

**dated**

**2011**

**Homes and Communities Agency**

and

**[Grant Recipient]**

**Framework Delivery Agreement**

in relation to Affordable Homes Programme Model (new RP – Local Authority)

11/15

# Contents

1	Definitions and interpretation	1
2	The Programme Offer	17
3	Programme Offer - Monitoring and Reporting	18
4	Programme Changes	19
5	Programme Default	21
6	Firm Schemes – Submission Procedures	24
7	Firm Scheme Obligations	24
8	Changes to Firm Schemes	26
9	Grant Claim Procedures	27
10	Calculation of Grant	28
11	Payment of Grant	28
12	Withholding of Firm Scheme Grant	29
13	Repayment of Grant	30
14	VAT	33
15	Allocation of Grant and Non Attributed Grant Units	33
16	Open Book Obligations	34
17	Transparency Obligations	35
18	State Aid	35
19	Representations and Warranties	35
20	Information and confidentiality	35
21	Intellectual Property	38
22	Grant Recipient's records and accounting	39
23	Health and Safety and Equality and Diversity	40
24	Co-operation	42
25	Dispute Resolution	42
26	Notices	43
27	No fetter on statutory functions	43
28	No agency	43
29	Exclusion of third party rights	44
30	Assignment and sub-contracting	44
31	Construction Industry Scheme	44
32	Data Protection	44
33	Further Assurance	47
34	Entire agreement	47
35	Severability	47
36	Cumulative rights and enforcement	48
37	Waiver	48

<b>38</b>	<b>Survival of this Agreement</b>	<b>48</b>
<b>40</b>	<b>Execution</b>	<b>49</b>
<b>41</b>	<b>Governing law</b>	<b>49</b>
	<b>Schedule 1 Programme Offer</b>	<b>50</b>
	<b>Schedule 2 Officer's Certificate</b>	<b>51</b>
	<b>Schedule 3 Representation and Warranties</b>	<b>53</b>
	<b>Schedule 4 Form of Legal Opinion</b>	<b>55</b>
	<b>Schedule 5 Affordable Rent Terms</b>	<b>57</b>
	<b>Annex 1 - Development Costs</b>	<b>58</b>
	<b>Annex 2 Adjustment Mechanism Illustration</b>	<b>61</b>
	<b>Annex 3 Recovery Principles</b>	<b>64</b>

# Framework Delivery Agreement<sup>1</sup>

dated

Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Central Business Exchange II, 406-412 Midsummer Boulevard, Central Milton Keynes MK9 2EA (including any statutory successor) (the **Agency**); and
- (2) [ ] of [ ] (the **Grant Recipient**).

## Introduction

- (A) The Agency is empowered under Section 19 of the Housing and Regeneration Act 2008 to, inter alia, make grants available to facilitate the development and provision of affordable housing.
- (B) The Agency and the Grant Recipient have agreed the terms of a Programme Offer (as hereinafter defined) pursuant to which the Agency agrees to provide grant to the Grant Recipient for the purposes of the delivery by 31 March 2015 of the number of Affordable Dwellings specified in the Programme Offer.
- (C) Grant paid by the Agency to the Grant Recipient pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.

## 1 Definitions and interpretation

### 1.1 Definitions

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

**Acceptance Date** means the date upon which the Agency accepts a Developable Scheme as a Firm Scheme pursuant to Condition 6.2;

**Actual Development Costs** means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Grant Recipient in developing that Firm Scheme as such amount is certified by the Grant Recipient pursuant to condition 9.2.3;

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

**Adjustment** has the meaning given to it in Condition 5.8. A worked example of the calculation referred to in Condition 5.8 is included at Annex 2 for illustrative purposes only;

---

<sup>1</sup> In relation to a Framework Delivery Agreement to be entered into by a London Borough, the agreement will be modified following settlement of the terms of the Localism Bill to provide expressly for novation of the contract to the Greater London Authority (GLA) when the Agency's housing functions for London are transferred to the GLA. It will also be modified to take account of GLA's ongoing role, i.e. references to successor guidance etc and policies published by the Mayor.

**Affected Affordable Dwelling** means an Affordable Dwelling in relation to which a Recovery Event occurs;

**Affordable Dwelling** means a house, flat or maisonette (including any Non Attributed Grant Unit) developed with the benefit of grant payable under this Agreement and in relation to each relevant Firm Scheme as more particularly described in the relevant Firm Scheme Details;

**Affordable Home Ownership** means low cost home ownership on Newbuild HomeBuy Lease terms or on Equity Loan Terms;

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

**Affordable Housing** means subsidised housing provided by the Grant Recipient that will be made permanently available as:

- (a) Affordable Rent;
- (b) Social Rent; or
- (c) Affordable Home Ownership;

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

**Affordable Rent Dwelling** means an Affordable Dwelling to be occupied on an Affordable Rent basis;

**Affordable Rent Terms** means the terms set out in Schedule 5;

**Agency's Representative** means such person or persons as the Agency may nominate to act as its representative from time to time for the purposes of this Agreement;

**Agreed Payment Rate or APR** means, subject to Condition 4, for:

- (a) Affordable Rent and Social Rent £[ ]; and
- (b) Affordable Home Ownership £[ ];

per dwelling delivered under this Agreement;

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

**Agreement** means this Framework Delivery Agreement (including its Schedules, Annexures and Appendices (if any));

**AHP** means the 2011/15 Affordable Homes Programme as described in the Framework Document;

**Allocated Grant** means [ ], being subject to Condition 4, the maximum amount of grant payable by the Agency to the Grant Recipient in respect of the Programme Offer;

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

**Area** means a geographical area prescribed by the Agency from time to time in which a HomeBuy Agent operates;

**Balancing Sum** means such sum as represents the amount by which Public Sector Subsidy in respect of the Programme Offer exceeds the aggregated Actual Development Costs incurred by the Grant Recipient in the delivery of the Programme Offer;

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

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

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

**Capital Funding Guide** means the "Affordable Housing Capital Funding Guide" published on the Agency's website or any successor guide published by the Agency (or any successor body) as updated from time to time;

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

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

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

**Condition Precedent** means receipt by the Agency of the Legal Opinion;

**Confidential Information** means in respect of each of the Agency and the Grant Recipient all information relating to that body (as applicable) or the existence or terms of the Agreement or any agreement associated with the Agreement (**Associated Agreement**) in respect of which any party hereto becomes aware in its capacity as a party to the Agreement or which is received by such party in relation to the Agreement or an Associated Agreement from the Agency or the Grant Recipient (as applicable) or either of the Agency's or the Grant Recipient's advisers (as applicable) or from any third party if the information was obtained by that third party directly or indirectly from the Agency or the Grant Recipient or their respective advisors (in each case as applicable) in whatever form in either case; **Consents** means any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any Relevant Authority;

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

**Conversion Capacity** means, subject to Condition 4, the sum of £[            ];

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

**Corporation** means The Housing Corporation, a body corporate established under the Housing Associations Act 1985, whose investment functions were transferred to the Agency on 1 December 2008 pursuant to the HRA 2008;

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

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

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

**Design and Quality Standards** means the standards set out in the Corporation's publication entitled "Design and Quality Standards April 2007";

**Developable Scheme** means each proposed scheme for the development (including, where relevant, the refurbishment) of Affordable Housing submitted by the Grant Recipient to the Agency pursuant to Condition 6.1;

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

**Disposal** means a transaction the effect of which is that the legal or beneficial title in any Affordable Dwelling transfers to becomes vested in is leased to or reverts to another person.

**Disposed Scheme** means a Firm Scheme were no further Recovery Event of the type described in limbs (g) to (j) (inclusive) of the definition of Recovery Event is capable of occurring;

**DPA** means the Data Protection Act 1998;

**EIR** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such statutory instrument;

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

**Employment Skills Statement** means the statement of that name incorporated within the Programme Offer;

**Equity Loan** means a loan which is equal in amount to a percentage to be acquired agreed between the Grant Recipient and the mortgagor (not exceeding twenty per centum (20%) of the market value of the dwelling) multiplied by the market value of the dwelling to be acquired as determined by the Grant Recipient when it makes the loan;

**Equity Loan Terms** means a Disposal of a dwelling by the Grant Recipient to a purchaser and facilitated by an Equity Loan secured by an Equity Mortgage in each case on terms consistent with paragraphs 4.12, 4.13, 4.16 and 4.19 of the Framework Document;

**Equity Mortgage** means a mortgage under which, in consideration for an Equity Loan, the mortgagor agrees that on the loan becoming repayable he shall pay to the Grant Recipient an amount which is equal to the agreed percentage multiplied by the value of the dwelling, determined in accordance with the terms of the mortgage, at the date upon which the loan becomes repayable;

**EU Procurement Regime** means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2004/18/EC, 89/665/EEC and 2004/17/EC, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228 and 2006/5 insofar as the same are applicable;

**Excess** means following the operation of Conditions 13.2.3(b) and 13.5 the amount by which the Firm Scheme Grant allocated in respect of the relevant Firm Scheme exceeds the revised Total Grant Required figure;

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

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

**Firm Scheme** means subject to Condition 13.5 each scheme for the development of Affordable Housing accepted by the Agency pursuant to Condition 6.2;

**Firm Scheme Completion Date** means the date for completion of the relevant Firm Scheme set out in the Firm Scheme Delivery Timetable;

**Firm Scheme Delivery Timetable** means the timetable for construction and completion of the Firm Scheme as agreed by the Agency through IMS;

**Firm Scheme Details** means the descriptive and other details in respect of each Firm Scheme as accepted by the Agency through IMS (as the same may be varied from time to time in accordance with the terms of this Agreement);

**Firm Scheme Grant** or **FSG** has (save where the context requires otherwise) the meaning given to it in Condition 10;

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



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

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

**Framework Document** means the Agency publication entitled "2011-15 Affordable Homes Programme – Framework";

**Funding Conditions** mean the Funding Conditions set out within the Capital Funding Guide, as formally accepted by the Grant Recipient and indicated as such on IMS;

**Grant Recipient Party** means:

- (a) the Grant Recipient, the Building Contractor, any member of the Professional Team, agent, employee or subcontractor of the Grant Recipient and the Grant Recipient's Representative;
- (b) any subsidiary, associate or joint venture in which a local authority has a material interest sufficient to require group financial statements to be prepared which account for these interests, in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom 2011/12 (as amended or updated) which is the Statement of Recommended Practice on local authority accounting or any code or other document which replaces it as the Statement of Recommended Practice;

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

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

**HomeBuy Agency Agreement** means an agreement entered into between the Grant Recipient and the HomeBuy Agent in whose Area a Firm Scheme is located and pursuant to which the HomeBuy Agent undertakes such roles or activities as the Agency may prescribe from time to time including inter alia the provision of a one stop service to qualifying applicants enquiring and applying for home ownership, marketing, the provision of lists of qualifying applicants to grant recipients and provision of information in respect of such services;

**HomeBuy Agent** means a body appointed by the Agency to undertake such roles or activities as the Agency may prescribe for HomeBuy Agents from time to time;

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

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

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

**Information** has the meaning in relation to:

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

**Information Commissioner** has the meaning set out in Section 6 of the DPA 1998;

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

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

**Legal Opinion** means a legal opinion in the form set out in Schedule 4 given by the Grant Recipient's solicitor and dated prior to the date hereof;

**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;

**Marketing Statement** means the statement of that name (if any) incorporated within the Programme Offer;

**Material Adverse Effect** means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the Programme Offer within the time limits (if any) for doing so;

**Milestone** means each stage in the development of the Firm Scheme agreed by the parties and set out in IMS;

**Milestone Date** means the date agreed by the Agency through IMS by which the relevant Milestone must have been achieved (as the same may be varied by the Agency pursuant to Condition 8.2);

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

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body which the Grant Recipient has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the construction works necessary to the delivery of the Firm Scheme by restricting the availability or use of labour which is essential to the proper carrying out of such works or preventing the Grant Recipient from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such works;
- (d) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) any:
  - i official or unofficial strike;
  - ii lockout;
  - iii go-slow; or
  - iv other dispute;generally affecting the house building industry or a significant sector of it;
- (k) the appointment of the Building Contractor under the Building Contract has been terminated or the Building Contract has been terminated; or
- (l) any material failure by the Building Contractor under the terms of the Building Contract which has the direct result of delaying the Grant Recipient's compliance with a Milestone Date and which did not result

from the Grant Recipient's failure effectively to manage the Building Contract

unless:

- (a) any of the events arises (directly or indirectly) as a result of any wilful default or wilful act of the Grant Recipient or, save in respect of the event referred to in (k) above, any of its subcontractors; or
- (b) in respect of the event referred to in (f) above, such event arises as a result of any failure by the Grant Recipient (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Grant Recipient to complete the Firm Scheme by the Firm Scheme Completion Date;

**Milestone Failure** means a failure by the Grant Recipient fully to achieve any Milestone by the relevant Milestone Date;

**Newbuild HomeBuy Lease** means a shared ownership lease that meets:

- (a) the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977; and
- (b) any applicable requirements of the Capital Funding Guide;

**Non Attributed Grant Unit** means an Affordable Dwelling comprised within a Firm Scheme in respect of which the Grant Recipient is entitled to be paid the Agreed Payment Rate but in relation to which the parties are deemed to have agreed that the amount paid by the Agency does not constitute social housing assistance for the purposes of Sections 19 and Sections 31-34 HRA 2008;

**NHBC** means the National House-Building Council;

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

**Officer's Certificate** means the certificate to be provided in accordance with the provisions of Conditions 3.2 and 3.3 in substantially the form set out in Schedule 2 or in such other form as the Agency may prescribe from time to time;

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

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

**Open Book Obligations** mean the obligations set out in Condition 16;

**Permitted Conversions** means, subject to Conditions 4 and 5.10, the number of properties (other than the Affordable Dwellings) identified in the Programme Offer which the Grant Recipient intends to let at an Affordable Rent or, as applicable, dispose of either on Affordable Home Ownership terms or on market sale terms to generate the Conversion Capacity;

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

**Practical Completion** means that stage in the execution of a Firm Scheme when the Firm Scheme has been completed in accordance with the terms of the relevant building contract and/or the terms of this Agreement being fit for beneficial occupation as a residential development in accordance with NHBC or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Firm Scheme and which would be reasonable to include in a snagging list, and Practically Complete shall be construed accordingly;

**Process** has the meaning ascribed to it in the DPA;

**Procurement Efficiencies Statement** means the statement of that name incorporated within the Programme Offer;

**Professional Team** means the architect, civil & structural engineer, the mechanical & electrical engineer and any other consultant appointed by the Grant Recipient in connection with a Firm Scheme;

**Programme Aims** means the Agency's requirements:

- (a) to ensure that the Allocated Grant and Conversion Capacity is properly and effectively spent; and
- (b) to maximise the delivery of Affordable Housing under the Programme Offer;

**Programme Change Notice** means a notification served by one party on the other pursuant to Condition 4.3;

**Programme Default** has the meaning given to it in Condition 5.1;

**Programme Offer** means the terms input by the Grant Recipient and approved by the Agency on IMS as at the date hereof upon which the Grant Recipient has agreed to deliver new Affordable Housing and the Agency has agreed to make the Allocated Grant available, details of which are appended at Schedule 1 (as the same may be amended from time to time in accordance with Condition 4);

**Prohibited Act** means:

- (a) offering, giving or agreeing to give to any servant of the Agency any gift or consideration of any kind as an inducement or reward:
  - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or

- ii for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement or any other agreement with the Agency relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by the Grant Recipient or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Agency;
- (c) committing any offence:
  - i under Legislation creating offences in respect of fraudulent acts;
  - ii at common law in respect of fraudulent acts in relation to this Agreement; or
  - iii under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010 (once in force); or
- (d) defrauding or attempting to defraud or conspiring to defraud the Agency or the Regulator;

**Public Sector Subsidy** means all funding or subsidy in relation to the Programme Offer in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by the Agency not provided under this Agreement;

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

**Reapplied Grant** means such sum (if any) as is permitted by the Agency to be applied to the delivery of further Affordable Dwellings pursuant to Condition 13.9;

**Recovery Event** means any of the following circumstances:

- (a) where FSG is claimed or paid in anticipation of an agreed Milestone being achieved and the Milestone is not achieved or is achieved later than agreed and the Agency has not agreed to the delay;
- (b) where the Agency discovers that the aggregate FSG paid to the Grant Recipient in respect of the Programme Offer was greater than required for the delivery of the Programme Offer;
- (c) where the Grant Recipient has failed to use the FSG for the purpose for which it was paid;
- (d) where the Grant Recipient has failed to comply with a condition attached to the making of the FSG;

- (e) save where Condition 13.1.2 applies where the Agency discovers that incorrect information has been supplied or errors made in connection with the calculation of the FSG payable or recoverable;
- (f) the de-registration of the Grant Recipient by the Regulator under section 118(4) of the Housing and Regeneration Act 2008;
- (g) a change of use of the Site or Affordable Dwellings to one which would not qualify in principle for grant funding under the Affordable Housing Programme or a change to a use which might receive a significantly lower grant including a change from use as Affordable Rent to use as Affordable Home Ownership or from supported to general needs housing);
- (h) cessation of use of property or land funded by FSG;
- (i) demolition of property funded by FSG;
- (j) Disposal of property funded by FSG except:
  - i with the prior approval of the Agency to another Registered Provider (taking the property subject to liability for the FSG within it pursuant to Section 33 of the HRA 2008); or
  - ii the sale of the first share of an Affordable Home Ownership Dwelling under a Newbuild HomeBuy Lease where such dwelling is/was specifically provided for sale on Newbuild HomeBuy Lease terms;
- (k) a Disposal of property or land funded by FSG that would give rise to a repayment of discount under section 155 of the Housing Act 1985; or
- (l) the redemption, or a Disposal of property or land funded by FSG giving rise to the redemption, of an Equity Loan secured by an Equity Mortgage;

**Recovery Notification** means the written notification referred to in Condition 13.8;

**Recovery Principles** means the principles set out in Annex 3;

**Register** means the register maintained by the Regulator pursuant to Section 111 of the HRA 2008;

**Registered Provider** means (as appropriate) a local authority entered on the Register pursuant to Section 114 of the HRA 2008 or a body entered on the Register as a non-profit organisation (as such term is defined in Section 115 of the HRA 2008);

**Regulator** means the body established pursuant to Section 81 of the HRA 2008 or any other body with responsibility for carrying on substantially the same regulatory or supervisory functions;

**Relevant Authority** means any governmental or other authority, court with relevant jurisdiction, the local planning authority, landlord, funder, adjoining landowner or any other

person whose consent is required to undertake the Works necessary to the delivery of the Firm Scheme or perform the Grant Recipient's obligations under this Agreement;

**Relevant Firm Scheme** means a Firm Scheme in relation to which a Recovery Event occurs;

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

**Review Meeting** means a meeting held pursuant to Conditions 3.5 to 3.7;

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

**Section 106 Agreement** means an agreement entered into by a local planning authority and person under section 106 of the Town and Country Planning Act 1990;

**Section 106 Scheme** means a Firm Scheme where the Affordable Housing is part of a larger scheme comprising accommodation which is non-residential and/or residential which is not Affordable Housing which is subject to a Section 106 Agreement;

**Secure Legal Interest** means the Grant Recipient has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title (where the lease has at least 60 years unexpired duration) registered with title absolute;
- (c) freehold title registered with possessory title or good leasehold title and defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Total Grant Required for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site (owning either a freehold interest or leasehold interest of at least sixty (60) years unexpired duration) to secure one of the interests in (a) to (c) and that, securing that interest is conditional only upon matters that are within the direct and unilateral control of the Grant Recipient.

**Site** means the site identified to the Agency as being the area of land comprised or to be comprised in a Firm Scheme and/or the Affordable Dwellings and common areas developed as part of such Firm Scheme;

**Social Rent** means low cost rental accommodation as defined in Section 69 of HRA 2008 made permanently available for letting to persons at Target Rents on secure tenancy terms;

**Social Rent Dwelling** means an Affordable Dwelling to be let as Social Rent;

**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 work specific to the buildings forming part of the Firm Scheme;

**Start on Site Date** means the date on which:

- (a) the Grant Recipient and Building Contractor have entered into the Building Contract;
- (b) the Building Contractor has taken possession of the Site; and
- (c) the Start on Site Works have commenced;

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

**Submitted Standards** means in respect of each Firm Scheme:

- (a) the Design and Quality Standards 2007; and
- (b) the Additional Design and Quality Standards (if any);

**Target Rents** means those rent levels as specified by the Government's Social Rent Guidance in respect of Social Rent as published by the Department for the Environment Transport and the Regions in March 2001 (including any guidance subsequently issued by that or any successor department in relation to that document) and calculated in accordance with the Rent Influencing Regime Guidance as published by the Corporation in October 2001 and any other guidance subsequently issued by the Regulator in relation to that document (whether or not such guidance is addressed to local authorities);

**Term** means the period of time from the date hereof until 31 March 2015 (subject to earlier termination by the Agency of the entirety of this Agreement);

**Total Grant Required** means in respect of each Firm Scheme the figure shown under or in relation to that heading in the Firm Scheme Details from time to time;

**Transparency Code** means, when brought into force, the Code of Recommended Practice for Local Authorities on Data Transparency (or any other like or successor code or guidance) published by the Department for Communities and Local Government (or any successor department);

**Transparency Obligations** means the obligations set out in Condition 17;

**Unallocated Scheme Grant** means in relation to any Firm Scheme the amount by which the Firm Scheme Grant exceeds the Total Grant Required;

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

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

- (a) an employee acting independently of the Grant Recipient; or
- (b) a subcontractor (or any employee of a subcontractor not acting independently of the subcontractor); or
- (c) an employee of a subcontractor acting independently of such subcontractor; or
- (d) any person not specified in parts (a), (b) or (c)

and the Agency is satisfied that the Grant Recipient and/or the subcontractor (as applicable) has taken such action as is appropriate taking in to account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one or more of the directors of the Grant Recipient or relevant subcontractor;

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

## 1.2 Interpretation

- 1.2.1 words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Agreement.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by

each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule or an Appendix to this Agreement.

- 1.2.11 A paragraph in a Schedule or Annex shall be construed as references to a paragraph in that particular Schedule or, as the case may be, Appendix.
- 1.2.12 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.13 In any case where the consent or approval of the Agency (or any officer of the Agency) is required or a notice is to be given by the Agency, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the Agency by notice in writing to the Grant Recipient.
- 1.2.14 An obligation to do anything includes an obligation to procure its being done.
- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 The term Site includes each and every part of it.
- 1.2.17 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.18 Save where a contrary intention is shown, or where an express discretion is given by this Agreement, the Agency shall act reasonably in exercising its rights hereunder (including in granting approvals hereunder).
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against the Agency for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 1.2.21 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Agency shall, unless otherwise expressly stated in this Agreement or agreed in writing by the Agency, relieve the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.

2        **The Programme Offer**

2.1        The parties acknowledge the terms of the Programme Offer which the Grant Recipient agrees to deliver subject to and in accordance with the terms of this Agreement.

2.2        The Agency has agreed to make the Allocated Grant available to the Grant Recipient to develop the Affordable Dwellings subject to and in accordance with the terms and conditions of this Agreement.

2.3        The Grant Recipient shall use its reasonable endeavours to deliver its commitments or proposals outlined in:

2.3.1        the Procurement Efficiencies Statement;

2.3.2        the Employment Skills Statement; and

2.3.3        the Marketing Statement.

2.4        The Grant Recipient shall:

2.4.1        use its reasonable endeavours to complete the Permitted Conversions in accordance with the timescale projected for such Permitted Conversions in the Programme Offer;

2.4.2        not convert more dwellings let as Social Rent within its housing stock to Affordable Rent beyond that required to create the Conversion Capacity; and

2.4.3        not dispose of more dwellings let as Social Rent within its housing stock on Affordable Home Ownership or market sale terms than are required to create the Conversion Capacity SAVE THAT nothing in this Condition 2.4.3 is intended to preclude the Grant Recipient from making such other Disposals from its housing stock as:

(a)        are consistent with its corporate asset management strategies from time to time; and

(b)        are consented to by the Secretary of State for Communities and Local Government (or any successor post).

2.5        The Grant Recipient acknowledges and agrees that:

2.5.1        the Allocated Grant is being made available by the Agency on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of the Affordable Dwellings;

2.5.2        the Public Sector Subsidy in respect of the Programme Offer may not exceed an amount equal to the aggregated Actual Development Costs incurred by the Grant Recipient in respect of the delivery of the Programme Offer; and

2.5.3        all funding under this Agreement is subject to the provisions of the HRA 2008 and any determinations made under such provisions and the provisions of Condition 13 represent the events and principles determined by the Agency for the purposes of Sections 31-34 of the HRA 2008.

2.6 The Grant Recipient shall comply with the Open Book Obligations and the Transparency Obligations.

### 3 **Programme Offer - Monitoring and Reporting**

3.1 The Grant Recipient acknowledges the high importance to the Agency of it being advised when any circumstance occurs which may:

3.1.1 impact on the Grant Recipient's ability to deliver the Programme Offer;

3.1.2 change any assumptions in the Programme Offer which would provide an opportunity for the Grant Recipient to deliver more Affordable Dwellings with the Allocated Grant;

3.1.3 indicates that the Agency is making available more grant than is required to deliver the Programme Offer;

3.1.4 without prejudice to the circumstances specified in 3.1.1 to 3.1.3 (inclusive), indicates that the Grant Recipient will need to make more or less Permitted Conversions; or

3.1.5 give rise to the making of a report under Section 114(3) of the Local Government Finance Act 1988

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

3.2 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Condition 3.

3.3 The Grant Recipient shall with effect from and including the first Quarter Date after the date of this Agreement submit a signed and dated Officer's Certificate to the Agency within five (5) Business Days of each Quarter Date, together with such other information as may have been requested on reasonable notice by the Agency.

3.4 The Officer's Certificate shall be signed by the Grant Recipient's Representative or, where agreed in advance by the Agency, another specified member of the Grant Recipient's executive management team.

3.5 Within ten (10) Business Days of receipt of the Officer's Certificate and the information required pursuant to Condition 3.3 (or such longer period as the Agency may at its absolute discretion agree), the Agency and the Grant Recipient shall meet to review:

3.5.1 the Grant Recipient's performance against the Programme Offer;

3.5.2 the Contract Monitoring Outputs;

3.5.3 the information supplied pursuant to the Open Book Obligations; and

3.5.4 the Grant Recipient's progress against its obligation in Condition 2.3.2.

3.6 At the Annual Review Meeting in addition to the matters to be addressed at each Review Meeting (as specified in Condition 3.5), the parties shall also review:

- 3.6.1 all changes made to the Programme Offer in the previous Financial Year;
- 3.6.2 the Grant Recipient's progress against its obligations in Conditions 2.3.1 and 2.3.3;
- 3.6.3 the allocations made in the previous Financial Year in accordance with the provisions of Condition 15

and the Grant Recipient shall supply the data referred to in Condition 3.6.3 no less than ten (10) Business Days prior to the Annual Review Meeting in a form which enables the Agency to satisfy itself that the Grant Recipient has complied with its obligations set out in Condition 15.

3.7 The Agency or the Grant Recipient may also call a Review Meeting at any time outside of the quarterly cycle provided that the party requesting the meeting:

- 3.7.1 gives reasonable prior written notice to the other of such meeting; and
- 3.7.2 includes with the notice an agenda for such meeting.

3.8 The Agency's Representative and the Grant Recipient's Representative (or, where agreed with the Agency in advance, such other member of the Grant Recipient's executive management team) shall attend all Review Meetings during the Term. The parties agree that the Regulator [and the Mayor of London] shall also be entitled to send a representative to attend such meetings.<sup>2</sup>

3.9 Save as otherwise agreed between the parties, any meeting under this Condition 3 shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.

#### 4 **Programme Changes**

4.1 The parties acknowledge that changes may be required to the Programme Offer during the Term to ensure that inter alia:

- 4.1.1 the Programme Aims are being delivered; and/or
- 4.1.2 the Grant Recipient remains capable of delivering the Programme Offer from time to time;

(the **Programme Offer Requirements**).

4.2 A change to the Programme Offer may take the form of one or more (or a combination of) the following:

- 4.2.1 a revision to:
  - (a) the profile of projected Start on Site Dates and dates for Practical Completion; and/or

---

<sup>2</sup> In respect of contracts entered into for developments out of London, the square bracketed text will be removed.

- (b) the type, location, number or tenure mix or the design and quality standards of Affordable Dwellings; and/or
  - (c) the rent levels forecast for such dwellings included in the Programme Offer
- 4.2.2 a change in the number, location or rate of Permitted Conversions or Conversion Capacity;
- 4.2.3 a reduction in the Agreed Payment Rate;
- 4.2.4 the Grant Recipient committing more of its own resources to underpin the delivery of the Programme Offer;
- 4.2.5 fewer or more Affordable Dwellings being included in the Programme Offer; or
- 4.2.6 such other change as either party may propose.
- 4.3 Either party shall notify the other in writing when it becomes aware of circumstances which give rise (in that party's opinion (acting reasonably)) to the need for a change to be implemented to the Programme Offer. Any Programme Change Notice shall specify the reasons for the proposed change to the Programme Offer and describe the proposed nature of the change being sought. The party issuing the Programme Change Notice may withdraw the notice at any time.
- 4.4 Save where the parties agree that a meeting is unnecessary a meeting shall be convened as soon as is practicable (but in any event no later than the next scheduled Review Meeting) to discuss a Programme Change Notice and shall be attended by the same persons as those required (or permitted) to attend Review Meetings.
- 4.5 In determining whether to implement a change to the Programme Offer, and the substance of that change, the parties shall act in good faith, reasonably and taking account of:
  - 4.5.1 the Programme Offer Requirements;
  - 4.5.2 the performance, to date, of the Grant Recipient under the Agreement; and
  - 4.5.3 (where applicable) the principles described in Annex 3 of the Framework Document

the parties shall seek to agree the terms of any change to the Programme Offer **provided that and it is hereby agreed that** the Agency shall not be obliged to agree any change to the Programme Offer where such change would (when taken individually or together with other changes to the Grant Recipient's Programme Offer or to the programme offers of other grant recipients under the AHP) result in the Agency becoming liable to pay out more by way of grant in any Financial Year than is then available to the Agency for investment in Affordable Housing for the relevant Financial Year.
- 4.6 No change to the Programme Offer shall be implemented unless it has been agreed by the parties. The Agency shall, where it considers it necessary, consult with the Regulator on the proposed change before determining whether to approve a change to the Programme Offer.

4.7 Where a change to the Programme Offer has been agreed in accordance with Condition 4.6, the Grant Recipient shall input the agreed changes to the Programme Offer on IMS as soon as is practicable and in any event within five (5) Business Days of the date of the meeting or other forum or means at or through which the change was agreed. Acceptance by the Agency of the changes to the Programme Offer on IMS shall constitute evidence of the parties' agreement as to the revised terms of the Programme Offer and no further evidence shall be required.

4.8 The Grant Recipient acknowledges that where a Programme Change Notice is submitted (and has not been withdrawn) and the parties are unable to agree on the change proposed in the Programme Change Notice within twenty (20) Business Days (or such longer period as the Agency may at its discretion permit) of the meeting held in accordance with the provisions of Condition 4.4 or where no such meeting is held the date of the next scheduled Review Meeting, either party (acting reasonably) shall be entitled to terminate this Agreement in accordance with Condition 5 **save that** this Condition 4.8 shall not apply in the circumstance contemplated in Condition 13.10.

## 5 **Programme Default**

5.1 The following circumstances shall constitute a Programme Default:

5.1.1 failure by the Grant Recipient to comply with its obligations in Condition 3 and/or any information supplied in connection with its obligations in Condition 3, whether in an Officer's Certificate, the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;

5.1.2 the Grant Recipient is unable to make the representations and give the warranties set out in Schedule 3 (in any case in whole or in part) and there is a resulting Material Adverse Effect;

5.1.3 the Grant Recipient is or becomes subject to a direction made by the Secretary of State under Section 15 of the Local Government Act 1999 which would in the opinion of the Agency have a Material Adverse Effect;

5.1.4 a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);

5.1.5 the occurrence of the circumstance referred to in Condition 4.8;

5.1.6 a breach of the Open Book Obligations and/or Transparency Obligations;

5.1.7 the Agency determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Programme Offer has not been made by the Grant Recipient in delivering the Programme Offer;

5.1.8 the Grant Recipient's status as a Registered Provider is lost or removed;

5.1.9 the Grant Recipient's status as an Investment Partner is lost or removed;

5.1.10 the Regulator directs or recommends that grant is not to be paid to the Grant Recipient;



- 5.1.11 a breach of the Grant Recipient's obligations under Condition 7.5.4, 7.5.6 or Condition 7.5.7;
  - 5.1.12 any other breach of the Agreement which has a Material Adverse Effect; and/or
  - 5.1.13 the occurrence of the circumstance referred to in Condition 13.2.3(c).
- 5.2 The Grant Recipient must notify the Agency immediately in writing on the occurrence of a Programme Default.
- 5.3 Without prejudice to Condition 5.4, in the event of the occurrence of a Programme Default and for so long as that Programme Default subsists (or another Programme Default has occurred and is continuing) or a Programme Change Notice has been issued but not yet agreed by the parties, the Agency shall be entitled to reject the submission of any Firm Scheme on IMS.
- 5.4 Where the Programme Default is:
- 5.4.1 an occurrence specified in Condition 5.1.3, 5.1.4, **Error! Reference source not found.**, 5.1.8, and/or 5.1.13, the Agency shall be entitled forthwith and without any liability to the Grant Recipient terminate the Agreement;
  - 5.4.2 an occurrence specified in Condition 5.1.1, 5.1.2, 5.1.6, 5.1.7, 5.1.10, 5.1.11 and/or 5.1.12, the Agency may serve notice on the Grant Recipient requiring the Grant Recipient to remedy the breach and if within a period of thirty (30) Business Days following service of such notice:
    - (a) the breach has not been remedied; or
    - (b) where so permitted by the Agency the Grant Recipient has not given an undertaking to remedy the breach on terms satisfactory to the Agency; or
    - (c) if it becomes apparent that the Programme Default is incapable of remedy either within such period or at all;
- the Agency shall be entitled on giving not less than ten (10) Business Days' notice and without any liability to the Grant Recipient to exercise the termination rights in Condition 5.6,
- 5.5 In the circumstances identified in Condition 5.1.5:
- 5.5.1 either party shall be entitled on giving not less than ten (10) Business Days notice to terminate this Agreement; and
  - 5.5.2 the provisions of Conditions 5.6 to 5.11 shall be deemed to apply (mutatis mutandis) to a termination under this Condition 5.5 as if it were a termination pursuant to Condition 5.4.2.
- 5.6 Where Condition 5.4.2 applies and:

- 5.6.1 there are no Continuing Firm Schemes, the Agency may terminate this Agreement in its entirety such termination to take effect at the end of the notice period referred to in Condition 5.4.2;
- 5.6.2 there are Continuing Firm Schemes the Agency may terminate this Agreement in relation to all but the Continuing Firm Schemes such termination to take effect at the end of the notice period referred to in Condition 5.4.2.
- 5.7 In the event that this Agreement is terminated pursuant to Condition 5.4.1 or Condition 5.6.1, the Agency shall determine the Adjustment in accordance with the provisions of Condition 5.8. Where the figure calculated in accordance with Condition 5.8 is greater than zero, the provisions of Condition 5.9 shall apply. Where the figure calculated in accordance with Condition 5.8 is less than zero, the provisions of Condition 5.10 shall apply.
- 5.8 The Adjustment is the product of the following calculation:
- $A = B - C$
- where:
- A is the Adjustment;
- B is the aggregate of all sums paid by the Agency to the Grant Recipient under this Agreement less the aggregate of any Recoverable Amounts paid to the Agency as at the date of this calculation; and
- C is that element of "B" which the Grant Recipient has allocated or which has been reallocated against Affordable Dwellings in accordance with the provisions of Condition 15.
- 5.9 Where this Condition 5.9 applies, the Grant Recipient shall pay a sum equivalent to the value of the Adjustment to the Agency within twenty (20) Business Days of receiving notification from the Agency of the Adjustment.
- 5.10 Where this Condition 5.10 applies, no payment shall be due from the Agency but the Grant Recipient shall be entitled to make such additional Permitted Conversions as are necessary to enable the Grant Recipient to recoup the Adjustment provided that the type and duration of such additional Permitted Conversions have been agreed with the Agency in consultation with the Regulator.
- 5.11 In the event that this Agreement is terminated pursuant to Condition 5.6.2, the Agency shall defer determination of the Adjustment until the earlier of:
- 5.11.1 any subsequent termination of the Agreement pursuant to Conditions 5.4.1 or 5.6.1 and
- 5.11.2 the delivery of the last remaining Continuing Firm Scheme
- at which point the Agency shall determine the Adjustment in accordance with the provisions of Condition 5.8. Where the figure calculated in accordance with Condition 5.8 is greater than zero, the provisions of Condition 5.9 shall apply. Where the figure calculated in accordance with Condition 5.8 is less than zero, the provisions of Condition 5.10 shall apply.

5.12 Where either party purports to terminate this Agreement in accordance with this Condition 5 and the other party disputes its entitlement to do so the provisions of Condition 25 shall apply.

## 6 Firm Schemes – Submission Procedures

6.1 Where the Grant Recipient identifies a Developable Scheme, it must submit to the Agency through IMS such details of the Developable Scheme as the Agency may require. Such details must be submitted no later than ten (10) Business Days after the Start on Site Date. In submitting the details of the Developable Scheme, the Grant Recipient is deemed to represent and warrant to the Agency that:

6.1.1 the Developable Scheme:

- (a) is consistent with the Programme Offer;
- (b) is in its opinion (acting reasonably) deliverable in accordance with the Firm Scheme Delivery Timetable and the Submitted Standards; and

6.1.2 the Grant Recipient:

- (a) possesses or will possess a Secure Legal Interest in the Site; and
- (b) has obtained all Consents necessary for the lawful development of the Developable Scheme to the Submitted Standards as are then required;
- (c) is not subject to any direction of the Secretary of State under Section 15 of the Local Government Act 1999 nor do any circumstances exist which would entitle the Secretary of State to issue such a direction which in either case would have a Material Adverse Effect; and
- (d) has not nor have any of its officers made a report (nor is the Grant Recipient aware of any circumstances that would give rise to the making of a report) under Section 114(3) of the Local Government Finance Act 1988 which in either case would have a Material Adverse Effect.

6.2 If the Agency (acting reasonably) is satisfied with the details submitted under Condition 6.1 and considers that the Developable Scheme is consistent with the Programme Offer (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution), it will subject to Condition 5.3 confirm its acceptance of the Developable Scheme to the Grant Recipient through IMS.

6.3 With effect from the Acceptance Date, the Developable Scheme shall constitute a Firm Scheme and shall be subject to the whole terms and conditions of this Agreement.

6.4 The Agency has no obligation to make any payment of grant in respect of a Firm Scheme unless and until it has confirmed its acceptance of it in the manner described in Condition 6.3.

## 7 Firm Scheme Obligations

7.1 The Grant Recipient must carry out the design construction and completion of the Firm Scheme so that:

- 7.1.1 the Firm Scheme is (subject to Condition 8.2) delivered in accordance with the Firm Scheme Delivery Timetable;
- 7.1.2 when delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standard; and
- 7.1.3 any applicable requirements of the EU Procurement Regime are complied with  
(collectively the **Firm Scheme Obligations**)
- 7.2 In delivering the Firm Scheme and in operating and administering the Firm Scheme after Practical Completion, the Grant Recipient must observe and comply with Legislation, the applicable terms of the Funding Conditions and the Capital Funding Guide.
- 7.3 The Grant Recipient shall procure that the Agency's Representative (or any person nominated by him) shall have at all reasonable times and upon giving reasonable notice the right to enter onto the Site and to take such action as he considers appropriate to inspect the progress of the Firm Scheme and to monitor compliance by the Grant Recipient with its obligations under this Agreement.
- 7.4 The Grant Recipient must notify the Agency in writing (save in respect of Condition 7.4.1, where notification is required to be given through IMS):
  - 7.4.1 immediately once the Start on Site Date has occurred;
  - 7.4.2 immediately, in the event of the receipt by it of any other Public Sector Subsidy or guarantees of it, or the offer of same, in respect of the Firm Scheme (or any part of it) beyond any amount of Public Sector Subsidy notified to the Agency by the Grant Recipient pursuant to Condition 6.1;
  - 7.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect;
  - 7.4.4 of any other event or circumstance in relation the Firm Scheme as the Agency may reasonably require from time to time and within such timeframes as the Agency may reasonably require.
- 7.5 Without prejudice to Condition 7.2, the Grant Recipient must in operating and administering the Firm Scheme after Practical Completion:
  - 7.5.1 subject to Condition 13.1 not use the Affordable Dwellings for any purpose other than the Agreed Purposes without the Agency's prior written consent;
  - 7.5.2 comply with the Affordable Rent Terms in respect of the Affordable Rent Dwellings and in relation to the Social Rent Dwellings with all applicable requirements issued by the Regulator or the Department for Communities and Local Government (or any successor department or agent thereof) in relation to properties let at Target Rents;
  - 7.5.3 observe and comply with the requirements of the Capital Funding Guide in relation to any Disposal of the Affordable Home Ownership Dwellings and ensure that such Disposal takes effect only at arms length and on market terms;

- 7.5.4 comply with the Agency's requirements in relation to Compliance Audit;
  - 7.5.5 participate in the CORE system from time to time and complete the "Initial Sales" data screens on IMS promptly following the sale of any Affordable Home Ownership Dwelling;
  - 7.5.6 save where the Agency agrees otherwise, procure on any Disposal a written acknowledgement from the disponent in favour of the Agency that the amount of Firm Scheme Grant allocated to the property comprised in the Disposal pursuant to this Agreement is social housing assistance received by it for the purposes of Section 33(7) of the HRA 2008;
  - 7.5.7 provide written notification to the Agency of any Disposal within ten (10) Business Days of such Disposal taking place; and
  - 7.5.8 provide the Agency with such information (and within such timescales) as the Agency may reasonably require to enable the Agency to monitor compliance by the Grant Recipient with its obligations under this Agreement.
- 7.6 The Grant Recipient shall ensure that the Agency's requirements from time to time in relation to public relations and publicity for capital projects (including site signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 7.7 In discharging its obligations under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Programme Offer as appended to this Agreement and with proper regard to the need for efficiency in the use of public funds.
- 7.8 Where the Grant Recipient is aware that it is in breach of an obligation under this Condition 7 it must promptly notify the Agency of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

## 8 **Changes to Firm Schemes**

- 8.1 The parties may from time to time agree changes to the Firm Scheme Details and where such changes are agreed they shall be implemented by the Grant Recipient amending the Firm Scheme Details in IMS and the electronic confirmation of that amendment by the Agency through IMS.
- 8.2 Where a Milestone Failure occurs or is in the opinion of the Agency reasonably likely to occur (having regard to the information supplied at the Review Meeting or pursuant to Condition 7.4) and such failure is directly caused by a Milestone Extension Event, the Agency shall subject to Conditions 8.3 and 8.4 extend the relevant Milestone Date and associated Firm Scheme Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.
- 8.3 The Agency shall not be obliged to extend a Milestone Date where such extension would (when taken individually or together with other extensions in relation to the Grant Recipient) in the Agency's reasonable opinion materially and adversely affect the delivery of the Programme Offer or (when taken individually or together with other extensions in

relation to the Grant Recipient or other grant recipients under the AHP) materially and adversely affect the Agency's projected expenditure profile in relation to any year of the AHP and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant Financial Year

8.4 The Agency may not extend a Firm Scheme Completion Date beyond 31 March 2015.

## 9 **Grant Claim Procedures**

9.1 Subject to a Firm Scheme having reached Practical Completion, the Grant Recipient may apply to the Agency for the grant payable in respect of that Firm Scheme to be paid to it. The Grant Recipient must make its application through IMS and in compliance with the procedures relating to grant claims and payments set out in the Capital Funding Guide.

9.2 In submitting an application pursuant to Condition 9.1 the Grant Recipient is deemed to represent and warrant to the Agency that:

9.2.1 the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of this Agreement;

9.2.2 the Firm Scheme has reached Practical Completion;

9.2.3 all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Firm Scheme have been or will be correct in all material respects;

9.2.4 the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;

9.2.5 has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted Standard as are then required or to the extent that they are not obtained that the Grant Recipient has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;

9.2.6 where it did not possess a Secure Legal Interest in the Site at the point of submitting a Developable Scheme pursuant to Condition 6.1, it possesses a Secure Legal Interest in the Site;

9.2.7 the Firm Scheme is covered by the terms of a current HomeBuy Agency Agreement (where applicable);

9.2.8 the Grant Recipient is not subject to any direction of the Secretary of State under Section 15 of the Local Government Act 1999 nor do any circumstances exist which would entitle the Secretary of State to issue such a direction which in either case would have a Material Adverse Effect; and

9.2.9 no report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making of a report under Section 114(3) of the Local Government Finance Act 1988 which in either case would have a Material Adverse Effect.

## 10 **Calculation of Grant**

The amount of grant payable in respect of a Firm Scheme will be calculated in accordance with the following formula:

$$\text{FSG} = (\text{A} \times \text{B}) + (\text{C} \times \text{D})$$

where:

FSG is the Firm Scheme Grant payable in relation to the relevant Firm Scheme;

A is the Agreed Payment Rate for a completed Affordable Rent Dwelling (including a Social Rent Dwelling);

B is the number of completed Affordable Rent Dwellings and Social Rent Dwellings within the Firm Scheme;

C is the Agreed Payment Rate for a completed Affordable Home Ownership Dwelling;

D is the number of completed Affordable Home Ownership Dwellings within the Firm Scheme.

## 11 **Payment of Grant**

### 11.1 Subject to:

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

11.1.2 Conditions 11.3, 11.4 and 12.1; and

11.1.3 the Condition Precedent having been satisfied

the Agency shall pay the Firm Scheme Grant to the Grant Recipient within ten (10) Business Days of receipt of the satisfactory application.

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

11.3 The Agency shall not be obliged to pay the Firm Scheme Grant to the Grant Recipient before the Firm Scheme Completion Date (as confirmed by the Agency though IMS) has occurred.

11.4 The Agency shall not be obliged to make any payment by way of Firm Scheme Grant or otherwise in respect of any Firm Scheme which has not reached Practical Completion by 31 March 2015.

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

## 12 **Withholding of Firm Scheme Grant**

12.1 Notwithstanding any other term of this Agreement the Agency shall not be obliged to make any payment to the Grant Recipient whether by way of Firm Scheme Grant or otherwise where:

12.1.1 the Firm Scheme has not been delivered in accordance with the Firm Scheme Details or to the Submitted Standard or in accordance with the Firm Scheme Delivery Timetable (in circumstances where the Agency was unable to agree revised Milestone Dates);

12.1.2 the Grant Recipient is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Condition 9.2 (in any case in whole or in part);

12.1.3 a Prohibited Act has been committed by or on behalf of the Grant Recipient and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;

12.1.4 the Grant Recipient is subject to any direction of the Secretary of State under Section 15 of the Local Government Act 1999 or any circumstances exist which would entitle the Secretary of State to issue such a direction which in either case would have a Material Adverse Effect;

12.1.5 a report has been made or the Agency becomes aware of any circumstances that would give rise to the making of a report under Section 114(3) of the Local Government Finance Act 1988 which in either case would in the Agency's reasonable opinion have a Material Adverse Effect;

12.1.6 the Grant Recipient's status as a Registered Provider or Investment Partner is removed or withdrawn;

12.1.7 the Regulator directs the Agency not to give grant to the Grant Recipient or formally recommends to it that it should not do so; or

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

12.2 In the circumstances contemplated in Conditions 12.1.1 and 12.1.2 the Agency (acting reasonably) shall be entitled (but not obliged) to elect between withholding the Firm Scheme Grant as permitted by Condition 12.1 or issuing a Programme Change Notice.

12.3 Where a change to the Programme Offer is agreed between the parties and confirmed by the Agency through IMS, the Agency shall (to the extent consistent with the change to the Programme Offer) pay the Firm Scheme Grant (mutatis mutandis) to the Grant Recipient within fifteen (15) Business Days of the date of it making its confirmation in IMS.



13        **Repayment of Grant**

13.1        Without prejudice to any other term of this Agreement, the Agency reserves the right whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) to recover from the Grant Recipient the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Condition 13.2 (the **Recoverable Amount**) in circumstances where:

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

13.1.2      the Firm Scheme Grant has been paid to the Grant Recipient on the basis of a misrepresentation made by or on behalf of the Grant Recipient other than in the circumstances specified in Condition 13.1.5;

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

13.1.4      a Balancing Sum has arisen;

13.1.5      the Firm Scheme Grant has been paid to the Grant Recipient but the Agency becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details; or

13.1.6      a Recovery Event occurs.

13.2        In the circumstances set out in:

13.2.1      Conditions 13.1.1 and 13.1.2, the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant for any affected Firm Scheme;

13.2.2      Conditions 13.1.3 and 13.1.4, the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the Balancing Sum as applicable;

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

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

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

$$RA = FSG - TGR$$

where

RA is the Recoverable Amount;

FSG is the Firm Scheme Grant paid pursuant to Condition 11.1.1 in respect of the relevant Firm Scheme; and

TGR is the revised Total Grant Required figure agreed pursuant to Condition 13.2.3(a);

- (c) where the parties are unable to agree a revised Total Grant Required figure in accordance with Condition 13.2.3(a) the Agency shall be entitled to terminate this Agreement in accordance with Condition 5;

13.2.4 Condition 13.1.6, the Recoverable Amount shall be determined by the Grant Recipient in accordance with the Recovery Principles.

13.3 Where the Agency (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Firm Scheme Grant for the relevant Firm Scheme, the Agency shall be entitled to treat such claim as a Prohibited Act for the purposes of Condition 5.1 and will not be bound by the terms of Condition 13.2.3 or 13.4.

13.4 In the circumstances set out in Condition 13.1.5 the Agency shall be entitled (in its absolute discretion) to elect between:

13.4.1 permitting the Grant Recipient to apply the Recoverable Amount towards a pro rated reduction in the Agreed Payment Rate in which case the Agency shall issue a Programme Change Notice; or

13.4.2 requiring the repayment of the Recoverable Amount in which case the terms of Condition 13.7 will apply.

13.5 Following the occurrence of a circumstance specified in Condition 13.1.1 or Condition 13.1.2 (a **13.1 Occurrence**), the Agency shall:

13.5.1 determine whether each Firm Scheme directly affected by the 13.1 Occurrence is:

- (a) to be withdrawn from the Programme Offer and may no longer be regarded as a Firm Scheme; or

- (b) to continue to form part of the Programme Offer and remain a Firm Scheme;

13.5.2 where Condition 13.5.1(b) applies, determine the revision (if any) required to the Total Grant Required figure for each such affected Firm Scheme. Where Condition 13.5.1(a) applies, the revised Total Grant Required shall always be zero;

13.5.3 determine whether a Programme Change Notice is required as a consequence of the 13.1 Occurrence; and

13.5.4 notify the Grant Recipient, as soon as is reasonably practicable, of the determinations it has made pursuant to Conditions 13.5.1-13.5.3 (inclusive).

13.6 In making any determinations pursuant to Condition 13.5, the Agency shall act reasonably and in good faith and, in the context of Condition 13.5.2, proportionately. Subject to

Condition 25, the Grant Recipient shall amend the relevant information on IMS in respect of the Programme Offer and each relevant Firm Scheme to reflect the determinations made pursuant to Condition 13.5.

- 13.7 Subject to Condition 13.4 (and where applicable) Condition 13.7 the Grant Recipient shall pay the Recoverable Amount to the Agency within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof) overpayment or payment in error was paid to the Grant Recipient until the date upon which the Agency receives the repayment required from the Grant Recipient under this Condition 13.
- 13.8 Where the Late Payment of Commercial Debts (Interest) Act 1998 applies the Parties agree that the rate of interest referred to in Condition 13.2.2 above shall be a substantial remedy within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998.
- 13.9 Notwithstanding any other term of this Condition 13, where a payment has been made following an administrative error by the Agency, the Grant Recipient shall not be liable for interest on the amount repayable under Condition 13.2.2.
- 13.10 Without prejudice to Condition 7.5.7 where a Recovery Event occurs or is planned by the Grant Recipient to occur the Grant Recipient must notify the Agency in writing as soon as reasonably practicable of:
- 13.10.1 the nature of the Recovery Event;
- 13.10.2 the:
- (a) amount of Firm Scheme Grant allocated in accordance with Condition 15 to the Relevant Firm Scheme; and
- (b) where the Recovery Event does not affect the whole Relevant Firm Scheme, the amount of Firm Scheme Grant allocated to the Affected Affordable Dwellings in accordance with Part 2B of Annex 3; and
- 13.10.3 whether it is seeking the Agency's permission to convert the Recoverable Amount into Reapplied Grant for the purposes of the delivery of further Affordable Dwellings.
- 13.11 Following receipt of a Recovery Notification the Agency must notify the Grant Recipient as soon as reasonably practicable as to whether:
- 13.11.1 it requires repayment of the Recoverable Amount in which case the Recoverable Amount must be paid to the Agency within twenty (20) Business Days of the date of the Agency's notice; or
- 13.11.2 such amount may be converted into Reapplied Grant in which case the Grant Recipient shall submit a Programme Change Notice to the Agency in accordance with Condition 4.3 within 15 Business Days of the date of the Agency's notice.

13.12 Where the Grant Recipient fails to submit a Programme Change Notice pursuant to Condition 13.11.2 or the parties fail to agree to the change proposed within the Programme Change Notice, the Grant Recipient must repay the Recoverable Amount to the Agency within ten (10) Business Days of demand therefor.

13.13 The Grant Recipient must maintain a written record of calculations underpinning all Recoverable Amounts arising pursuant to Condition 13.1.6.

## 14 VAT

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

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

14.1.2 where any payment or taxable supply falls to be made pursuant to this Agreement VAT properly chargeable on it will be paid in addition by the recipient of the supply for which payment (if any) is consideration on the provision of a valid VAT invoice for it.

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

## 15 Allocation of Grant and Non Attributed Grant Units

15.1 Without prejudice to the provisions of Condition 7.2, on receipt of Firm Scheme Grant, the Grant Recipient must allocate such Firm Scheme Grant against the Affordable Dwellings constructed with such grant **provided always that** the amount that may be allocated in respect of any Firm Scheme shall not exceed the Total Grant Required for that Firm Scheme. Where the Firm Scheme Grant for a Firm Scheme exceeds the Total Grant Required the Grant Recipient shall subject always to Condition 15.2, allocate the Unallocated Scheme Grant or such part thereof as it is capable of allocating in accordance with the terms of this Condition 15.1 against another Firm Scheme in respect of which Firm Scheme Grant has been paid but in respect of which the relevant Firm Scheme Grant was less than the Total Grant Required for that Firm Scheme and such process shall be repeated until any Unallocated Scheme Grant which is capable of being allocated has been allocated into other available Firm Schemes in accordance with the provisions of this Condition 15.1.

15.2 No Firm Scheme Grant shall be allocated in respect of a Non Attributed Grant Unit or in respect of a Disposed Scheme. The Grant Recipient must allocate any Firm Scheme Grant received in respect of a Non Attributed Grant Unit against Affordable Dwellings (other than Non Attributed Grant Units) in accordance with the process for allocating grant as identified in Condition 15.1.

15.3 Where the Total Grant Required for a Firm Scheme is revised as a consequence of the operation of Condition 13.5 and/or Condition 13.2.3(b) and such revised Total Required Grant figure is less than the Firm Scheme Grant then allocated by the Grant Recipient to such Firm Scheme pursuant to Condition 15.1, the Grant Recipient shall reallocate the Excess in accordance with Condition 15.1 as if such Excess was Unallocated Scheme Grant.

15.4 Without prejudice to the obligation on the Grant Recipient set out in Condition 3.6.3, where requested by the Agency (acting reasonably), the Grant Recipient shall provide the Agency within ten (10) Business Days of receiving written notification of such a request, details of any Firm Scheme Grant received under this Agreement which remains to be allocated as a consequence of the operation of Conditions 15.1 and 15.2 or reallocated as a consequence of the operation of Condition 15.3.

16 **Open Book Obligations**

16.1 The Grant Recipient shall on an Open Book basis:

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

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

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

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

16.2.1 income (including Public Sector Subsidy and receipts);

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

16.2.3 payments made to Subcontractors;

16.2.4 capital and revenue expenditure;

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

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

and the Grant Recipient shall have (and procure that to the extent expressly agreed the Subcontractors shall have) the books of account evidencing the items listed in this

Condition available for inspection by the Agency (and any person appointed pursuant to the dispute resolution provisions at Condition 25 to determine a dispute or otherwise authorised by the Agency) upon reasonable notice, and shall submit a report of these to the Agency as and when requested.

## **17 Transparency Obligations**

17.1 The Grant Recipient must comply with the Transparency Code.

17.2 If and to the extent that, the Transparency Code is not binding upon the Grant Recipient, the Grant Recipient acknowledges that:

17.2.1 where the Allocated Grant exceeds £3,000,000, the Grant Recipient must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Firm Schemes by such means as ensures that such details can be accessed by the general public; and

17.2.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Grant Recipient hereby consents for the Agency to publish such information as it considers appropriate in relation to the AHP, including, but not limited to, details of the Programme Offer, Development Costs and funding for Firm Schemes, including from time to time agreed changes to this information.

## **18 State Aid**

18.1 If the Agency is required pursuant to the Decision of the Commission of the European Communities published on 15 July 2005 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the Agency will be entitled to recover any such amount from the Grant Recipient.

## **19 Representations and Warranties**

19.1 Without prejudice to any other term of this Agreement, the Grant Recipient:

19.1.1 represents and warrants to the Agency on the date hereof and on each day until and including the date upon which the Grant Recipient receives the last payment of Grant payable under this Agreement in the terms set out in Schedule 3 inclusive; and

19.1.2 acknowledges and agrees that the Agency is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

## **20 Information and confidentiality**

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

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

20.5.3 where it is considered necessary in the opinion of the other party, the relevant party shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

20.6 Nothing in this Condition 20 shall prevent either party from:

20.6.1 disclosing any Confidential Information for the purpose of:

- (a) the examination and certification of its accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or

20.6.2 disclosing any Confidential Information obtained from the other party:

- (a) to any other department, office or agency of the Crown; or
- (b) to any person engaged in providing any services to such Party for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;

provided that in disclosing information under Condition 20.6.2(a) or 20.6.2(b) the disclosing party discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

20.7 Nothing in this Condition 20 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

20.8 The parties to this Agreement are FOIA Authorities and:

20.8.1 are subject to legal duties which may require the release of information under FOIA and / or EIR; and

20.8.2 FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

20.9 The FOIA Authority in receipt of or to receive the RFI ("**Relevant FOIA Authority**") shall be responsible for determining in its absolute discretion whether:

20.9.1 any Information is Exempted Information or remains Exempted Information; and/or

20.9.2 any Information is to be disclosed in response to a Request for Information;

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.



20.10 Subject to Condition 20.11 below, each party acknowledges that the Relevant FOIA Authority may disclose Information:

20.10.1 without consulting the other; or

20.10.2 following consultation with the other party and having taken (or not taken, as the case may be) its views into account.

20.11 Without in any way limiting Conditions 20.9 and 20.10, in the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other party.

20.12 Each party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority 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 and sub-contractors will), at their own cost:

20.12.1 transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a RFI;

20.12.2 provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;

20.12.3 provide the Relevant FOIA Authority with any data or information in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information;

20.12.4 permit the Relevant FOIA Authority to inspect any records as requested from time to time.

20.13 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.

20.14 The obligations in this Condition 20 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

## 21 **Intellectual Property**

21.1 Subject to Condition 21.5 the Grant Recipient shall, to the extent that it is able to do so without incurring material cost, grant to the Agency a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Grant Recipient

or which are or become owned by the Grant Recipient and which relate to the Firm Schemes, for any purpose relating to this Agreement.

- 21.2 To the extent that any of the data, materials and documents referred to in Condition 21.1 are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by the Agency use its reasonable endeavours (without having to incur material cost) procure for the benefit of the Agency for the duration of this Agreement at the cost of the Grant Recipient the grant of a licence or sub-licence and supply any relevant software and/or database to enable the Agency making such request to access and otherwise use such data for the purposes referred to in Condition 21.1.
- 21.3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 21.4 The Grant Recipient shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 21.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this Condition 21, any breach by the Grant Recipient of this Condition 21 and against all costs and damages of any kind which the Agency may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 21.5 The Grant Recipient shall only be entitled to revoke the licence granted to the Agency under Condition 21.1 in the following circumstances and upon the following terms:
- 21.5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Grant has been paid to the Grant Recipient; or
- 21.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant has been paid to the Grant Recipient **provided that** nothing in this Condition 21.5.2 shall entitle the Grant Recipient to revoke such licence insofar as it relates to:
- (a) Firm Schemes in respect of which Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Firm Scheme Grant has arisen;
  - (b) Continuing Firm Schemes; or
  - (c) Firm Schemes subject to the provisions of Condition 12.2.

## 22 **Grant Recipient's records and accounting**

- 22.1 The Grant Recipient shall, as and when requested by the Agency whether before or after the date of payment of the Firm Scheme Grant, make available in a timely manner to the Agency where required in connection with this Agreement or the Programme Offer a copy of each of:
- 22.1.1 all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient for the purposes of this Agreement; and

22.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Grant Recipient's officers, employees, agents or consultants relating to the Firm Schemes and which have been supplied to the Grant Recipient for the purposes of this Agreement.

22.2 On the expiry of this Agreement or (if earlier) upon termination thereof, the Grant Recipient shall if requested to do so deliver up to the Agency all the data, materials, documents and accounts referred to in this Condition 22 which it has in its possession, custody or control and shall procure the handing over to the Agency such data, materials, documents and accounts referred to in Condition 22.1.2 or as otherwise directed by the Agency.

22.3 The Grant Recipient must for a period of ten (10) years from the date upon which it receives the Firm Scheme Grant retain all of the data, documents, materials and accounts referred to in this Condition 22 and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only.

22.4 The Grant Recipient acknowledges that The Comptroller and Auditor General shall have rights of access to the information referred to in Condition 22.1 pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000.

## 23 **Health and Safety and Equality and Diversity**

23.1 The Grant Recipient will comply in all material respects with all relevant Legislation relating to health and safety, equality and relevant employment matters and will use reasonable endeavours to procure that all Grant Recipient Parties do likewise.

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

23.3 The Grant Recipient shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part.

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

23.4.1 where the Grant Recipient is engaging consultants and a contractor or contractors as Subcontractors to deliver the Firm Scheme the Grant Recipient elects to be the only client in relation to such Firm Scheme; or

23.4.2 where the Grant Recipient is contracting with a developer as a Subcontractor to deliver a Firm Scheme the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Firm Scheme on or before the date that a Developable Scheme becomes a Firm Scheme

and the Agency hereby agrees to such election.

23.5 The Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to clause 23.4.1 or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any

election pursuant to clause 23.4.2 without the Agency's prior written consent, which the Agency may in its absolute discretion withhold.

- 23.6 The Grant Recipient shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.
- 23.7 The Grant Recipient shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 23.8 The Grant Recipient shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme.
- 23.9 Without prejudice to any other provision of this Agreement, the Grant Recipient shall notify the Agency's Health & Safety Manager within five (5) Business Days of the occurrence of any of the following events which arise out of or in connection with a Firm Scheme:
- 23.9.1 a fatal accident to any worker or a member of the public;
  - 23.9.2 any injury to a member of the public requiring reporting under RIDDOR;
  - 23.9.3 any dangerous occurrence, as defined by RIDDOR;
  - 23.9.4 the service of any improvement or prohibition notice under the HS Act;
  - 23.9.5 any incident having health & safety implications which attracts the attention of the police and/or the media;
  - 23.9.6 the commencement of any criminal prosecution under the HS Act.
- 23.10 The Grant Recipient will procure that all its Subcontractors comply at all times with the HS Act and the CDM Regulations and will procure that:
- 23.10.1 where for the purposes of the Works a Subcontractor is a Client Designer, Principal Contractor or CDM Coordinator, the Subcontractor will comply with the obligations imposed on such role(s) under the CDM Regulations;
  - 23.10.2 each Subcontractor co-operates fully with the CDM Coordinator and the Principal Contractor appointed under the CDM Regulations (whether or not either of these roles are carried out by the relevant contractor);
  - 23.10.3 each Subcontractor allocates adequate resources to enable it to comply with its obligations under the relevant Works contract and the CDM Regulations;
  - 23.10.4 each Subcontractor co-operates with all other persons involved in the Works to consider the prevention of risks and protection of persons who may be exposed to risks;
  - 23.10.5 no Subcontractor will by any act or omission do anything that would cause the Grant Recipient to breach or be prosecuted under the HS Act and/or the CDM Regulations; and

23.10.6 the Grant Recipient and each Subcontractor at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

## 24 **Co-operation**

24.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Firm Schemes. Without prejudice to the generality of the foregoing the Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:

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

24.1.2 of the Agency where the Agency is required under any legislation to provide any document relating to the Firm Schemes to any person.

## 25 **Dispute Resolution**

25.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 25.

25.1.1 In the event that the Grant Recipient or the Agency consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Condition 25.

25.1.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.

25.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 25.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Grant Recipient and the Agency (the **Chief Executives**).

25.1.4 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

25.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Chief Executives, such Dispute must be dealt with in accordance with Condition 25.2

25.2 In the circumstances contemplated in Condition 25.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

25.2.1 to initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.

25.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and

25.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

## 26 **Notices**

26.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, (but not by facsimile or electronic mail) or sent by a recorded delivery service addressed in the case of either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses as either party may from time to time notify to the other in writing **provided that** such other address is within England and Wales.

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

26.2.1 if delivered by hand, when delivered to the recipient;

26.2.2 if delivered by a recorded delivery service, three (3) Business Days after delivery including the date of postage;

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

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

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

## 28 **No agency**

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

28.2 The Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between the Agency

and the Grant Recipient. Neither the Grant Recipient nor any of its employees shall at any time hold itself or themselves out to be an employee of the Agency.

29 **Exclusion of third party rights**

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

30 **Assignment and sub-contracting**

30.1 The Agency will be entitled to transfer or assign all or part of this Agreement.

30.2 The Grant Recipient will not be entitled to transfer or assign all or part of this Agreement.

31 **Construction Industry Scheme**

31.1 For such time as:

31.1.1 the Grant Recipient continues to be a local authority; and

31.1.2 the provisions of paragraph 13040 of Chapter 1 of HM Revenue & Customs' CIS Reform Manual remain in effect as published at July 2009,

the Grant Recipient warrants to the Agency that since it is a local authority, it is deemed by concession to be certificated as a sub-contractor entitled to receive relevant payments gross under the Construction Industry Scheme set out in Chapter 3 of Part 3 of the Finance Act 2004 and associated regulations (the **CIS**) provided always that if either Condition 31.1.1 or Condition 31.1.2 ceases to hold at a time when monies remain outstanding from the Agency to the Grant Recipient pursuant to this Agreement then the Grant Recipient shall promptly notify the Agency of such fact and the parties shall take such steps as may reasonably be required to ensure that the CIS is if necessary applied to all such outstanding payments.

32 **Data Protection**

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

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

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

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

32.2.2 the Grant Recipient shall only Process Personal Data for and on behalf of the Agency for the purpose of performing its obligations under this Agreement in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written instructions from the Agency to ensure compliance with the DPA;

32.2.3 the Grant Recipient shall allow the Agency to audit the Grant Recipient's compliance with the requirements of this Condition 32 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Grant Recipient's compliance with the obligations within this Condition 32.

32.3 The Grant Recipient undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to Condition 32.2 the Grant Recipient shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Grant Recipient to perform its obligations under this Agreement, or to the extent required under a court order.

32.4 The Grant Recipient shall:

32.4.1 take reasonable steps to ensure the reliability of any Grant Recipient Party who has access to the Personal Data;

32.4.2 ensure that any Grant Recipient Party required to access the Personal Data is informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 32;

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

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

32.4.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:

(a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by



providing an adequate level of protection to any Personal Data that is transferred; and

(b) any reasonable instructions notified to it by the Agency.

32.5 The Grant Recipient agrees to use all reasonable efforts to assist the Agency to comply with such obligations as are imposed on the Agency by the DPA. For the avoidance of doubt, this includes the obligation to:

32.5.1 provide to the Agency such access as may be reasonably required from time to time to all Personal Data stored or processed in performing its obligations under this Agreement in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;

32.5.2 provide the Agency with reasonable assistance in complying with any request for information served on the Agency under Section 7 of the DPA;

32.5.3 notify the Agency (within five (5) Business Days) about the receipt of any such request received by the Grant Recipient under Section 7 of the DPA (a Section 7 DPA) or complaint or request relating to the Agency's obligations under the DPA and not disclose or release any information (including the Agency's Personal Data) in response to a Section 7 DPA request or a complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;

32.5.4 provide the Agency with full co-operation and assistance in relation to any complaint or request made, including by:

(a) providing the Agency with full details of the complaint or request;

(b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;

(c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and

(d) providing the Agency with any information requested by the Agency;

32.6 The Grant Recipient shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.

32.7 The Grant Recipient shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Grant Recipient's destruction of and/or damage to any of the Agency's Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 32 by the Grant Recipient, its employees, agents or sub-contractors.

32.8 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Grant Recipient's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency

relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.

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

32.10 For the purposes of this Condition 32:

**Law** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate Legislation or notice of any Regulatory Body;

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

### 33 **Further Assurance**

33.1 At any time upon the written request of the Agency the Grant Recipient:

33.1.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Agency the full benefit of this Agreement and of the rights and powers herein granted.

33.1.2 shall perform and use its reasonable endeavours to procure that any third party performs such acts as may be reasonably required for the purposes of giving full effect to this Agreement.

### 34 **Entire agreement**

34.1 This Agreement and the conditions herein contained together with the Schedules and Annexes constitute the entire agreement between the parties and, subject always to Condition 4.7, may only be varied or modified in writing by agreement under the seals of the parties.

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

### 35 **Severability**

If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that

extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

### **36 Cumulative rights and enforcement**

- 36.1 Any rights and remedies provided for in this Agreement whether in favour of the Agency or the Grant Recipient are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.
- 36.2 The parties acknowledge that money damages alone may not properly compensate the Agency for any breach of the Grant Recipient's obligations hereunder and the parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies the Agency may have in law, in equity or otherwise the Agency shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

### **37 Waiver**

- 37.1 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.
- 37.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.
- 37.3 Any waiver or release of any right or remedy of either party must be specifically granted in writing signed by that party and shall:
- 37.3.1 be confined to the specific circumstances in which it is given;
  - 37.3.2 not affect any other enforcement of the same or any other right; and
  - 37.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

### **38 Survival of this Agreement**

- 38.1 Insofar as any of the rights and powers of the Agency provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 38.2 Insofar as any of the obligations of the Grant Recipient provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 38.3 Without limitation the provisions of Conditions 2.6, 5.7 to 5.12 (inclusive), 7.2, 7.4 to 7.8, 8 to 10, 12, 13, 15, 16 to 18 and 20 to 22, 32.5, 32.7 and this Condition 38 and such other provisions of this Agreement as are necessary to give effect to such Conditions are expressly agreed by the parties to survive the termination or expiry of this Agreement.

39 **[London Living Wage<sup>3</sup>**

39.1 For the purposes of this Condition , unless the context indicates otherwise, the following expressions shall have the following meanings:

**London Living Wage** means the basic hourly wage of £7.85 (before tax, other deductions and any increase for overtime) as may be updated from time to time and notified to the Grant Recipient.

39.2 Without prejudice to any other provision of this Agreement, the Grant Recipient shall:

39.2.1 use all reasonable endeavours to ensure that none of its employees engaged in the provision of the Works is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;

39.2.2 use all reasonable endeavours to ensure that none of its employees engaged in the provision of the Works is paid less than the amount to which they are entitled in their respective contracts of employment;

39.2.3 provide to the Agency such information concerning the London Living Wage as the Agency or its nominees may reasonably require from time to time;

39.2.4 disseminate on behalf of the Agency to its employees engaged in the provision of the Works such perception questionnaires as the Agency may reasonably require from time to time and promptly collate and return to the Agency responses to such questionnaires; and

39.2.5 use all reasonable endeavours to co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.]

40 **Execution**

This Agreement may be executed in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

41 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Condition 25 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

---

<sup>3</sup> This Condition applies only to London based Framework Delivery Agreements.

**Schedule 1**  
**Programme Offer**

## Schedule 2

### Officer's Certificate

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

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

As an authorised signatory of the Grant Recipient<sup>4</sup>, I hereby certify that as at the date hereof (save as disclosed in the Schedule to this Certificate):

- 1 all data or other information submitted on IMS in respect of the Programme Offer and each Firm Scheme is accurate and the Grant Recipient is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate;
- 2 all data or other information supplied to the Regulator in connection with, or related to the Programme Offer is accurate (including, inter alia, details of any Permitted Conversions);
- 3 the Grant Recipient is not in breach of its Transparency Obligations;
- 4 save where expressly agreed by the Agency, no Firm Scheme which is a Section 106 Scheme is being subsidised by Conversion Capacity, FSG, or Reapplied Grant;
- 5 save where expressly agreed by the Agency, all Affordable Dwellings and Permitted Conversions have been let or disposed of (as applicable) in accordance with the terms of the Programme Offer;
- 6 so far as the Grant Recipient is aware (having made all reasonable enquiries) the Programme Offer (including, inter alia, all projected Start on Site and Practical Completion dates) is capable of being delivered without the need for a change to the Programme Offer.

This Certificate is given by virtue of my position as [ ]<sup>5</sup> and is given on behalf of the Grant Recipient. I am not giving this Certificate in a personal capacity, nor do I accept any private or personal liability for any error or omission in it and the Agency, in relying on the contents of the Certificate, duly acknowledges that its remedy, in the event that any error or omission is later to be found, is that it constitutes a Programme Default and the rights that affords the Agency against the Grant Recipient.

Dated [ ]

.....

**Authorised signatory**

[ ]

<sup>4</sup> Under the terms of the Framework Delivery Agreement, the signatory is to be the Housing Director unless the Agency's consent has been obtained in advance that the certificate can be provided by another member of the Grant Recipient's management team.

<sup>5</sup> See footnote 4

Schedule [ ]

Paragraph Number	Disclosure

## Schedule 3

### Representation and Warranties

#### 1 Powers, vires and consents

- 1.1 All consents, required by it in connection with the execution, delivery, issue, validity, performance or enforceability of this Agreement, have been obtained and have not been withdrawn.
- 1.2 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.
- 1.3 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.4 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect
- 1.5 It has not committed any Prohibited Act.

#### 2 Programme Deliverability

- 2.1 It has obtained or will by Practical Completion of a Firm Scheme obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- 2.2 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.3 No Programme Default has occurred and is continuing.
- 2.4 All information supplied by or on behalf of it to the Agency or its agents or employees in connection with the Grant Recipient's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.5 It has informed the Agency of any material change that has occurred since the date of submission of the Programme Offer of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the use, provision or offer of any additional Public Sector Subsidy.
- 2.6 It is not aware of any material fact or circumstance that has not been disclosed to the Agency and which might, if disclosed, materially, adversely affect the decision of anyone considering whether or not to contract with it.



3        **Application of Programme Offer Capacity**

3.1       All financial capacity generated by the Grant Recipient through the terms of the Programme Offer is being and will be applied by the Grant Recipient to the delivery of new Affordable Housing supply under this Agreement.

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

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

5        **Local Government Act 1999**

The Grant Recipient is not subject to any direction of the Secretary of State under Section 15 of the Local Government Act 1999 nor do any circumstances exist which would entitle the Secretary of State to issue such a direction which in either case would have a Material Adverse Effect.

6        **Local Government Finance Act 1988**

No report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making of a report under Section 114(3) of the Local Government Finance Act 1988 which in either case would have a Material Adverse Effect.

## Schedule 4

### Form of Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes and Communities Agency  
Central Business Exchange II  
406-412 Midsummer Boulevard  
Central Milton Keynes  
MK9 2EA

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

Dear Sirs,

#### **Legal Opinion re Framework Delivery Agreement and related matters**

I refer to the proposed Framework Delivery Agreement to be entered into between [ ] (the **Council**) and the Agency (the **Agreement**) for the purposes of, inter alia, providing affordable housing which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

- (a) the Agreement in its final form prior to execution and delivery thereof by the Council ;
- (b) the Council's Standing Orders for approving entry into and the execution and delivery of deeds by the Council and for the delegation of its authority and the powers of the Council's Executive;
- (c) such other documents I consider appropriate for the purposes of giving this opinion.

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

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

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

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

This opinion is given by virtue of my position as Solicitor to the Council and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to the Agency and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Council Solicitor

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Agreement referred to above.

Name	Title	Specimen Signature
------	-------	--------------------

## Schedule 5

### Affordable Rent Terms

In relation to each Affordable Rent Dwelling:

- 1 the rent (inclusive of service charge) must be set at a level which is no more than eighty per centum (80%) of the estimated market rent for an equivalent property in the locality (inclusive of service charges) based on a valuation in accordance with a method recognised by the Royal Institution of Chartered Surveyors,
- 2 the rent must not increase by more than RPI + 0.5% per annum,
- 3 the rent must be reset, based on a new valuation, each time the relevant Affordable Rent Dwelling is
  - 3.1 let to a new tenant; or
  - 3.2 re-let to the same tenant (but for the avoidance of doubt any automatic conversion of an introductory tenancy to a secure tenancy shall not be deemed to be constitute a re-letting for the purposes of this Schedule 5).

In this Schedule 5, "RPI" means the general index of retail prices (for all items) published by the Office for National Statistics or, if that index is not published for any month, any substituted index or index figures published by that Office.

## Annex 1

### Part 1

#### Development Costs

##### Heads of expenditure

##### 1 Acquisition

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

##### 2 Works

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

##### 3 On costs

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

- 3.10 An appropriate proportion of the Grant Recipient's development and administration costs.
- 3.11 Marketing costs – for sale schemes only.
- 3.12 Post-completion interest - for sale schemes only.
- 3.13 Irrecoverable VAT on the above.

**Note 1**

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

**Note 2**

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

Examples of these are as follows:

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

**Note 3**

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

## **Annex 1**

### **Part 2**

#### **Costs which are not Development Costs**

Capital costs incurred:

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

## Annex 2

### Adjustment Mechanism Illustration

#### FDA start point

Scheme	Total Scheme Costs	Affordable Rent grant	Affordable Home Ownership grant	Total grant required	Affordable Rent grant/unit	Affordable Home Ownership grant/unit	No of Affordable Rent units	No of Affordable Home Ownership units	No of Total units
A	£ 15,000,000	£ 2,400,000	£ 300,000	£ 2,700,000	£ 30,000	£ 15,000	80	20	100
B	£ 20,000,000	£ 3,200,000	£ 400,000	£ 3,600,000	£ 40,000	£ 20,000	80	20	100
C	£ 21,000,000	£ 3,600,000	£ 400,000	£ 4,000,000	£ 45,000	£ 20,000	80	20	100
D	£ 18,000,000	-	-	-	-	-	80	20	100
		<b>£ 9,200,000</b>	<b>£ 1,100,000</b>	<b>£ 10,300,000</b>	<b>£ 28,750</b>	<b>£ 13,750</b>	<b>320</b>	<b>80</b>	<b>400</b>
					<b>APR</b>	<b>APR</b>			

#### Over payment at termination

Scheme	Total Scheme Costs	Total grant required	No of Affordable Rent units completed	No of Affordable Home Ownership units	No of Total units	Affordable Rent grant paid	Affordable Home Ownership grant paid	Total grant paid	Under/over (-£) payment
A			-	-	-				
B			-	-	-				
C	£ 21,000,000	£ 4,000,000	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	£ 1,425,000
D	£ 18,000,000	-	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	-£ 2,575,000
		<b>£ 4,000,000</b>	<b>160</b>	<b>40</b>	<b>200</b>	<b>£ 4,600,000</b>	<b>£ 550,000</b>	<b>£ 5,150,000</b>	<b>-£ 1,150,000</b>

At termination only C & D have completed.  
 APR payments have underpaid C and over paid D (a nil grant scheme) against the total grant required for those schemes. Total of £5.15m has been paid resulting in a net over payment of £1.15m against the £4m grant required for C.  
 £4m is allocated for recovery against C as per principles in Capital Funding Guide.  
 £0 is allocated for recovery against D



### Shortfall at termination

Scheme	Total Scheme Costs	Total grant required	No of Affordable Rent units completed	No of Affordable Home Ownership units	No of Total units	Affordable Rent grant paid	Affordable Home Ownership grant paid	Total grant paid	Under/over (-£) payment
A			-						
B	£ 20,000,000	£ 3,200,000	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	£ 625,000
C	£ 21,000,000	£ 4,000,000	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	£ 1,425,000
D		£ -	-						
		<b>£ 7,200,000</b>	<b>160</b>	<b>40</b>	<b>200</b>	<b>£ 4,600,000</b>	<b>£ 550,000</b>	<b>£ 5,150,000</b>	<b>£ 2,050,000</b>

At termination only B & C have completed.  
 APR payments have been insufficient to meet grant requirements of both schemes. Total of £5.15m has been paid resulting in a net shortfall of £2.05m against £7.2m total grant required.  
 Grant Recipient uses remaining conversion capacity to meet funding shortfall.

For recovery purposes £5.15m is applied using Capital Funding Guide principles across the two schemes. Grant Recipient cannot attribute more than agreed total grant required for each scheme.

**Scheme variation**

<b>Scheme</b>	<b>Total Scheme Costs</b>	<b>Total grant required</b>	<b>No of Affordable Rent units completed</b>	<b>No of Affordable Home Ownership units</b>	<b>No of Total units</b>	<b>Affordable Rent grant paid</b>	<b>Affordable Home Ownership grant paid</b>	<b>Total grant paid</b>	<b>Under/over (-£) payment</b>
A	£ 15,000,000	£ 2,700,000	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	£ 125,000
B	£ 20,000,000	£ 3,600,000	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	£ 1,025,000
<b>C</b>	<b>£ 12,600,000</b>	<b>£ 2,700,000</b>	<b>60</b>	<b>-</b>	<b>60</b>	£ 1,725,000	-	£ 1,725,000	£ 975,000
D	£ 18,000,000	£ -	80	20	100	£ 2,300,000	£ 275,000	£ 2,575,000	-£ 2,575,000
		<b>£ 9,000,000</b>	<b>300</b>	<b>60</b>	<b>360</b>	<b>£ 8,625,000</b>	<b>£ 825,000</b>	<b>£ 9,450,000</b>	<b>-£ 450,000</b>

At termination all schemes have completed.  
 Scheme C has only delivered 60 units against agreed 100. All other schemes have delivered as expected.

£9.45m has been paid out resulting in a net overpayment of £450k against the reduced grant requirement of £2.7m for C. £450k is refunded to the Agency.

£9m is allocated for recovery across ABCD. Grant Recipient cannot attribute more than agreed total grant required for each scheme.

## Annex 3

### Recovery Principles

#### Part 1

#### 1 Definitions

1.1 In this Part 1, the following terms have the following meanings:

**Allocated Grant Amount** means the amount of Firm Scheme Grant allocated to the Relevant Firm Scheme from time to time pursuant to Condition 15 and not the amount of Firm Scheme Grant paid pursuant to Condition 11.1.1 in respect of such scheme

**Disposals and Demolition Cases** means the disposals and events described in paragraphs 3.3.1. to 3.3.5 below

#### 2 Interpretation

2.1 For the purposes of the Disposal and Demolition Cases:

2.1.1 Where a first disposal of Affordable Dwellings or other grant funded property occurs in relation to a Relevant Firm Scheme prior to the Allocated Grant Amount having reached the Total Grant Required, the Recoverable Amount will be determined by reference to the then current Allocated Grant Amount (apportioned in accordance with Part 2B of this Annex).

2.1.2 On any disposal subsequent to a first disposal, the Recoverable Amount will be determined by reference to the result of then current Allocated Grant Amount less the aggregate of the Recoverable Amounts paid (or reapplied) by the Grant Recipient pursuant to Conditions 13.11 and 13.12 in relation to that Relevant Firm Scheme (such result being apportioned in accordance with Part 2B of this Annex).

#### 3 Calculation of Recoverable Amount

3.1 In the case of the Recovery Events listed in limbs (a), (c) and (d) of the definition of Recovery Event, the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant paid in relation to the affected Firm Scheme.

3.2 In the case of the Recovery Events listed in limbs (b) and (e) of the definition of Recovery Event, the Recoverable Amount shall in the case of:

3.2.1 limb (b) be a sum equivalent to the amount by which the aggregate amounts of Firm Scheme Grant paid to the Grant Recipient exceeded the amount of grant necessary for the delivery of the Programme Offer;

3.2.2 limb (e) be a sum equivalent to the amount overpaid by the Agency as a result of the incorrect information supplied or error made.

3.3 In the case of the Recovery Events listed in limbs (f) to (l) of the definition of Recovery Event, the Recoverable Amount shall in the case of:

- 3.3.1 outright sales (which shall be deemed to include those events listed in paragraphs 2, 3, 4.1, 4.2, 7, 8, 10, 11, 12 and 13 of Part 2A of this Annex) be calculated in accordance with the methodology set out in Part 3A of this Annex save in the case of a change of use from supported housing to general needs in which case the Recoverable Amount shall be calculated in accordance with the terms of paragraph 12.2 of Part 2A of this Annex;
- 3.3.2 shared ownership staircasing disposals (including those events listed in paragraphs 4.3, 4.4 and 4.5 of Part 2A of this Annex) be calculated in accordance with the methodology set out in Part 3B of this Annex;
- 3.3.3 recovery of tenants discounts be calculated in accordance with the methodology set out in Part 3C of this Annex;
- 3.3.4 demolition be determined and applied in accordance with the terms of paragraph 13 of Part 2A of this Annex;
- 3.3.5 Equity Loans be determined in accordance with the terms of paragraphs 5 or 6 (as applicable) of Part 2A of this Annex;
- 3.3.6 deregistration by the Regulator be determined and applied in accordance with the terms of paragraph 14 of Part 2A of this Annex

and in employing the relevant methodology the Grant Recipient shall take into account and apply the provisions of Parts 2A and 2B of this Annex to the extent relevant.

- 4 In circumstances where a Recovery Event occurs and the Agency is satisfied that the repayment of the Recoverable Amount would place the Grant Recipient in material financial difficulty, the Agency shall be entitled (at its absolute discretion and on such terms as it considers appropriate) to:
  - 4.1 defer repayment of the Recoverable Amount by the Grant Recipient;
  - 4.2 permit repayment of the Recoverable Amount by way of instalments; or
  - 4.3 reduce the Recoverable Amount by such sum as the Agency considers appropriate.

## Annex 3

### Part 2A

#### 1 Deemed Loan Debt

- 1.1 For rented schemes Grant Recipients must apportion Deemed Loan Debt in the same way as they apportion FSG between individual units (see Part 2B of this Annex 3).
- 1.2 For shared ownership schemes Deemed Loan Debt is apportioned according to the market values of the dwellings at practical completion of the scheme.

#### 2 Outright Sale of Land and Buildings

- 2.1 Outright sale includes both sale on a freehold or a leasehold basis. The Gross Sale Receipt received by the Grant Recipient must not be below a valid valuation by an Independent Qualified Valuer.
- 2.2 The Net Sale Receipt is the Gross Sale Receipt less the eligible deductions, which are:
- 2.2.1 the Deemed Loan Debt
  - 2.2.2 reasonable valuation fees and expenses and
  - 2.2.3 reasonable legal fees and expenses of the disposal.
- 2.3 Grant Recipients may not deduct any administration allowance nor the cost of demolition (if any) from gross sales receipts if it sells the site.
- 2.4 If the Net Sale Receipt is less than the attributable FSG, the shortfall may (with the Agency's consent) be written off by the Grant Recipient.
- 2.5 Where grant is to be written off by the Grant Recipient, it must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

#### 3 Sale under Compulsory Purchase Orders

- 3.1 If a property owned by a Grant Recipient is sold under a Compulsory Purchase Order or equivalent mandatory purchase order (**CPO**) (or where there is written evidence of the threat of a CPO), the amount of FSG recovered will be calculated in the manner described in the preceding paragraph 2, EXCEPT:
- 3.1.1 the Gross Sale Receipts will be the HIGHER of either:
    - (a) the receipt from the disposal PLUS any compensation received PLUS any interest received as part of the CPO, or
    - (b) the amount obtained by a qualified valuer acting on behalf of the Grant Recipient in negotiation with the body exercising compulsory powers.
  - 3.1.2 Eligible deductions will only include the Grant Recipient 's valuation and legal fees and costs, and an administrative allowance if the body exercising the CPO has not paid them as part of the CPO process.

- 3.2 The amount of interest to be included in the calculation of the Gross Sale Receipt will be the interest paid by the acquiring body, less any tax on that interest that the Grant Recipient may have to pay .
- 3.3 The amount of FSG recovered will not normally be reduced in respect of any costs incurred by an Grant Recipient in opposing a CPO.
- 3.4 If the Net Sales Receipts resulting from this calculation are insufficient to enable the recovery of all of the FSG attributable to that property or land, the amount of FSG recovered may, at the Agency's discretion, be reduced by the shortfall. Grant Recipients should discuss such cases with the Agency's operational area. However, if the Grant Recipient makes net surpluses upon the sale of other Property or land within the same Compulsory Purchase Order, those surpluses must be used to cover the shortfall in whole or in part.
- 3.5 If a shortfall still remains, the amount of FSG recovered will be reduced by the shortfall, which may (with the Agency's consent) be written off by the Grant Recipient. Where FSG is to be written off, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

#### 4 **Shared Ownership Sales**

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

4.1.1 Grant Recipients should note that this section covers voluntary sales on property on a shared ownership basis with no discount. The Gross Sale Receipts must not be below a Valid Valuation by an Independent Qualified Valuer .

4.1.2 The eligible deductions from the Gross Sale Receipts are:

- (a) the Deemed Loan Debt;
- (b) valuation expenses; and
- (c) legal expenses of the disposal

but no administrative allowance.

4.1.3 If the net sale receipts are insufficient to enable the recovery of all of the attributable FSG, then recovery of the shortfall may (with the Agency's consent) be deferred to the next staircasing sale.

4.1.4 Where recovery is deferred, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require.

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

4.2.1 The eligible deductions from the Gross Sale Receipts are the valuation and legal expenses of the disposal.

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

#### 4.3 **Protected Areas**

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

#### 4.4 **Shared ownership: staircasing sales**

- 4.4.1 The Gross Sale Receipts must not be below the applicable proportion of a valid valuation by an Independent Qualified Valuer.
- 4.4.2 The eligible deductions from the Gross Sale Receipts are the Deemed Loan Debt attributable to the percentage sold, and the staircasing allowance. The valuation must be paid for by the prospective purchaser.
- 4.4.3 The Net Sale Receipts are used to recover the FSG attributable to the staircased proportion of the dwelling plus any FSG previously deferred on initial or subsequent staircasing sales in respect of other properties within the same scheme.
- 4.4.4 If the Net Sale Receipts are insufficient to enable the recovery of all the attributable and deferred FSG, then the shortfall of the recoverable FSG may (with the Agency's consent) be deferred until the sale of a further share of that dwelling or sales of shares of any other shared ownership dwellings within the same scheme.
- 4.4.5 If, when the final dwelling in a scheme is staircased to outright ownership (or the maximum percentage allowable for that scheme) the total Net Sale Receipts were less than the FSG recoverable, the final shortfall will be written off by the Grant Recipient.

- 4.4.6 Where there is a deferral or write off of FSG, the Grant Recipient must provide such supporting documentation and information to the Agency as the Agency may reasonably require

#### 4.5 **Shared Ownership: Repossessions**

- 4.5.1 Policy in respect of defaulting shared owners is contained in Housing Corporation Circular 26/86 (and any successor circular or like publication) .
- 4.5.2 The basic approach to calculating recoverable FSG, including any deferrals and any FSG to be written off is the same as for any other shared ownership staircasing, although there are important differences:
- (a) Grant Recipients may accept (for recovery purposes) the valuation by the mortgagee's valuer instead of one by an Independent Qualified Valuer;
  - (b) the gross sale receipt is the money received from the mortgagee, as stated in the mortgagee's statement of account for details.
- 4.5.3 The eligible deductions from the Gross Sale Receipts are:
- (a) the Deemed Loan Debt attributable to the percentage sold. and
  - (b) the Staircasing Allowance.
- 4.5.4 Any shortfall on staircasing receipts remains a debt due to the Grant Recipient by the defaulting leaseholder.
- 4.5.5 Where the leaseholder's mortgagee has used the Mortgagee Protection Clause, and the Grant Recipient has suffered a shortfall on staircasing receipts recoverable FSG may (with the Agency's consent) be written off by the Grant Recipient or deferred provided that the Grant Recipient confirms in supporting documentation to the written calculation that they:
- (a) are in the process of obtaining legal advice, or have already obtained legal advice on the prospect of recovering the money due from the leaseholder;
  - (b) will take all necessary steps to recover the money due; and
  - (c) undertake to pay the money to the Agency if applicable within fourteen (14) days of receipt.
- 4.5.6 In deciding what action is reasonable to pursue the debt the Grant Recipient should obtain the written advice of its solicitors. A copy of the solicitor's advice must be kept with the written calculation for audit purposes.
- 4.5.7 If action is taken as advised by the Grant Recipient 's solicitor, and no receipts are generated, any expenses or abortive costs will NOT be allowed against grant recovery UNLESS the surpluses from shared ownership staircasing sales completed in the previous twelve (12) months are insufficient to cover the costs.



- 4.5.8 Where the Grant Recipient incurs such a loss, the Grant Recipient may (with the Agency's consent) deduct the costs that it has incurred from a future FSG recovery on a shared ownership sale or staircasing in that scheme.
- 4.5.9 If the amount for which the defaulting leaseholder is liable under the Mortgagee Protection Clause would have left the Grant Recipient with a surplus after full grant recovery then it is a matter for the Grant Recipient to decide whether to seek to recover this amount when taking action to recover other monies due.
- 4.5.10 Where FSG recovery is to be reduced or deferred, the supporting documentation to be provided to the Agency should include an appropriate certification signed by an authorised signatory of the Grant Recipient together with a copy of the completion statement provided by the leaseholder's mortgagee, and a copy of the mortgagee's explanation if the sale price is lower than the Valuer's valuation, etc.

## 5 **Equity loans paid by Equity Loan Providers**

- 5.1 An owner redeeming all or part of an equity loan, either voluntarily or when obliged to do under the terms of their equity loan agreement, is a Recovery Event
- 5.2 The Recoverable Amount will be determined in accordance with such principles as the Agency shall have communicated to the Grant Recipient prior to the Acceptance Date.

### **Equity Loans paid under the Mortgage Rescue Scheme (shared equity product)**

- 5.3 An owner redeeming all or part of a mortgage rescue equity loan, either voluntarily or when obliged to do under the terms of their equity loan agreement, is a Recovery Event.
- 5.4 On receipt of the equity loan redemption payment calculated in accordance with section 7 of the Mortgage Rescue Shared Equity chapter of the Capital Funding Guide, the provider will be required to ring fence 73% of this amount and either repay this to the Agency or with the Agency's consent apply it to new supply under this Agreement. The remaining 27% is to be retained by the provider.

## 6 **Right To Buy**

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

## 7 **Right To Buy**

- 7.1 The deductions to be offset against the gross sale receipt shall be:
- 7.1.1 the Deemed Loan Debt;
- 7.1.2 reasonable expenses being the valuation and legal expenses of the disposal;
- 7.1.3 the Right To Buy (RTB) sales allowance;
- 7.1.4 any abortive RTB sales expenses.

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

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

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

HOWEVER:

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

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

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

8 **Not used**

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

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

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

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

10.2 FSG will be recovered as if the property had been sold outright.

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

10.3.1 vacant possession

10.3.2 existing use

to determine the notional "gross sales receipt".

10.4 Eligible deductions are:

10.4.1 the Deemed Loan Debt

10.4.2 reasonable valuation fees and expenses and

10.4.3 reasonable legal fees and expenses of the disposal.

A Grant Recipient may not deduct any administration allowance.

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

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

11.1 A change of use from Supported Housing to general needs is a Recovery Event

11.2 This is not treated as a "notional sale", and so there are no gross sales receipts (real or notional) or eligible deductions. Instead, the Grant Recipient will pay to the Agency 12% of all FSG paid on the Supported Housing units (net of any FSG previously recovered) subject to the exceptions set out immediately below.

11.3 If the Grant Recipient is providing a replacement Supported Housing service in units that form part of its general needs stock then grant recovery may be waived by the Agency, at the discretion of the relevant Agency operational area.

11.4 The Agency reserves the right to recover FSG if, in the future, the replacement units ceased to be used for Supported Housing without further replacement units being made available.

11.5 Where a change of use of supported housing triggers FSG recovery, this may (with the Agency's consent) be deferred until a further Recovery Event, when the amount to be recovered will be calculated on the original FSG amount.

11.6 This deferral is at the discretion of the Agency (through agreement of the relevant Agency operational area). The Agency will consider:

11.6.1 any changes in revenue sources and amounts;

11.6.2 the future needs of the current client group;

11.6.3 changes in methods of supplying support, eg to floating;

11.6.4 other potential client groups;

11.6.5 the nature, type and condition of the building, currently and in future.

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

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

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

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

13        **Demolition**

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

13.2        Demolition is a Recovery Event.

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

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

13.5        In the meantime FSG is treated as remaining in the land.

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

13.6.1        remains in the ownership of the Grant Recipient;

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

13.6.3        a compensation payment is received by the Grant Recipient

then FSG will be recovered.

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

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

14        **Deregistration by the Regulator**

14.1        Where a Grant Recipient is deregistered by the Regulator, this is a Recovery Event and all grant, previously paid (including FSG) to the Grant Recipient is required to be repaid. .

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

**Cost Floor** means in the context of the Right To Buy, those costs in respect of the Dwelling, which are treated as incurred after 31 March 1974 and relevant in accordance with the Secretary of State's Determinations made under Section 131 of the Housing Act 1985 as amended by Section 122 of the Housing Act 1988. In cases where the Landlord's notice under Section 125 of the 1985 Act is issued after 9 March 1989, the Secretary of State's Determination made in March 1989 shall apply;

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

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

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

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

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

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

**Net Sales Receipt** means the Gross Sales Receipt less any eligible deductions identified in this Annex

**Protected Areas** means a principle introduced by The Housing (Shared Ownership Leases (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 with effect from 7th September 2009, to assist the retention of shared ownership property in

hard to replace areas (e.g. those exempted from the Right to Acquire) by either restricting staircasing or requiring the leaseholder to sell back to the landlord;

**Protected Areas Repurchase** (or any cognate term) means the repurchase of grant funded shared ownership property originally built subject to the Agency's Protected Areas policy from time to time by the landlord or a suitable nominated organisation. Where alternative means of funding have been robustly explored, the Agency will fund the repurchase of eligible Protected Area grant funded shared ownership property;

**Staircasing** means the acquisition by the shared owner of further equity in the relevant dwelling in accordance with the terms of the Newbuild HomeBuy Lease

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

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

**Total Scheme Costs** means in respect of each Firm Scheme the figure shown under or in relation to that heading in the Firm Scheme Details.

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

## Annex 3

### Part 2B

#### Apportionment of Grant in Dwellings (excluding Non Attributed Grant Units)

##### 1 Apportionment of Grant: Rented Properties

1.1 The Grant Recipient must apportion the Allocated Grant Amount or, as applicable, the result of the calculation referred to in paragraph 2.1.2 of Part 1 of this Annex (the **Resulting Amount**) on a reasonable basis to individual properties where a Recovery Event does not affect the whole Firm Scheme.

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

1.2.1 rents as charged on first letting;

1.2.2 floor area;

1.2.3 equal division where properties are similar in size;

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

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

1.3 The total amount of Allocated Grant Amount or the Resulting Amount (as applicable) to be apportioned must include:

1.3.1 Funding (including new grant and Reapplied Grant); and

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

## 2 **Apportionment of Grant: Shared Ownership Properties**

For shared ownership schemes, the Allocated Grant Amount or the Resulting Amount (as applicable) is apportioned according to the market values of the dwellings at practical completion of the scheme.

## 3 **Shared ownership staircasing sales**

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

## 4 **Apportioning Grant on Land**

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

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

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

## Annex 3

### Part 3A

## RECOVERY OF GRANT ON OUTRIGHT SALE OF PROPERTY

---

### Calculation of grant to be recovered

---

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

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



## Annex 3

### Part 3B

# RECOVERY OF GRANT ON SHARED OWNERSHIP STAIRCASING SALES

---

## Calculation of grant to be recovered

---

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

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

**Annex 3**

**Part 3C**

**RECOVERY OF GRANT RE: TENANTS DISCOUNTS ON SALE OF PROPERTY**

---

Calculation of grant to be recovered

---

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

- 1 Identification of the discount repayable less the "Recovery of tenants discount allowance".
- 2 Identification of FSG paid in respect of tenants discount/FSG recovery abated on original property sale.
- 3 Recoverable amount is the lower of the amounts identified in paragraphs 1 and 2 above.

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

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

Authorised Signatory

**EXECUTED** as a **DEED** by affixing )  
**THE COMMON SEAL** of )  
**[GRANT RECIPIENT]** )  
in the presence of:<sup>6</sup> )

Authorised Officer

---

<sup>6</sup> Insert relevant local authority attestation block