as shown in the Scheme Budget.

## 10.2 **Resolution**

In the event of notification by the Provider under this clause 10, if applicable and if requested by the Agency, the Provider will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of the Agency on such proposals.

## 10.3 **Reporting**

10.3.1 From the date of this Agreement until the Final Repayment Date the Provider will, no later than ten (10) Business Days following the end of each Quarter Day and on the Final Repayment Date, provide the Agency with the Quarterly Officer's Certificate.

10.3.2 The Quarterly Officer's Certificate shall provide such information as is reasonably required by the Agency including the following information, as appropriate to the Scheme for that quarter:

- (a) progress against any Milestone Dates including any anticipated delays in achieving any Milestone Date;
- (b) reasons for, and actions to mitigate, any delays;
- (c) details of all Dwelling Disposals;
- (d) any Significant Event;
- (e) any breach of any term or warranty of this Agreement or any agreement referred to herein;
- (f) any matter or event which would entitle the Agency to terminate this Agreement in whole or in part;

- (g) the receipt by the Provider of any Public Sector Subsidy or guarantee of it or offer of the same in respect of the Scheme;
- (h) confirmation that the Total Commitment will not exceed 50% of Total Scheme Costs forecast at Practical Completion;
- (i) any other issue requested on reasonable notice by the Agency (including without limitation at a previous meeting);
- (j) in the case of the final Quarterly Officer's Certificate, full details of any estate or interest in the Scheme which has not been disposed of by the Provider/the Provider.

10.3.3 Each Quarterly Officer's Certificate shall:

- (a) certify that the information set out therein is true and correct;
- (b) demonstrate to the satisfaction of the Agency compliance with the Finance Documents;

and be signed by the Provider's Representative.

10.3.4 the Agency may call a meeting with the Provider at any time provided that the Agency:

- (a) gives reasonable prior written notice of such meeting; and
- (b) includes with the notice (or circulates within 10 Business Days of the notice) an agenda for such meeting.

10.3.5 The Agency and the Provider shall use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 10 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.

10.3.6 Subject to the prior approval of the other party (such approval not be unreasonably withheld) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.

10.3.7 Save as otherwise agreed between the parties, any meeting under this clause 10 shall be minuted by the Provider and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.

10.3.8 Nothing in this clause 10.3 shall prevent the Agency from requesting (whether on behalf of itself or any Government office) at any other time information from the Provider in respect of any of the items listed in clause 10.3.2 and the Provider shall promptly respond to any such request.

#### 10.4 **Inspection and audit facilities**

10.4.1 The Provider shall:

- (a) provide the Agency with such information as the Agency shall reasonably require to support or facilitate the discussions referred to in this clause 10.4; and
  - (b) take all reasonable steps to ensure that any information provided to the Agency pursuant to this clause 10.4 is accurate in all material aspects.
- 10.4.2 The Provider shall, as and when requested by the Agency (as required in connection with this Agreement, the Bid or any Scheme) promptly provide to the Agency hard and/or electronic copies of:
  - (a) 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 the Provider for the purposes of or in connection with this Agreement; and
  - (b) the elemental breakdown of the construction costs in relation to each Scheme.
- 10.4.3 On the expiry of this Agreement or (if earlier) upon termination thereof, the Provider shall, if requested to do so, deliver up to the Agency all the data, materials, documents and accounts referred to in this clause 10.4 which it has in its possession, custody or control and shall procure the handing over to the Agency such data, materials, documents and accounts referred to in clause 10.4 or as otherwise directed by the Agency.
- 10.4.4 The Provider must for a period of 10 (ten) years from the Final Repayment Date retain all of the data, documents, materials and accounts referred to in this clause 10.4 and the Provider may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to the Agency pursuant to this clause 10.4.
- 10.4.5 The Provider shall comply with the Agency's requirements in relation to Compliance Audit.
- 10.4.6 The Provider 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.
- 10.4.7 The Provider shall promptly and fully co-operate with any request for information or evidence from time to time of:
  - (a) any auditor (whether internal or external) of the Agency; and/or
  - (b) 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.

10.4.8 The Provider shall ensure that for each Scheme it and each Provider Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Facility and such other items required under this clause 10.4.

10.4.9 The Provider shall upon the Agency's written request:

- (a) make available upon reasonable notice for the Agency's inspection (and that of any person referred to in this clause 10.4 or in clause 14.1 or any person appointed pursuant to clause 25) the books of account referred to in this clause 10.4 (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
- (b) 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 clause 10.4 are held or maintained and examine such records or information.

## 10.5 **Change in financial circumstances**

10.5.1 The Provider shall notify the Agency immediately where there is or has been any change in its financial circumstances which has or might have a Material Adverse Effect, including for the avoidance of doubt any withdrawal or reduction of any Senior Lender Debt Funding;

10.5.2 In the event that the Agency believes that any change notified to it pursuant to clause 10.5.1 or which it otherwise becomes aware of has or might have a Material Adverse Effect, the Agency shall be entitled to exercise any of the rights and remedies set out in clause 11.

## 11 **Events of Default**

11.1 An Event of Default occurs where:

11.1.1 a Milestone Failure occurs or is in the opinion of the Agency likely to occur (having regard to the information supplied pursuant to clause 10.3) and such Milestone Failure is not the direct result of a Milestone Extension Event;

11.1.2 the Provider fails to perform and/or observe any obligation or restriction on it under any Finance Document (to which it is a party);

11.1.3 any representation or warranty or covenant made by the Provider pursuant to clause 3 is incorrect in any material respect when made or repeated;

11.1.4 any requirement of clause 3.7 is not satisfied;

11.1.5 the Provider is subject to any Insolvency Event and/or ceases trading;

11.1.6 an event or circumstance occurs in relation to the Provider that might in the opinion of the Agency have a Material Adverse Effect;

- 11.1.7 a Finance Document is not or ceases to be effective or to have the priority expressed in it or is alleged by any person (other than the Agency) to be ineffective or not to have such priority for any reason;
- 11.1.8 any Consent is withdrawn or revoked, where such withdrawal or revocation is likely to have a Material Adverse Effect;
- 11.1.9 the Provider or where applicable any Subcontractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- 11.1.10 the Provider fails to pay any sum due under a Finance Document on the due date for payment thereof provided that if the Agency is satisfied that such failure to pay any amount due hereunder is due solely to technical delays in the transmission of funds and such amount is paid within two (2) Business Days, this paragraph shall not apply;
- 11.1.11 an officer or director of the Provider is convicted of dishonesty;
- 11.1.12 any enforcement action is taken or other right is enforced by the Regulator in relation to the Provider or a member of its Group or the Scheme;
- 11.1.13 the Provider fails to achieve Registered Provider status by 31 December 2016;
- 11.1.14 the Provider [once it has achieved Registered Provider status] ceases to be a Registered Provider for any reason;
- 11.2 Where an Event of Default has occurred the Agency may by notice to the Provider:
- 11.2.1 require the Provider to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to the Agency within ten (10) Business Days of such request for approval; and/or
- 11.2.2 suspend or alter the timing of the payment of Funding for such period as the Agency will determine in its sole discretion; and/or
- 11.2.3 reduce the Total Commitment; and/or
- 11.2.4 enforce any of the Finance Documents in its sole discretion; and/or
- 11.2.5 require the Provider to immediately repay the Funding and all other amounts due under this Agreement; and/or
- 11.2.6 terminate this Agreement in which case the Agency will have no obligation to provide any further Funding and will be entitled to require the Provider to immediately repay the Funding and all other amounts due under this Agreement.
- 11.3 In relation to the exercise by the Agency of its rights under clause 11.2:
- 11.3.1 the exercise by the Agency of its rights under clause 11.2.1 will be without prejudice to any other right of action or remedy of the Agency (including any claim for damage) in respect of the Event of Default;

11.3.2 if in the sole opinion of the Agency, the Event of Default capable of remedy, the Provider will, after notice from the Agency, remedy the Event of Default to the Agency's satisfaction within such period as the Agency will determine and following such remedy to the Agency's satisfaction the Agency will not continue such suspension.

## 12 Public relations and publicity

12.1 Save as specified in the Agency's marketing requirements or otherwise set out in this clause 12, the Provider shall not and shall procure that no Contractor, officer, employee or agent shall communicate with any representative of any press, television, radio or other communications media on any matter concerning this Agreement without the Agency's prior written consent (not to be unreasonably delayed).

12.2 The Provider shall:

12.2.1 notify the Agency's Press Office and Communications Team (from time to time) in advance of any publicity plan, event or communication which it proposes to implement, hold or issue;

12.2.2 ensure that pro-active positive press releases issued in respect of the Scheme acknowledge in the body of their text the fact and amount of the Agency's contribution to the Scheme;

12.2.3 ensure that such wording as the Agency may require from time to time is included within all press releases in respect of the Scheme;

12.2.4 not produce any publication touching or concerning the Works, the Agreement (or the performance of it by either party) without the prior written approval of the Agency save where such publication is in the overwhelming public interest (and in any event without first consulting the Agency and allowing the Agency to make representations on such proposed disclosure);

12.2.5 comply with such requirements as to Site signage as the Agency may notify to it from time to time; and

12.2.6 ensure that any publicity material prepared in relation to the Scheme includes the logo of the Agency and/or the logo of any other organisation advised from time to time by the Agency.

12.3 The Provider grants to the Agency a non-exclusive, royalty free licence to use any photographs, records, images, articles or illustrations relating to the Scheme undertaken by or for the Provider for use in any publicity or advertising, whether published alone or in conjunction with any other person.

12.4 During the term of this Agreement, the Agency grants the Provider a non-exclusive licence to use the Agency's logo only for the purposes of the Scheme and in accordance with the Agency's marketing guide (provided to the Provider as updated from time to time);

12.5 The Provider will not grant sub licences of this licence or any part of it or use such logo for any other purposes save where approved in advance by the Agency.

12.6 The Provider acknowledges that the Agency's logo is owned by and will remain the property of the Agency.

### 13 **Reputation of the parties**

13.1 The Provider will not, and will use all reasonable endeavours to procure that all Contractors will not knowingly do or omit to do anything in relation to the Finance Documents, the Scheme or in the course of their other activities that may bring the standing of the Agency into disrepute or attract adverse publicity for the Agency.

13.2 No party will publish any statement, orally or in writing, relating to the other party which might damage that other party's reputation or that of any of its officers or employees.

13.3 The Provider has not, at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

13.4 No Associated Person of the Provider has bribed another person (within the meaning given in section 7(3) the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business for the Provider, and the Provider has in place adequate procedures in line with guidance published by the Secretary of State under section 9 the Bribery Act 2010 designed to prevent its Associated Persons from undertaking any such conduct.

13.5 Neither the Provider nor any of its Associated Persons is, or has, been the subject of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Bribery Act 2010, and no such investigation, enquiry or proceedings are pending or to the best of the Provider's knowledge and belief having made all due enquiry have been threatened which, if adversely determined, might be expected to have a Material Adverse Effect and there are no circumstances likely to give rise to any such investigation, enquiry or proceedings.

13.6 The Provider is not ineligible to be awarded any contract or business under section 23 the Public Contracts Regulations 2006 (SI 2006/5) or section 26 the Utilities Contracts Regulations 2006 (SI 2006/6) (each as amended).

13.7 The Provider will not and will procure that the Provider will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.

13.8 The Provider will, and will procure that the Provider will, maintain in place adequate procedures in line with guidance published by the Secretary of State under section 9 the Bribery Act 2010 designed to prevent any Associated Person of a person from bribing another person (within the meaning given in section 7(3) the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business of a person. The Provider shall supply to the Agency, promptly on request of the Agency, copies of such documentation or other evidence as is reasonably requested by the Agency to enable the Agency to satisfy itself that such procedures are in place.

13.9 The Provider shall supply to the Agency, promptly on becoming aware of them, details of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence or alleged offence under the Bribery Act 2010 against it.

14 **Confidentiality and freedom of information**

14.1 **Information and Confidentiality**

14.1.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.

14.1.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

14.1.3 The obligations of confidence referred to in this clause 14.1 shall not apply to any Confidential Information which:

- (a) 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;
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
- (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to the Confidential Information of the other party.

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

- (a) 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;
- (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Provider 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;
- (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or



- (d) 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.

14.1.5 The Provider shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:

- (a) 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;
- (b) 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;
- (c) where it is considered necessary in the opinion of the Agency the Provider shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

14.1.6 Nothing in this clause 14 shall prevent the Agency:

- (a) disclosing any Confidential Information for the purpose of:
  - i the examination and certification of the Agency's accounts;
  - ii 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;
- (b) disclosing any Confidential Information obtained from the Provider:
  - i to any other department, office or agency of the Crown; or
  - ii 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;
- (c) provided that in disclosing information under this clause 14 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.

14.1.7 Nothing in this clause 14 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

14.1.8 The Provider 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.

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

- (a) any Information is Exempted Information or remains Exempted Information; or
- (b) any Information is to be disclosed in response to a Request for Information;

and in no event shall the Provider 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.

14.1.10 Subject to clause 14.1.11 below, the Provider acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:

- (a) without consulting the Provider; or
- (b) following consultation with the Provider and having taken (or not taken, as the case may be) its views into account.

14.1.11 Without in any way limiting clause 14.1.9 or clause 14.1.10, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Provider.

14.1.12 The Provider will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:

- (a) transfer any Request for Information received by the Provider to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
- (b) 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;
- (c) 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;
- (d) permit the Agency to inspect such records as are requested from time to time.

14.1.13 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.

14.1.14 The obligations in this clause 14.1 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

14.1.15 The Provider must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Provider must:

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

(b) 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;

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

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

## 14.2 **Publication of information before Parliament**

The Provider acknowledges that the National Audit Office has the right to publish details of the Finance Documents in its relevant reports to Parliament.

## 15 **Data protection**

15.1 The Provider 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.

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

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

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

15.2.2 the Provider 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;

15.2.3 the Provider shall allow the Agency to audit the Provider's compliance with the requirements of this clause 15 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Provider's compliance with the obligations within this clause 15.

15.3 The Provider 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 clause 15.2 the Provider shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Provider to perform its obligations under this Agreement, or to the extent required under a court order.

15.4 The Provider shall:

15.4.1 take reasonable steps to ensure the reliability of any Provider Party who has access to the Personal Data;

15.4.2 ensure that any Provider Party required to access the Personal Data is informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 15;

15.4.3 ensure that no Provider Party publishes, discloses or divulges any of the Personal Data to any third party unless directed in writing to do so by the Agency;

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

15.4.5 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.

- 15.5 The Provider 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:
- 15.5.1 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;
  - 15.5.2 provide the Agency with reasonable assistance in complying with any request for information served on the Agency under Section 7 of the DPA;
  - 15.5.3 notify the Agency (within five (5) Business Days) about the receipt of any such request received by the Provider 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;
  - 15.5.4 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.
- 15.6 The Provider 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.
- 15.7 The Provider shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Provider's destruction of and/or damage to any of the Agency's Personal Data processed by the Provider, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this clause 15 by the Provider, its employees, agents or sub-contractors.
- 15.8 The Provider shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Provider's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or management of any enforcement action

or assessment by the Information Commissioner or any other Competent Authority in relation thereto.

15.9 The Provider undertakes to include obligations no less onerous than those set out in this clause 15, in all contractual arrangements with agents engaged by the Provider in performing its obligations under this Agreement to the Agency.

## 16 **Intellectual property**

16.1 The Provider shall, to the extent that it is able to do so without incurring material cost, grant to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Provider or which are or become owned by the Provider and which relate to the Schemes, for any purpose relating to this Agreement.

16.2 To the extent that any of the data, materials and documents referred to in clause 16.1 are generated by or maintained on a computer or in any other machine readable format, the Provider shall if requested by the Agency use its reasonable endeavours (without having to incur material cost) procure for the benefit of the Agency for the duration of this Agreement at the cost of the Provider 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 clause 16.1.

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

16.4 The Provider shall fully indemnify the Agency within five (5) Business Days of demand under this clause 16.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 16, any breach by the Provider of this clause 16 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.

16.5 The Provider shall only be entitled to revoke the licence granted to the Agency under clause 16.1 in the following circumstances and upon the following terms:

16.5.1 on the termination of the whole of this Agreement; or

16.5.2 Continuing Schemes.

## 17 **Further assurance**

At any time upon the written request of the Agency the Provider will 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 or any other Finance Document and of the rights and powers therein granted and the Provider hereby appoints the Agency as its attorney solely for that purpose.

## 18 Indemnity

The Provider shall:

- 18.1 be liable for and will indemnify the Agency in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to the Agency or otherwise or any claim by any third party arising out of or in the course of or caused or contributed to by the Provider and/or the performance or non-performance or delay in performance by the Provider of its obligations under any of the Finance Documents except to the extent that the same is due to any wilful neglect of the Agency; and
- 18.2 be liable for and shall indemnify the Agency against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connect with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Provider.

## 19 Senior Officers

### 19.1 Authority of the Provider's Representative

The Provider represents to the Agency that the Provider's Representative has full authority to act on its behalf for all purposes under the Finance Documents. the Agency and the Agency Senior Officer are entitled to treat any act of the Provider's Representative in connection with the Finance Documents as being expressly authorised by the Provider (save where the Provider has notified the Agency that such authority has been revoked) and the Agency will not be required to determine whether any express authority has in fact been given.

### 19.2 Provider's Representative's power to delegate

The Provider's Representative may authorise any of its subordinates to exercise its powers under the Finance Documents by notice to the Agency.

### 19.3 Authority of the Agency Senior Officer

The Agency represents to the Provider that the Agency Senior Officer has full authority to act on its behalf for all purposes under the Finance Documents. The Provider is entitled to treat any act of the Agency Senior Officer in connection with the Finance Documents as being expressly authorised by the Agency (save where the Agency has notified the Provider that such authority has been revoked) and the Provider will not be required to determine whether any express authority has in fact been given.

### 19.4 the Agency Senior Officer's power to delegate

The Agency Senior Officer may authorise any of its subordinates to exercise any of its powers under any Finance Document by notice to the Provider.

### 19.5 Notices

Subject to clause 27, any notice, information, instructions or public communication given in writing to the Agency Senior Officer or the Provider's Representative will be deemed to have been given to their respective appointing party.

## 20 **No agency, partnership or employment**

- 20.1 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 for any purpose whatsoever.
- 20.2 The Provider shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Agency and the Provider. Neither the Provider nor any of its respective employees shall at any time hold itself or themselves out to be an employee of the Agency.
- 20.3 The Provider will not say or do anything which may pledge the credit of or otherwise bind the Agency or that may lead any other person to believe that the Provider is acting as the Agency.

## 21 **Assignment and sub contracting**

- 21.1 Save in the case of statutory transfers and subject to clause 21.2, the Agency may not assign, transfer or novate its rights and/or obligations under this Agreement to any other party without Provider consent (such consent not to be unreasonably withheld).
- 21.2 Notwithstanding clause 21.1, the Agency may assign, transfer or novate its rights and/or obligations under this Agreement to any financial institution without Provider consent if such assignment, transfer or novation would not cause the Provider to incur additional costs or expenses in connection with the Facilities.
- 21.3 the Agency acknowledges and agrees that the Provider is entitled to assign all or any rights or remedies under this Agreement to another Registered Provider but only as agreed by the Agency provided that in exercising or declining to exercise its power under this clause the Agency will be entitled to act in its absolute discretion including with regard to any requirement that the proposed assignee provides as a precondition of such proposed assignment such form of performance bond or guarantee as the Agency may require having regard to the nature of the obligations to be undertaken by the proposed assignee and the general duty of the Agency to safeguard the application of public monies.

## 22 **Value Added Tax**

- 22.1 The parties understand and agree that the Funding by the Agency under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Provider or otherwise.
- 22.2 If, notwithstanding the agreement and understanding of the parties as set out in clause 22.1 above, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.
- 22.3 All sums or other consideration payable to or provided by the Provider to the Agency at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Provider will pay to the Agency all the VAT payable upon the receipt of a valid VAT invoice.



23 **No fettering of discretion/statutory powers**

Nothing contained in or carried out pursuant to any Finance Document and no consents given by the Agency or the Provider will unlawfully prejudice the Agency's or the Provider's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

24 **Fees and Expenses**

24.1 **Costs**

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Agreement, and all documents ancillary to it.

24.2 **Valuations**

24.2.1 The Agency may request a Valuation at any time.

24.2.2 The Provider shall promptly on demand pay to the Agency the costs of the Initial Valuation.

24.2.3 The Provider must supply to the Agency a copy of any valuation it obtains of the Site or the Charged Property promptly upon obtaining it.

24.3 **Variations and Enforcement Costs**

The Provider shall, forthwith on demand, pay to the Agency the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

24.3.1 in connection with the variation or amendment of, or the enforcement or preservation of any rights under, any Finance Document; or

24.3.2 in investigating any Event of Default which has occurred.

25 **Public Resource and State Aid compliance**

25.1 This Agreement is drafted (and the Funding provided under it structured) to comply with the requirements of the SGEI Decision.

25.2 The Provider shall comply with Schedule 4 which sets out the requirements under the SGEI Decision in relation to Funding

25.3 The Provider shall ensure that it and any Provider Affiliate co-operates with the Agency during an SGEI Review and if requested by the Agency it shall promptly provide the Agency with any information, explanation or evidence as the Agency may reasonably require to monitor compliance with the SGEI Decision or if the Agency is required to provide to a third party such information or evidence either under legislation or by a Competent Authority.

25.4 The Provider shall ensure that it and each Provider Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Dwellings which identify items which are costs, income, this Loan or other Public Subsidy and such other items as may be specified by the Agency.

25.5 The Provider and the Agency agree that if an SGEI Decision Overpayment and or Unlawful State Aid arises in respect of the Affordable Housing Dwellings then:

25.5.1 the Provider and the Agency shall promptly amend this Agreement to the extent necessary to ensure that no SGEI Overpayment and/or Unlawful State Aid subsequently arises from it;

25.5.2 the Agency shall be entitled to recover from the Provider 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 Provider shall pay such amount(s) within ten (10) Business Days of the Agency requesting repayment.

## 26 **Co-operation**

26.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Scheme and in particular will (subject to clause 26.2):

26.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;

26.1.2 not interfere with the rights of any other party (nor its employees, agents, representatives, contractors or Subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent any other party (nor its employees, agents, representatives, contractors or Subcontractors) from performing those obligations provided that this provision shall not prevent any party from exercising its express rights under this Agreement.

26.2 Nothing in clause 26.1 shall:

26.2.1 interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in connection with the Scheme in the manner in which it considers to be the most effective and efficient; or

26.2.2 relieve a party from any obligation contained in this Agreement.

26.3 The Provider shall co-operate fully and in a timely manner with any reasonable request from time to time:

26.3.1 of any auditor (whether internal or external) of the Agency to provide documents, or to procure the provision of documents, relating to the Scheme, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

26.3.2 of the Agency where the Agency is required under any legislation to provide any document relating to the Scheme to any person.

## 27 **Notices**

27.1 Any notice to be given hereunder shall be in writing addressed to the Agency Senior Officer and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by the Recorded Delivery Service addressed in the case of any party to

the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

27.2 Any notice shall be deemed to be given by the sender and received by the recipient:

27.2.1 if delivered by hand, when delivered to the recipient; or

27.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

## 28 **Rights of third parties**

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

## 29 **Entire agreement**

29.1 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 accordance with clause 36.

29.2 The Provider hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of the Agency of whatsoever nature on the faith of which the Provider is entering into this Agreement.

## 30 **Counterparts**

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.

## 31 **Severance**

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**

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

## 33 **Waiver**

33.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may

the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

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 a 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 **Disclaimer**

the Agency will not be liable to the other party for any advice given by a representative of the Agency. In addition, the Agency gives no assurance as to the suitability or viability of the Scheme and no endorsement of the same.

#### 35 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

#### 36 **Amendment**

The parties agree that this Agreement may be amended by agreement between the Agency and the Provider.

#### 37 **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.

#### 38 **Survival of this agreement**

38.1 Insofar as any of the rights and powers of the Agency provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

38.2 Insofar as any of the obligations of the Provider 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.

39 **Miscellaneous**

- 39.1 Any approval by the Agency or any person on behalf of the Agency pursuant to this Agreement of any matter submitted by the Provider for approval will not be deemed to be an acceptance by the Agency of the correctness or suitability of the contents of the subject of the approval or consent.
- 39.2 The parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.
- 39.3 A certificate by the Agency as to any sum payable hereunder by the Provider will be conclusive save in the case of manifest error.

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

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**Schedule 1**

**Scheme Details**

**Scheme Name**

**Scheme Information**

Site Description *[Title details]*

Scheme Description *[Number of Dwellings and unit mix etc]*

**Milestones and Milestone Dates:**

Start on Site Date *[ ]*

Practical Completion Date *[ ]*

*[Repayment Dates]* *[ ]*

Final Repayment Date *[ ]*

**Additional conditions (if any)** *[ ]*

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## Schedule 2

### Part 1

#### Development Costs

##### Heads of expenditure

##### 40 Acquisition

- 40.1 Purchase price of land/Site.
- 40.2 Stamp Duty Land Tax on the purchase price of land/Site.

##### 41 Works

- 41.1 Main Works contract costs (excluding any costs defined as on costs).
- 41.2 Major site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.
- 41.3 Statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such) where applicable.
- 41.4 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.
- 41.5 Irrecoverable VAT on the above (where applicable).

##### 42 On costs

- 42.1 Legal fees and disbursements.
- 42.2 Net gains/losses via interest charges on development period loans.
- 42.3 Building society or other valuation and administration fees.
- 42.4 Fees for building control and planning permission.
- 42.5 Fees and charges associated with compliance with European Community directives, and the Agency's requirements relating to energy rating of Dwellings, Code for Sustainable-Homes certification and Housing Quality Indicators.
- 42.6 In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- 42.7 Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in works costs).
- 42.8 Contract performance bond premiums.
- 42.9 Borrowing administration charges (including associated legal and valuation fees).

42.10 An appropriate proportion of the Provider's development and administration costs.

42.11 Irrecoverable VAT on the above.

43 **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.

44 **Note 2**

44.1 Some items will not qualify as Development Costs unless the Provider 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.

44.2 Examples of these are as follows:

44.2.1 works to any roads which do not exclusively serve the housing development;

44.2.2 landscaping to areas of land which lie outside the boundaries of the Site;

44.2.3 district heating systems;

44.2.4 trunk sewers and sewage disposal works;

44.2.5 special refuse treatment buildings;

44.2.6 public conveniences;

44.2.7 community halls, club rooms, recreation rooms.

45 **Note 3**

Subject to the above, where any cost incurred or to be incurred by the Provider is common both to the development of the Dwellings within any Scheme and to any other activity, asset or property of the Provider, only such part of that cost as is attributable to the development of the Dwellings may be treated as a cost in respect of which grant under this Agreement may be paid.



## Schedule 2

### Part 2

#### Costs Which Are Not Development Costs

Capital costs incurred:

- 1.1 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Scheme;
- 1.2 on estate offices, factories, letting offices;
- 1.3 on stores (other than external storage provision required by Design and Quality Standards);
- 1.4 on medical or dental surgeries, clinics;
- 1.5 on police stations, public libraries, bus shelters;
- 1.6 on shops, restaurants, public houses, offices;
- 1.7 on transformer and other related buildings;
- 1.8 on maintenance depots, tools, plant and vehicles;
- 1.9 on garages (other than integral garages on market purchase scheme types) and greenhouses;
- 1.10 on separate commercial laundry blocks and related equipment;
- 1.11 management costs;
- 1.12 void costs.

### Schedule 3

#### Funding Information and SGEI Compliance

- 1 The Cash Grant Equivalent sum provided through the Subsidised Interest is £[INSERT AMOUNT].
- 2 The Agency has evaluated the SGEI Net Costs in accordance with the requirements of the SGEI Decision.
- 3 The parties acknowledge and agree that the Cash Grant Equivalent should not exceed the State Aid Cap.

**Signatory page**

**THE COMMON SEAL of HOMES** )  
**AND COMMUNITIES AGENCY** )  
was hereunto affixed )  
in the presence of: )

Authorised Signatory

**THE COMMON SEAL of [PROVIDER]** )  
was hereunto affixed )  
in the presence of: )

Authorised Signatory