

dated

2015

Homes and Communities Agency

and

[Developer]

Delivery Agreement

in relation to the Affordable Homes Programme 2015-18

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Delivery Agreement

dated

Parties

- (1) **Homes and Communities Agency**, a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 6QH (including any statutory successor) (the **Agency**); and
- (2) [] (company number []) whose registered office is at [] (the **Developer**).

Introduction

- (A) The Agency is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia to make grants available to facilitate the development and provision of AHP Housing.
- (B) The Agency and the Developer have agreed the terms of a Approved Bid (as hereinafter defined) pursuant to which the Agency agrees to provide grant to the Developer for the purposes of the delivery by 31 March 2018 of the number of AHP Dwellings specified in the Approved Bid.
- (C) Grant paid by the Agency to the Developer 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:

2005 Regulations means the Income Tax (Construction Industry Practice) Regulations 2005 SI No 2045;

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 Developer in developing that Firm Scheme as such amount is certified by the Developer pursuant to condition 9.3.3;

Additional Scheme means a scheme for the delivery of AHP Housing proposed by the Grant Recipient in addition to those comprised within the Approved Bid;

Additional Scheme Acceptance Date means the date upon which the Agency confirms acceptance of an Additional Scheme pursuant to Condition 8.14;

Affordable Homes Guarantees Programme means the programme described in the publication entitled "2013 - 2015 Affordable Homes Guarantee Programme Framework"

issued by the Department for Communities and Local Government Agency in February 2013 (as the same may be amended or updated from time to time);

Affordable Home Ownership means low cost home ownership on Shared Ownership Lease terms;

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

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

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

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

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

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

Agreed Transfer means a transfer with full title guarantee of the Site free from mortgages or charges and from onerous encumbrances that will have any material adverse effect on the use of the AHP Dwellings for the Agreed Purposes and which will entitle the Landlord to be registered at the Land Registry as proprietor of the Site with a Secure Legal Interest of the type specified in (a)-(c) of that term;

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

Agreement Funding means any funding given to the Developer by the Agency under the provisions of this Agreement;

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

AHP Dwelling means a house, flat or maisonette which is to be developed pursuant to the terms of this Agreement and in relation to each relevant Firm Scheme as more particularly described in the relevant Firm Scheme Details;

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

AHP 2015/18 Funds means grant funding made available pursuant to the AHP 2015/18 or care and support funding made available by the Department of Health (if any);

AHP Housing means subsidised housing developed by the Developer that will be made permanently available by a Landlord:

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

AHP Housing means subsidised housing developed by the Developer pursuant to this Agreement that will be made permanently available:

- (a) at an Affordable Rent;
- (b) at a Social Rent; or
- (c) on Affordable Home Ownership terms.

Allocated Grant means [], being, subject to Condition 4 and Condition 8, the maximum amount of grant payable by the Agency to the Developer in respect of the Approved Bid;

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

Approved Bid means the aggregated schemes for the development of AHP Housing proposed by the Developer and approved by the Agency on IMS as at the date hereof in relation to which 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 or Condition 8);

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

Balancing Sum means such sum as represents the amount by which Public Sector Subsidy in respect of the Approved Bid exceeds the aggregated Actual Development Costs incurred by the Developer in the delivery of the Approved Bid;

Building Contract means the contract (if any) entered into between the Developer and the Building Contractor relating to the construction and development of a Firm Scheme;

Building Contractor means the building contractor (if any) appointed or to be appointed by the Developer 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 "AHP 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;

Care and Support Specialised Housing Fund means the Care and Support Specialised Housing Fund described in the Department of Health and Agency publication entitled "Care and Support Specialised Housing Fund - Prospectus - October 2012";

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

CEDR means the Centre for Effective Dispute Resolution;

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

Competent Authority means for the purposes of Condition 3 and Condition 30 any or all of:

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

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

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

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

Construction Innovations Statement means the statement of that name incorporated within or provided in support of the Approved Bid;

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;

Contractor means a person who is a contractor for the purposes of the FA 2004 and the 2005 Regulations;

Conversion Capacity means, subject to Condition 4, the sum of £[]¹;

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

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

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

Decision Allowable Costs means those costs incurred by the Developer in providing the AHP Housing as specified in Schedule 1 (calculated using generally acceptable accounting principles) as follows:

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

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

Decision Revenue means all income (including all Public Sector Subsidy but excluding Firm Scheme Grant) which the Developer receives for the purposes of or earns from the AHP Housing;

Deed of Adherence means the deed in substantially the form set out in Schedule 4 to be provided in respect of each Firm Scheme by the Landlord of that scheme pursuant to Condition 9.4;

Default has the meaning given to it in Condition 5.1;

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

Developer Party means:

- (c) the Developer, the Building Contractor, any member of the Professional Team, agent, employee or subcontractor of the Developer and the Developer's Representative; and/or

¹ Figure to be inserted from the Approved Bid which identifies the capacity to be generated from Permitted Conversions.

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

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

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 Developer 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;

Direct Cost of Materials means the amount in respect of which the Agency is satisfied represents the direct cost to the Developer or to any other person of materials used or to be used in carrying out the construction operations to which this Agreement relates as provided in regulation 4 of the 2005 Regulations;

DPA means the Data Protection Act 1998;

DPF means the Disposal Proceeds Fund maintained (where applicable) by each Landlord in accordance with the requirements of Section 177 of the HRA 2008;

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

EIR Exemption means any applicable exemption to EIR;

Employment Skills Statement means the statement of that name incorporated within the Approved Bid;

EU Procurement Regime means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 2014/24/EU, 89/665/EEC and 2004/17/EC, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228 and 2006/5 insofar as the same are applicable;

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

FA 2004 means the Finance Act 2004;

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 8 and Condition 10.6.3, each scheme (including any Nil Grant Scheme) for the development of AHP 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 by which Practical Completion must have been achieved;

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** means the amount of grant payable by the Agency to the Developer in respect of the relevant Firm Scheme as agreed between the parties in accordance with Condition 6 and as subsequently approved on IMS;

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

FOIA Exemption means any applicable exemption to FOIA;

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the same type of undertaking as that of the Developer or any of its subcontractors) or any Subcontractor under the same or similar circumstances;

Group Company means any company which is:

- (a) a subsidiary or holding company of the Developer; or
- (b) a subsidiary of the Developer's holding company

where "subsidiary" and "holding company" have the meanings ascribed to them under Section 1159 of the Companies Act 2006;

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

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

HMRC means HM Revenue & Customs;

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 Regulation 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;

Insolvency Event means the occurrence of any of the following in relation to the Developer;

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by the Agency (such approval not to be unreasonably withheld or delayed);
 - ii a composition, compromise, assignment or arrangement with any of its creditors;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency (such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, administrator, compulsory manager or other similar officer);
 - iv enforcement of any Security over any assets of the Developer; or
 - v any analogous procedure or step is taken in any jurisdiction;

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

- (d) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Developer which has a Material Adverse Effect;

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 person which has been confirmed by the Agency as having "Investment Partner Status" under the Agency's Investment Partner qualification procedure;

Landlord means the Registered Provider that will be the landlord of the tenants or lessees (as applicable) of the AHP Dwellings comprised in the relevant Firm Scheme and "**Landlords**" shall be construed accordingly;

Landlord's Firm Scheme Conversion Capacity means that element of the acquisition price to be paid by the Landlord for the Firm Scheme which is to be funded by the Permitted Conversions (as defined in the Deed of Adherence for the said scheme);

Legislation means:

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

in each case in the United Kingdom;

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

Material Adverse Effect means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of the Developer to deliver the Approved Bid or any Firm Scheme 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 (and which must as a minimum include a Start on Site Date and a Firm Scheme Completion Date) (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 Developer 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 Developer 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 Developer's compliance with a Milestone Date and which did not result from the Developer'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 Developer 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 Developer (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 Developer to complete the Firm Scheme by the Firm Scheme Completion Date;

Milestone Failure means a failure by the Developer fully to achieve any Milestone by the relevant Milestone Date;

NHBC means the National House-Building Council;

Nil Grant Scheme means a Firm Scheme comprised only of Nil Grant Units and as identified as such on IMS;

Nil Grant Unit² means an AHP Dwelling comprised within a Firm Scheme in respect of which the Developer has neither sought nor received FSG under this Agreement;

Non Compliance Notification Date means the date on which the Agency notifies the Developer 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;

Notification means a notification by HMRC to the Agency under Regulation 6(6) of the 2005 Regulations;

Officer's Certificate means the certificate to be provided in accordance with the provisions of Conditions 3.3 and 3.4 in substantially the form set out in Schedule 2 or in such other form as the Agency may prescribe from time to time;

Open Book Basis means the full and transparent disclosure and declaration of all information which the Developer is required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

² Note that the concept of Nil Grant Unit only applies to units submitted as part of the Approved Bid and identified as such on IMS.

Open Book Obligations mean the obligations set out in Condition 14;

Permitted Conversions means, subject to Condition 4, the number of properties (other than the AHP Dwellings) identified in the Approved Bid which the Landlords intend 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;

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

Process has the meaning ascribed to it in the DPA;

Procurement Efficiencies Statement means the statement of that name incorporated in or provided in support of the Approved Bid;

Professional Team means the architect, civil & structural engineer, the mechanical & electrical engineer and any other consultant appointed by the Developer 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 AHP Housing under the Approved Bid;

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 Developer or on its behalf, or to its knowledge, unless before the relevant agreement is

entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Agency;

- (c) committing any offence:
 - i under Legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Agency or the Regulator;

Public Sector Subsidy means all funding or subsidy in relation to the Approved Bid in money or money's worth (including the Firm Scheme Grant) received or receivable by the Developer 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;

RCGF means the Recycled Capital Grant Fund maintained (where applicable) by each Landlord in accordance with the Recovery Determination;

Recovery Determination means the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2012 (or any applicable successor determination);

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

Registered Provider means a body entered on the Register as a non-profit organisation (as such term is defined in Section 115 of the HRA 2008);

Regulator means the Agency acting through the Regulatory Committee established by it pursuant to Part 2 of the HRA 2008 or any other similar future authority (including any statutory successor) 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 Developer's obligations under this Agreement;

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

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

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

Secure Legal Interest means the Developer, a Group Company or the Landlord 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 leasehold title (where the lease has at least 60 years unexpired duration) registered with good leasehold title and in each case defective title indemnity insurance in favour of the Developer, the Group Company or the Landlord (as applicable) 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 Developer, the Group Company or the Landlord (as applicable).

Security means a mortgage charge pledge lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect (such as a sale or lease and leaseback a blocked account set off or similar "flawed asset" arrangement);

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

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

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

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

Shared Ownership Lease means a shared ownership lease that meets:

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

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

Social Rent means a rent calculated in accordance with the formula for calculating social rent set out in the Rent Standard guidance published by the Regulator, as such guidance or associated explanatory notes may be amended, updated or replaced from time to time;

Social Rent Dwelling means an AHP Dwelling to be let at a 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;
- (d) drainage work specific to the buildings forming part of the Firm Scheme; or
- (e) such works of demolition or service diversion as are expressly and strictly contemplated in the section of the Capital Funding Guide entitled "Finance – Grant Claims and Payments".

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

- (a) where applicable, the Developer and Building Contractor have entered into the Building Contract;
- (b) the Building Contractor or the Developer has taken possession of the Site; and
- (c) the Start on Site Works have commenced;

Statutory Deduction means the deduction which is in force at the time of payment referred to in Section 61 of the FA 2004;

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

Submitted Standards means in respect of each Firm Scheme, the standards referenced in the Firm Scheme Details in IMS;

Substitute Scheme has the meaning ascribed to it in Condition 8.5;

Substitute Scheme Acceptance Date means the date upon which the Agency confirms acceptance of a Substitute Scheme pursuant to Condition 8.8;

Tenancy Standard means any standard set by the Regulator including any associated explanatory notes or guidance from time to time under Section 193 HRA 2008 pursuant to any then applicable Secretary of State direction;

Term means the period of time from the date hereof until 31 March 2018 (subject to earlier termination by the Agency of the entirety of this Agreement);

Transparency Obligations means the obligations set out in Condition 15;

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

Unlawful State Aid means State Aid which has been granted in contravention of Article 107(1) Treaty of the Functioning of the European Union and which does not qualify for an exemption pursuant to any of the provisions of the Treaty of the Functioning of the European Union or any of its subsidiary instruments or legislation;

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

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

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

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

and the Agency is satisfied that the Developer and/or the subcontractor or other person (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 Developer or relevant subcontractor;

Works means all of the works (including design, Start on Site Works, infrastructure works and all other works necessary for obtaining access to the AHP Dwellings) to be undertaken in order to ensure that the AHP 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 Appendix shall be construed as references to a paragraph in that particular Schedule or, as the case may be, Appendix.
- 1.2.12 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.13 In any case where the consent or approval of the Agency (or any officer of the Agency) is required or a notice is to be given by the Agency, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by the Agency by notice in writing to the Developer.

- 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(s) Site and Firm Scheme 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, any reference to the Agency acting reasonably, shall be interpreted as requiring the Agency to act in a commercially reasonable manner.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 The Developer 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 Developer Party as if they were the acts or omissions of the Developer.
- 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 Developer of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.22 In the event of any conflict between the Firm Scheme Details summarised in Schedule 1 (*Approved Bid*) and the Firm Scheme Details set out in IMS (and accepted by the Agency through IMS) the Firm Scheme Details in IMS shall prevail.

2 The Approved Bid

- 2.1 The parties acknowledge the terms of the Approved Bid which the Developer 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 Developer to develop the AHP Dwellings subject to and in accordance with the terms and conditions of this Agreement.
- 2.3 The Developer 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 Construction Innovations Statement.
- 2.4 The Developer acknowledges and agrees that:
 - 2.4.1 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 dwellings to be let or sold as AHP Housing;
 - 2.4.2 the Public Sector Subsidy in respect of a Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Developer in respect of the delivery of that Firm Scheme nor may the Public Sector Subsidy in respect of the Approved Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Bid;
 - 2.4.3 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 12 represent the events and principles determined by the Agency for the purposes of Sections 31-34 of the HRA 2008;
 - 2.4.4 the Affordable Rent Dwellings and the Social Rent Dwellings (including for the avoidance of doubt the Nil Grant Units) shall be deemed to have been provided with public money for the purposes of Section 180 of the HRA 2008;
 - 2.4.5 the provisions of this Agreement represent the conditions upon which the Agency makes the Allocated Grant available to the Developer for the purposes of Sections 19 and 31 HRA 2008;
 - 2.4.6 All Firm Scheme Grant paid under this Agreement is:
 - A social housing assistance as defined in Section 32(13) of the HRA 2008; and
 - B subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 2.5 The Developer shall comply with the Open Book Obligations and the Transparency Obligations.
- 2.6 The Developer must:
 - 2.6.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
 - 2.6.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 2.6.3 comply with the Agency's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical->

[policies](#), in each case as the Agency or the relevant industry body may update from time to time (**Relevant Policies**);

- 2.6.4 have and maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and Condition 2.6.2, and will enforce them where appropriate; and
- 2.6.5 immediately report to the Agency's Head of Risk and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the Developer in connection with the performance of this Agreement.

2.7 Where the Developer is aware that it is in breach of an obligation under this Condition 2 it must promptly notify the Agency of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

3 **Monitoring and Reporting**

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

- 3.1.1 impact on the Developer's ability to deliver the Approved Bid;
- 3.1.2 change any assumptions in the Approved Bid which would provide an opportunity for the Developer to deliver more AHP Dwellings with the Allocated Grant;
- 3.1.3 indicates that the Agency is making available more grant than is required to deliver the Approved Bid; or
- 3.1.4 without prejudice to the circumstances specified in 3.1.1 to 3.1.3 (inclusive) indicate that the Landlords will need to make more or less Permitted Conversions

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

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

3.3 The Developer 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 Developer's Representative or, where agreed in advance by the Agency, another specified member of the Developer'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 Developer shall meet to review (without limitation):

- 3.5.1 the Developer's performance against the Approved Bid and progress in relation to each Firm Scheme;
 - 3.5.2 the Contract Monitoring Outputs;
 - 3.5.3 the information supplied pursuant to the Open Book Obligations;
 - 3.5.4 the Developer's progress against its obligation in Condition 2.3.2 and Condition 2.3.3; and
 - 3.5.5 the position on agreeing nomination arrangements in respect of AHP Dwellings with relevant local authorities.
- 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 Approved Bid in the previous Financial Year; and
 - 3.6.2 the Developer's progress against its obligation in Condition 2.3.1.
- 3.7 The Agency or the Developer 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 Developer's Representative (or, where agreed with the Agency in advance, such other member of the Developer's executive management team) shall attend all Review Meetings during the Term. The parties agree that the Regulator shall also be entitled to send a representative to attend such meetings.
- 3.9 Save as otherwise agreed between the parties, any meeting under this Condition 3 shall be minuted by the Developer and such minutes shall be distributed within ten (10) Business Days following the meeting to the Agency and any other attendee.
- 3.10 The Developer shall:
- 3.10.1 provide the Agency with such information as the Agency shall reasonably require to support or facilitate the discussions referred to in this Condition 3; and
 - 3.10.2 take all reasonable steps to ensure that any information provided to the Agency pursuant to this Condition 3 is accurate in all material aspects.
- 3.11 The Developer agrees that the Agency's auditors (including the Comptroller and Auditor General) shall have unrestricted rights of access to any and all information to which the Agency is entitled under this Agreement or to which the Agency's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.

- 3.12 The Developer shall promptly and fully co-operate with any request for information or evidence from time to time of:
- 3.12.1 any auditor (whether internal or external) of the Agency; and/or
- 3.12.2 the Agency, to the extent such request relates to this Agreement (or any matter associated with it), or to SGEI Information and which the Agency is required to provide to any third party pursuant to Legislation or by any Competent Authority.
- 3.13 The Developer shall ensure that for each Firm Scheme it keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the AHP Housing which identify items of Decision Revenue, the Firm Scheme Grant and Decision Allowable Costs and such other items required under this Condition 3.
- 3.14 The Developer shall upon the Agency's written request:
- 3.14.1 make available upon reasonable notice for the Agency's inspection (and that of any person referred to in this Condition 3 or in Condition 18 or any person appointed pursuant to Condition 23 the books of account referred to in this Agreement (together with, if specified, such supporting correspondence, agreements, orders, invoices, receipts and other documents) and shall submit a report in relation to the same to the Agency as and when requested to do so; and
- 3.14.2 procure that a representative of the Agency (or any of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Agreement are held or maintained and examine such records or information.
- 3.15 The Developer shall ensure that it (at its or their cost) co-operates with the Agency during an SGEI Review and it shall if requested promptly provide the Agency with SGEI Information and such other information, evidence and/or explanation as the Agency may reasonably require.

4 **Programme Changes**

- 4.1 The parties acknowledge that changes may be required to the Approved Bid during the Term to ensure that inter alia:
- 4.1.1 the Programme Aims are being delivered; and/or
- 4.1.2 the Developer remains capable of delivering the Approved Bid from time to time (the **Approved Bid Requirements**).
- 4.2 A change to the Approved Bid 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
 - (b) the type, location, number or tenure mix or the design and quality standards of AHP Dwellings; and/or
 - (c) the rent levels forecast for such dwellings included in the Approved Bid;
- 4.2.2 a change in the number, location or rate of Permitted Conversions or Conversion Capacity;
- 4.2.3 a reduction in the Allocated Grant;
- 4.2.4 the Developer or the Landlords committing more of its or their own resources to underpin the delivery of the Approved Bid;
- 4.2.5 fewer or more AHP Dwellings being included in the Approved Bid; 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 Offer. Any Change Notice shall specify the reasons for the proposed change to the Approved Bid and describe the proposed nature of the change being sought. The party issuing the 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 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 Approved Bid, and the substance of that change, the parties shall act in good faith, reasonably and taking account of:
 - 4.5.1 the Approved Bid Requirements; and
 - 4.5.2 the performance, to date, of the Developer under the Agreement,

seek to agree the terms of any change to the Approved Bid **provided that and it is hereby agreed that** the Agency shall not be obliged to agree any change to the Approved Bid where such change would (when taken individually or together with other changes to the Developer's Approved Bid or to the Approved Bids of other developers under the AHP 2015/18) 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 AHP Housing for the relevant Financial Year.
- 4.6 No change to the Approved Bid 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 Approved Bid.
- 4.7 Where a change to the Approved Bid has been agreed in accordance with Condition 4.6, the Developer shall input the agreed changes to the Approved Bid 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 Approved Bid on IMS shall constitute evidence of the parties' agreement as to the revised terms of the Approved Bid and no further evidence shall be required.

- 4.8 The Developer acknowledges that where a Change Notice is submitted (and has not been withdrawn) and the parties are unable to agree on the change proposed in the 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, the Agency (acting reasonably) shall be entitled to terminate this Agreement in accordance with Condition 5.

5 **Default**

- 5.1 The following circumstances shall constitute a Default:

- 5.1.1 failure by the Developer to comply with its obligations in Condition 3, Condition 7.4 and Condition 14 and/or any information supplied in connection with its obligations in Condition 3, Condition 7.4 and Condition 14 whether in an Officer's Certificate, the Open Book Obligations or otherwise, is materially deficient, misleading or inaccurate;
- 5.1.2 the Developer is unable to make the representations and give the warranties set out in Part 2 of Schedule 3 (in any case in whole or in part) and there is a resulting Material Adverse Effect;
- 5.1.3 an Insolvency Event has occurred in relation to the Developer;
- 5.1.4 a Prohibited Act has been committed by or on behalf of the Developer (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 Developer's projections in the Approved Bid has not been made by the Developer in delivering the Approved Bid;
- 5.1.8 the Developer ceases operating/trading;
- 5.1.9 the Developer's Investment Partner status is lost or removed;
- 5.1.10 a breach of the Developer's obligations under Condition 7.5, 9 or 12;
- 5.1.11 any other breach of the Agreement or event which has a Material Adverse Effect; and/or
- 5.1.12 the occurrence of the circumstance referred to in Condition 12.2.3(c).

- 5.2 The Developer must notify the Agency immediately in writing on the occurrence of a Default.
- 5.3 Without prejudice to Condition 5.4, in the event of the occurrence of a Default and for so long as that Default subsists (or another Default has occurred and is continuing) or where a 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 Default is:
- 5.4.1 an occurrence specified in Condition 5.1.3, 5.1.4, 5.1.8, 5.1.9 and/or 5.1.12, the Agency shall be entitled forthwith and without any liability to the Developer terminate the Agreement;
- 5.4.2 an occurrence specified in Condition 5.1.1, 5.1.2, 5.1.5, 5.1.6, 5.1.7, 5.1.10 and/or 5.1.11 the Agency may serve notice on the Developer requiring the Developer 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 Developer has not given an undertaking to remedy the breach on terms satisfactory to the Agency; or
- (c) if it becomes apparent that the 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 Developer to exercise the termination rights in Condition 5.5.
- 5.5 Where Condition 5.4.2 applies and:
- 5.5.1 there are no Continuing Firm Schemes, the Agency may terminate this Agreement in its entirety such termination to take effect at the end of the notice period referred to in Condition 5.4.2;
- 5.5.2 there are Continuing Firm Schemes the Agency may terminate this Agreement in relation to all but the Continuing Firm Schemes such termination to take effect at the end of the notice period referred to in Condition 5.4.2.
- 5.6 Where the Agency purports to terminate this Agreement in accordance with this Condition 5 and the Developer disputes its entitlement to do so the provisions of Condition 23 shall apply.
- 6 Firm Schemes – Submission Procedures**
- 6.1 Where the Developer 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, save where the Agency expressly agrees in writing a longer period, be submitted no later than ten (10) Business Days prior to the Start on Site Date or the date

of this Agreement (whichever is the later). In submitting the details of the Developable Scheme, the Developer is deemed to represent and warrant to the Agency that:

6.1.1 the Developable Scheme:

- (a) is (save where the Agency has been notified to the contrary on IMS) not a Section 106 Scheme;
- (b) is consistent with the Approved Bid;
- (c) is in its opinion (acting reasonably) deliverable in accordance with the Firm Scheme Delivery Timetable and the Submitted Standards;
- (d) has received the support of the Local Housing Authority which it acknowledges will be verified by the Agency with the Local Housing Authority;
- (e) comprises no Public Sector Subsidy beyond that identified in the Firm Scheme Details;

6.1.2 the Developer, a Group Company or the Landlord (as applicable):

- (a) possesses 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; and

6.1.3 the Developer is under contract with the Landlord for the acquisition of the AHP Dwellings comprised in the Developable Scheme and:-

- (a) the Landlord has confirmed in writing to the Developer:-
 - i the initial rents payable in respect of those AHP Dwellings which are to be made available at an Affordable Rent and the projected income from the initial sales of those AHP Dwellings to be disposed of on Affordable Home Ownership terms;
 - ii the extent of:
 - A the Landlord's Firm Scheme Conversion Capacity; and /or
 - B any DPF or RCGF proceeds to be applied in respect of the Firm Scheme;
 - iii the acquisition price for the AHP Dwellings comprised in the Developable Scheme; and
 - iv no Insolvency Event has occurred in relation to the Landlord(collectively the **Landlord's Information**); and
- (b) the Landlord's Information is accurately represented on IMS.

- 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 Approved Bid (including the scheme cost information, the FSG requirement (if any) and the Landlord's Information), it will, subject to Condition 5.3, confirm its acceptance of the Developable Scheme to the Developer 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 Developer 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 Standards; 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 Practical Completion, the Developer must observe and comply with Legislation and Good Industry Practice and all applicable provisions of the Capital Funding Guide.
- 7.3 The Developer 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 Developer with its obligations under this Agreement.
- 7.4 The Developer 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 Developer pursuant to Condition 6.1;
 - 7.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect and/or which would necessitate or constitute a change to the Firm Scheme Details;

- 7.4.4 of any other event or circumstance in relation to 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 The Developer shall comply with any reasonable request made in connection with a Compliance Audit.
- 7.6 The Developer 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 Developer 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 Developer must act at all times with the utmost good faith, with the intent to deliver the Approved Bid as appended to this Agreement and with proper regard to the need for efficiency in the use of public funds.
- 7.8 Where the Developer 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 Developer 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 pursuant to Condition 3 or 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 Developer) in the Agency's reasonable opinion materially and adversely affect the delivery of the Approved Bid or (when taken individually or together with other extensions in relation to the Developer or other Developers under the AHP 2015/18) materially and adversely affect the Agency's projected expenditure profile in relation to any year of the AHP 2015/18 and in particular (but without limitation) such expenditure profile in relation to the last quarter of the relevant Financial Year.
- 8.4 The Agency shall not be obliged to extend a Firm Scheme Completion Date beyond 31 March 2018.
- 8.5 The Developer may, where he considers (acting reasonably) that a Firm Scheme constitutes an Undeliverable Scheme, request the Agency to accept the substitution of a different scheme (a **Substitute Scheme**) in place of the Undeliverable Scheme.
- 8.6 If the Developer wishes to submit a Substitute Scheme, it must submit to the Agency through IMS such details of the relevant Substitute Scheme as the Agency may require.

In submitting the details of the Substitute Scheme, the Developer is deemed to make and give the representations and warranties set out in Condition 6.1 in relation to the Substitute Scheme:

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

8.7.1 the Substitute Scheme offers value for money;

8.7.2 the Substitute Scheme is consistent with the Approved Bid (including the scheme cost information and information in relation to the level of the Developer's contribution);

8.7.3 the Developer's performance in respect of other Firm Schemes has satisfied the terms of this Agreement;

8.7.4 the Substitute Scheme can be fully delivered by 31 March 2018 (or such earlier date as is set out in IMS);

8.7.5 no Default subsists;

8.7.6 the Submitted Standards submitted in respect of such scheme by the Developer are satisfactory; and

8.7.7 the Substitute Scheme has received the support of the Local Housing Authority (which it acknowledges will be verified by the Agency with the Local Housing Authority)

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

8.8 Where the Agency accepts a Substitute Scheme into the Approved Bid pursuant to Condition 8.7 it will confirm its acceptance of such scheme to the Grant Recipient through IMS.

8.9 With effect from the Substitute Scheme Acceptance Date:

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

8.9.2 the details set out by the Developer in respect of the Substitute Scheme in IMS and as confirmed by the Agency through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement.

8.10 It is agreed by the parties that any Firm Scheme Grant received by the Developer in relation to the Undeliverable Scheme shall be deemed to have been received by the Developer in relation to the Substitute Scheme.

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

8.12 Where Condition 8.11 applies, the Developer shall submit to the Agency through IMS such details of the proposed Additional Scheme as the Agency may require. In submitting such

details, the Developer makes the same representations and warranties in relation to the proposed Additional Scheme as it makes to the Agency pursuant to Condition 6.1.

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

8.13.1 the Additional Scheme offers value for money;

8.13.2 the Developer's performance in respect of other Firm Schemes comprised within the Approved Bid has been of an acceptable standard and has satisfied the terms of this Agreement;

8.13.3 the Additional Scheme can be fully delivered by 31 March 2018 (or such other date as is set out and agreed by the Agency in and through IMS);

8.13.4 no Default subsists;

8.13.5 the Submitted Standards submitted in respect of such scheme by the Developer Recipient are satisfactory; and

8.13.6 the Additional Scheme has received the support of the Local Housing Authority (which it acknowledges will be verified by the Agency with the Local Housing Authority)

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

8.14 Where the Agency accepts an Additional Scheme into the Approved Bid pursuant to Condition 8.13 it shall confirm such acceptance to the Developer through IMS.

8.15 With effect from the Additional Scheme Acceptance Date:

8.15.1 the Additional Scheme shall be deemed to be a Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;

8.15.2 the details set out by the Developer in respect of the Additional Scheme in IMS and as confirmed by the Agency through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and

8.15.3 the Developer must ensure that it complies with all of its obligations under this Agreement as they apply to such new Firm Scheme.

8.16 If the Agency agrees to make available any grant funding in relation to a Substitute Scheme or Additional Scheme, the Allocated Grant will (subject to Condition 8.10) be deemed to be increased or decreased (as appropriate) by the Firm Scheme Grant agreed by the Agency in IMS in relation to the relevant Firm Scheme.

9 Grant Claim Procedures and Nil Grant Schemes

9.1 Subject to a Firm Scheme having reached Practical Completion, the Developer may apply to the Agency for the Firm Scheme Grant payable in respect of that Firm Scheme to be paid to it. The Developer 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 Where a Nil Grant Scheme reaches Practical Completion, the Developer shall submit confirmation of Practical Completion to the Agency on IMS within ten (10) Business Days of Practical Completion being achieved.
- 9.3 In submitting an application pursuant to Condition 9.1 or submitting a confirmation pursuant to Condition 9.2, the Developer is deemed to repeat the representations and warranties set out in Condition 6.1 and to further represent and warrant to the Agency that:
- 9.3.1 the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of this Agreement;
 - 9.3.2 the Firm Scheme has reached Practical Completion;
 - 9.3.3 all confirmations and certifications made or to be made by the Developer in IMS in relation to the Firm Scheme have been are or will be correct in all material respects;
 - 9.3.4 the Developer retains its status as an Investment Partner;
 - 9.3.5 it, a Group Company or the Landlord (as applicable), has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted Standards as are then required or to the extent that they are not obtained that the Developer, Group Company or the Landlord (as applicable) 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;
 - 9.3.6 save where the Site is already in the ownership of the Landlord, an Agreed Transfer as contemplated in the Firm Scheme Details has been executed and delivered in escrow conditional only on payment of the Firm Scheme Grant and payment of the stipulated consideration by the Landlord (if any) and the conveyancers for the disponent have verified the identity of the parties to the Agreed Transfer deed (or any other document connected with the Agreed Transfer) in accordance with the Money Laundering Regulations 2007;
 - 9.3.7 all the AHP Dwellings comprised in the Firm Scheme meet the standards and requirements of a buildings standards indemnity scheme currently approved by the Council of Mortgage Lenders and those dwellings (if any) which have been developed from former commercial buildings will qualify for mortgages;
 - 9.3.8 the Firm Scheme is covered by the terms of a current Help to Buy Agency Agreement (where applicable); and
 - 9.3.9 none of the circumstances set out in Condition 5 or Condition 11 has occurred or arisen.
- 9.4 The application pursuant to Condition 9.1 or the confirmation pursuant to Condition 9.2 must be accompanied by a Deed of Adherence incorporating the details relevant to that Firm Scheme duly executed by the Landlord together with irrevocable authority from the Landlord for the Agency to complete the Deed of Adherence following execution by the Agency.

10 Payment of Grant

10.1 Subject to:

10.1.1 the Agency (acting reasonably) being satisfied with the Developer's application for payment and the Deed of Adherence provided pursuant to Condition 9.4; and

10.1.2 Conditions 10.3, 10.4, 10.5 and 11.1; and

10.1.3 the Firm Scheme not being a Nil Grant Scheme

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

10.2 If the Agency is not satisfied with the Developer's application for payment, it must notify the Developer 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 Developer a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of Condition 9 and this Condition 10 (as applicable) will be reapplied to the Developer's resubmitted or amended application for payment.

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

10.4 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 2018.

10.5 The Agency shall not be obliged to make payment by way of Firm Scheme Grant to the Developer where:

10.5.1 the Landlord's status as a Registered Provider is lost or removed;

10.5.2 the Regulator directs the Agency not to give financial assistance to the Landlord of that Scheme or formally recommends to it that it should not do so or where the Landlord is insolvent; or

10.5.3 an Insolvency Event has occurred in relation to the Landlord.

10.6 Where a circumstance of the type specified in Condition 10.5 occurs (a **10.5 Occurrence**):

10.6.1 the Developer shall as soon as reasonably practicable give written notice to the Agency of the 10.5 Occurrence;

10.6.2 the Agency shall use its reasonable endeavours to procure from the Regulator, within 30 Business Days from the date upon which notice of the same is given to the Developer, the identity of a person approved in writing by the Regulator that may accept a transfer of the Site and the Developer shall within such period as may be agreed with the Agency (not exceeding 40 Business Days)

use all reasonable endeavours to (a) where the Developer has the Secure Legal Interest enter into a binding contract to transfer the Site to such party (the **Selected Party**) or (b) where a Group Company or the Landlord has the Secure Legal Interest procure that the Group Company or the Landlord (as applicable) enters into a binding contract to transfer the Site to the Selected Party provided always that the Developer or the Group Company (as applicable) shall not be obliged to agree a price for the Site which is less than had been agreed with the Landlord (as identified in the relevant Firm Scheme Details);

- 10.6.3 if the Regulator fails to respond within the timescale identified in Condition 10.6.2 or it does not identify a prospective replacement for the Landlord pursuant to Condition 10.6.2 or if the Developer fails to enter into a binding contract with the Selected Party within 40 Business Days of the date of the identification of the Selected party under Condition 10.6.2 the Agency or the Developer may determine (acting reasonably) that the Firm Scheme is to be withdrawn from the Approved Bid and submit a Change Notice.
- 10.7 Where the provisions of Condition 10.6.2 apply and a Selected Party is identified, the Developer shall amend the Firm Scheme Details on IMS accordingly.
- 10.8 The procedure in Conditions 10.6 and 10.7 may be repeated.
- 10.9 Where the Agency pays Firm Scheme Grant to the Developer, the Allocated Grant shall be reduced by a commensurate amount.
- 11 **Withholding of Firm Scheme Grant**
- 11.1 Notwithstanding any other term of this Agreement the Agency shall not be obliged to make any payment to the Developer whether by way of Firm Scheme Grant or otherwise where:
 - 11.1.1 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);
 - 11.1.2 the Developer is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Condition 9.3 (in any case in whole or in part);
 - 11.1.3 a Prohibited Act has been committed by or on behalf of the Developer and the Developer has not satisfied the Waiver Condition in respect of such Prohibited Act;
 - 11.1.4 an Insolvency Event has occurred in relation to the Developer or the Landlord;
 - 11.1.5 the Developer has ceased to operate;
 - 11.1.6 the Developer's Investment Partner status is removed or withdrawn; or
 - 11.1.7 where the Developer is in material breach of any Firm Scheme Obligation or of any of its obligations under Conditions 3, 14 or 15 and it has not taken steps to remedy it to the Agency's satisfaction (acting reasonably).

11.2 In the circumstances contemplated in Conditions 11.1.1 and 11.1.2 the Agency (acting reasonably) shall be entitled (but not obliged) to elect between (i) withholding the Firm Scheme Grant as permitted by Condition 11.1 and (ii) agreeing a revised FSG figure for the Firm Scheme and in either case shall be entitled to issue a Change Notice to take account of any change required to the Approved Bid.

11.3 Where a change to the FSG and the Approved Bid is agreed between the parties pursuant to the provisions of Condition 11.2 and confirmed by the Agency through IMS, the Agency shall (to the extent consistent with the change to the Approved Bid) pay the Firm Scheme Grant (mutatis mutandis) to the Developer within fifteen (15) Business Days of the date of it making its confirmation in IMS. In default of agreement, the Agency shall be entitled to withhold the Firm Scheme Grant.

12 Repayment of Grant

12.1 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 Developer expressly acknowledges and agrees) to recover from the Developer the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Condition 12.2 (the **Recoverable Amount**) in circumstances where:

12.1.1 a Prohibited Act has occurred and the Developer has not satisfied the Waiver Condition in respect of such Prohibited Act;

12.1.2 the Firm Scheme Grant has been paid to the Developer on the basis of a misrepresentation made by or on behalf of the Developer other than in the circumstances specified in Condition 12.1.5;

12.1.3 the Agency has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Developer;

12.1.4 a Balancing Sum has arisen; or

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

12.2 In the circumstances set out in:

12.2.1 Conditions 12.1.1 and 12.1.2, the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant for any affected Firm Scheme;

12.2.2 Conditions 12.1.3 and 12.1.4, 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;

12.2.3 Condition 12.1.5, subject always to Condition 12.3, the Recoverable Amount shall be determined in accordance with the following procedure:

(a) the parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure

for the Firm Scheme Grant reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;

- (b) where a revised figure for the Firm Scheme Grant is agreed, the Recoverable Amount shall be the difference between the amount which is the revised figure for the Firm Scheme Grant and the amount paid to the Developer by way of Firm Scheme Grant for that Firm Scheme;
- (c) where the parties are unable to agree a revised Firm Scheme Grant figure in accordance with Condition 12.2.3(a) the Agency shall be entitled to terminate this Agreement in accordance with Condition 5.

12.3 Where the Agency (acting reasonably) considers that the Developer 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 12.1.1 and will not be bound by the terms of Condition 12.2.3.

12.4 The Developer 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 Developer until the date upon which the Agency receives the repayment required from the Developer under this Condition 12.

12.5 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.

12.6 Notwithstanding any other term of this Condition 12, where a payment has been made following an administrative error by the Agency, the Developer shall not be liable for interest on the amount repayable under Condition 12.4.

12.7 If the Agreement Funding gives rise to an SGEI Decision Overpayment or otherwise constitutes Unlawful State Aid then the Agency shall be entitled to recover from the Developer the amount of such SGEI Decision Overpayment and/or Unlawful State Aid together with such interest as it is required by law to recover and the Developer must pay such amount(s) within ten (10) Business Days of the Agency requesting repayment.

13 **VAT**

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

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

13.1.2 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.

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

14 **Open Book Obligations**

14.1 The Developer shall on an Open Book Basis:

- 14.1.1 at all times maintain a full record of particulars of all the income (including Public Sector Subsidy) received and Development Costs incurred by the Developer in respect of each Firm Scheme;
- 14.1.2 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 14.1.1 as the Agency may reasonably require to enable it to monitor the performance by the Developer of its obligations under this Agreement; and
- 14.1.3 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 14.

14.2 Compliance with the above shall require the Developer 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 Developer 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:

- 14.2.1 income (including Public Sector Subsidy and receipts);
- 14.2.2 administrative overheads where directly attributed or where apportioned on a pro rata basis;
- 14.2.3 payments made to Subcontractors;
- 14.2.4 capital and revenue expenditure;
- 14.2.5 VAT incurred on all items of expenditure where the Developer 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 Developer of such VAT as input tax from HM Revenue & Customs or other competent authority;
- 14.2.6 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
- 14.2.7 items of Decision Revenue, the Firm Scheme Grant and Decision Allowable Costs,

and the Developer 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 23 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.

15 **Transparency Obligations**

- 15.1 The Developer acknowledges that:
- 15.1.1 where the Allocated Grant (itself or if aggregated with other AHP 2015/18 Funds or funds made available under (i) any subsequent Agency capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, it 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
 - 15.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, it hereby consents for the Agency to publish such information as it considers appropriate in relation to the AHP 2015/18, including, but not limited to, details of the Approved Bid, Development Costs and funding for Firm Schemes, including from time to time agreed changes to this information.
- 15.2 The Agency shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:
- 15.2.1 following consultation with the Developer and having taken (or not taken, as the case may be) its views into account; or
 - 15.2.2 without consulting the Developer.
- 15.3 The Developer shall assist and cooperate with the Agency to enable the Agency to publish the information referred to in Condition 15.1.2.
- 16 **State Aid**
- 16.1 If the Agency is required pursuant to the SGEI Decision 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 Developer.
- 17 **Acknowledgements, representations and Warranties**
- 17.1 Without prejudice to any other term of this Agreement, the Developer:
- 17.1.1 represents and warrants to the Agency on the date hereof and on each day during the currency of this Agreement in the terms set out in Schedule 3 inclusive; and
 - 17.1.2 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.
- 18 **Information and confidentiality**
- 18.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.

- 18.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 18.3 The obligations of confidence referred to in Condition 18.2 shall not apply to any Confidential Information which:
- 18.3.1 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
 - 18.3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - 18.3.3 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
 - 18.3.4 is independently developed without access to the Confidential Information of the other party.
- 18.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- 18.4.1 to enable the disclosing party to perform its obligations under this Agreement or any loan agreement or proposed loan agreement or funding documentation with a commercial lender; or
 - 18.4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Developer acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information; or
 - 18.4.3 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
 - 18.4.4 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.
- 18.5 The Developer shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:-
- 18.5.1 is given only to such of its or any Group Company's 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;

- 18.5.2 is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
- 18.5.3 where it is considered necessary in the opinion of the Agency the Developer shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 18.6 Nothing in this Condition 18 shall prevent the Agency:-
- 18.6.1 disclosing any Confidential Information for the purpose of:
- (a) the examination and certification of the Agency's accounts; or
 - (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or
- 18.6.2 disclosing any Confidential Information obtained from the Developer:-
- (a) to any other department, office or agency of the Crown; or
 - (b) to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
- 18.6.3 provided that in disclosing information under Condition 18.6.2(a) or 18.6.2(b) the Agency discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 18.7 Nothing in this Condition 18 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights
- 18.8 The Developer acknowledges that the Agency is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.
- 18.9 The Agency shall be responsible for determining in its absolute discretion whether:-
- 18.9.1 any Information is Exempted Information or remains Exempted Information; or
- 18.9.2 any Information is to be disclosed in response to a Request for Information;
- and in no event shall the Developer respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency unless otherwise expressly authorised to do so by the Agency.

- 18.10 Subject to Condition 18.11 below, the Developer acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:-
- 18.10.1 without consulting the Developer or
 - 18.10.2 following consultation with the Developer and having taken (or not taken, as the case may be) its views into account.
- 18.11 Without in any way limiting Conditions 18.9 and 18.10, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Developer.
- 18.12 The Developer will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:
- 18.12.1 transfer any Request for Information received by the Developer to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;
 - 18.12.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
 - 18.12.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five (5) Business Days (or such other period as the Agency may specify) of the Agency requesting that Information;
 - 18.12.4 permit the Agency to inspect such as requested from time to time
- 18.13 Nothing in this Agreement will prevent the Agency from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.
- 18.14 The Developer must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Developer must:
- 18.14.1 notify the Agency immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Developer or if such person leaves the Developer's employment or relinquishes that role;
 - 18.14.2 maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
 - 18.14.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants;
 - 18.14.4 ensure that systems are in place to prevent any person accessing IMS under a user ID other than their own; and

18.15 Nothing in this Condition 18 shall preclude the Developer from disclosing the terms of this Agreement to a Landlord.

18.16 The obligations in this Condition 18 will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

19 Intellectual Property

19.1 Subject to Condition 19.5 the Developer 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 Developer or which are or become owned by the Developer and which relate to the Firm Schemes, for any purpose relating to this Agreement.

19.2 To the extent that any of the data, materials and documents referred to in Condition 19.1 are generated by or maintained on a computer or in any other machine readable format, the Developer shall if requested by the Agency use its reasonable endeavours (without having to incur material cost) procure for the benefit of the Agency at the cost of the Developer the grant of a licence or sub-licence for the term of this Agreement 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 19.1.

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

19.4 The Developer shall fully indemnify the Agency within five (5) Business Days of demand under this Condition 19.4 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 19, any breach by the Developer of this Condition 19 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.

19.5 The Developer shall only be entitled to revoke the licence granted to the Agency under Condition 19.1 in the following circumstances and upon the following terms:

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

19.5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Grant has been paid to the Developer **provided that** nothing in this Condition 19.5.2 shall entitle the Developer 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.

20 Developer's records and accounting

- 20.1 The Developer shall, as and when requested by the Agency whether before or after the date of payment of the Firm Scheme Grant, make available in a timely manner to the Agency where required in connection with this Agreement or the Approved Bid hard and/or electronic copies of each of:
- 20.1.1 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 Developer for the purposes of this Agreement;
 - 20.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Developer's officers, employees, agents or consultants relating to the Firm Schemes and which have been supplied to the Developer for the purposes of this Agreement; and
 - 20.1.3 the elemental breakdown of the construction costs in relation to each Firm Scheme.
- 20.2 On the expiry of this Agreement or (if earlier) upon termination thereof, the Developer shall if requested to do so deliver up or procure the delivery to the Agency all the data, materials, documents and accounts referred to in this Condition 20.
- 20.3 The Developer 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 20 and the Developer may retain such data, documents, materials and accounts in electronic form only.
- 20.4 The Developer acknowledges its obligations under Condition 3.

21 Health and Safety and Equality and Diversity

- 21.1 The Developer 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 Developer Parties engaged in the delivery of the Approved Bid do likewise.
- 21.2 The Developer 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.
- 21.3 The Developer 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.
- 21.4 The Developer accepts that:

- 21.4.1 it is a client as defined by the CDM Regulations and warrants that it is and will at all times remain competent to carry out the role of a client under the CDM Regulations; and
 - 21.4.2 it will act as the only client in respect of each Firm Scheme and the Developer hereby elects to be the only client under the CDM Regulations for each Firm Scheme.
- 21.5 The Agency agrees to the election of the Developer as the only client for the Firm Schemes for the purposes of CDM Regulations.
- 21.6 The Developer shall comply fully with all the obligations, requirements and duties of the client under the CDM Regulations.
- 21.7 The Developer shall not seek to withdraw, terminate or in any manner derogate from such election without the Agency's prior written consent, which the Agency may in its absolute discretion withhold.
- 21.8 The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the Works are aware of the terms of the Developer's election as the only client for the purposes of the CDM Regulations.
- 21.9 The Developer shall at all times comply with all obligations, requirements and duties arising under the HS Act in connection with the Works.
- 21.10 The Developer 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.
- 21.11 The Developer shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme.
- 21.12 Without prejudice to any other provision of this Agreement, the Developer shall notify the Agency's Health and Safety Manager within five (5) Business Days the occurrence of any of the following events which arise out of or in connection with a Firm Scheme:
 - 21.12.1 a fatal accident to any worker or a member of the public;
 - 21.12.2 any injury to a member of the public requiring reporting under RIDDOR;
 - 21.12.3 any dangerous occurrence, as defined by RIDDOR;
 - 21.12.4 the service of any improvement or prohibition notice under the HS Act;
 - 21.12.5 any incident having health & safety implications which attracts the attention of the police and/or the media;
 - 21.12.6 the commencement of any criminal prosecution under the HS Act.
- 21.13 The Developer will procure that all its Contractors and subcontractors comply at all times with the HS Act and the CDM Regulations and will procure that:

- 21.13.1 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;
- 21.13.2 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);
- 21.13.3 each Subcontractor allocates adequate resources to enable it to comply with its obligations under the relevant Works contract and the CDM Regulations;
- 21.13.4 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;
- 21.13.5 no Subcontractor will by any act or omission do anything that would cause the Developer to breach or be prosecuted under the HS Act and/or the CDM Regulations; and
- 21.13.6 the Developer 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.

22 **Co-operation**

- 22.1 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 Developer shall co-operate fully and in a timely manner with any reasonable request from time to time:
 - 22.1.1 of any auditor (whether internal or external) of the Agency and/or
 - 22.1.2 of the Agency where the Agency is required under any legislation to provide any document relating to the Firm Schemes to any person.

23 **Dispute Resolution**

- 23.1 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 23.
 - 23.1.1 In the event that the Developer 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 23.

- 23.1.2 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.
- 23.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 23.1.2 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 Developer and the Agency (the **Senior Executives**).
- 23.1.4 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Senior Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
- 23.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Executives, such Dispute must be dealt with in accordance with Condition 23.2
- 23.2 In the circumstances contemplated in Condition 23.1.5, 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:
 - 23.2.1 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.
 - 23.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
 - 23.2.3 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.

24 **Notices**

- 24.1 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.
- 24.2 Any notice shall be deemed to be given by the sender and received by the recipient:
 - 24.2.1 if delivered by hand, when delivered to the recipient;

24.2.2 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.

25 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.

26 No agency

26.1 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.

26.2 The Developer 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 Developer. Neither the Developer nor any of its employees shall at any time hold itself or themselves out to be an employee of the Agency.

27 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.

28 Assignment and sub-contracting

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

28.2 The Developer will not be entitled to transfer or assign all or part of this Agreement.

29 Construction Industry Scheme

29.1 The Agency will inform the Developer as to whether or not it is at the date of this Agreement a Contractor and:

29.1.1 if it is a Contractor Conditions 29.3 to 29.11 shall apply; and

29.1.2 if it is not a Contractor Conditions 29.3 to 29.11 shall not apply.

29.2 If at any time up to the due date for final payment by the Agency under this Agreement the Agency becomes a Contractor (whether or not it has previously been a Contractor) or ceases to be a Contractor the Agency shall so inform the Developer and the provisions of Conditions 29.3 to 29.11 shall or shall not apply as the case may be.

29.3 It is acknowledged by the Agency and the Developer that the Agency shall not make any payment under or pursuant to this Agreement unless a Verification has been obtained by the Agency.

- 29.4 The Agency shall be required to use its reasonable endeavours to obtain a Verification and the Developer shall provide the Agency with the information referred to in Regulation 6(2) of the 2005 Regulations.
- 29.5 Where the Agency has obtained or received a Verification or Notification that the Developer is registered under FA 2004 for payment under deduction or is not registered under FA 2004:
- 29.5.1 at least five (5) Business Days before the final date for payment of any sum due under this Agreement the Developer shall give to the Agency a statement showing the Direct Cost of Materials to be included in the payment;
 - 29.5.2 the Agency shall make the Statutory Deduction from that part of the payment which is not in respect of the Direct Cost of Materials as stated by the Developer or as estimated by the Agency pursuant to Conditions 29.5.1 or 29.5.4 respectively;
 - 29.5.3 where the Developer complies with Condition 29.5.1 he shall indemnify the Agency against any loss or expense caused to the Agency by any incorrect statement of the amount of Direct Cost of Materials provided by the Developer pursuant to Condition 29.5.1;
 - 29.5.4 where the Developer fails to comply with Condition 29.5.1, or where the Agency has reasonable grounds to believe that any statement provided pursuant to Condition 29.5.1 is incorrect, the Agency shall make a fair estimate of the Direct Cost of Materials to be included in the payment;
- 29.6 Where the Agency has obtained or received a Verification or Notification that the Developer is registered for gross payment under FA 2004 the Agency shall pay any amount due without making the Statutory Deduction.
- 29.7 Where the Agency has obtained a Verification or Notification as referred to in Conditions 29.5 or 29.6 or a Notification under this Condition 29.7 and subsequently receives a Notification the Agency shall thereupon notify the Developer and thereafter Conditions 29.5 or 29.6 shall apply as appropriate.
- 29.8 The Agency shall comply with its obligations towards the Developer under Regulation 4(8) of the 2005 Regulations and the Developer shall provide the Agency with the information referred to in Regulation 6(2) of the 2005 Regulations.
- 29.9 Where the Agency has made an error or omission in calculating the Statutory Deduction he may correct the error by repayment or further deduction from payments due to the Developer under this Agreement (and if there are no such further payments due to the Developer any overpayment by the Agency shall be reimbursed by the Developer to the Agency immediately upon demand by the Agency) subject only to an instruction from HMRC to the Agency not to make such a correction.
- 29.10 If compliance with this Condition 29 involves the Agency or the Developer in not complying with any other provisions of this Agreement, then the provisions of this Condition shall prevail.

29.11 The relevant procedures applicable under this Agreement to the resolution of disputes or differences between the Agency and the Developer shall apply to any dispute or difference between the Agency and the Developer as to the operation of this Condition 29 except where FA 2004 or the 2005 Regulations or any other Act of Parliament or statutory instrument, rule or order made under any Act of Parliament provide for some other method of resolving such dispute or difference.

30 **Data Protection**

30.1 The Developer 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.

30.2 The Developer undertakes that to the extent that the Developer 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 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 Developer 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:

30.2.1 the Developer 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;

30.2.2 the Developer 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;

30.2.3 the Developer shall allow the Agency to audit the Developer's compliance with the requirements of this Condition 30 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Developer's compliance with the obligations within this Condition 30.

30.3 The Developer 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 30.2 the Developer shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Developer to

performing its obligations under this Agreement, or to the extent required under a court order.

30.4 The Developer shall:

- 30.4.1 take reasonable steps to ensure the reliability of any Developer Party who has access to the Personal Data;
- 30.4.2 ensure that any Developer Party required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition 30;
- 30.4.3 ensure that none of any Developer Party publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agency;
- 30.4.4 provide a written description of the technical and organisational methods employed by the Developer for processing Personal Data (within the timescales required by the Agency); and
- 30.4.5 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.

30.5 The Developer 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:

- 30.5.1 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;
- 30.5.2 provide the Agency with reasonable assistance in complying with any request for information served on the Agency under Section 7 of the DPA;
- 30.5.3 notify the Agency (within five (5) Working Days) about the receipt of any such request received by the Developer under Section 7 of the 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 such a request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;

30.5.4 provide the Agency with full co-operation and assistance in relation to any complaint of 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;

30.6 The Developer 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.

30.7 The Developer 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 Developer's destruction of and/or damage to any of the Agency's Personal Data processed by the Developer, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Condition 30 by the Developer, its employees, agents or sub-contractors.

30.8 The Developer shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Developer'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.

30.9 The Developer undertakes to include obligations no less onerous than those set out in this Condition 30, in all contractual arrangements with agents engaged by the Developer in performing its obligations under this Agreement to the Agency.

30.10 For the purposes of this Condition 30:

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 a 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;

31 Further Assurance

31.1 At any time upon the written request of the Agency the Developer:

- 31.1.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for the Agency the full benefit of this Agreement and of the rights and powers herein granted and the Developer hereby irrevocably appoints the Agency as its attorney solely for that purpose.
- 31.1.2 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.

32 **Entire agreement**

- 32.1 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 deed.
- 32.2 The Developer 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 Developer is entering into this Agreement.

33 **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.

34 **Cumulative rights and enforcement**

- 34.1 Any rights and remedies provided for in this Agreement whether in favour of the Agency or the Developer are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.
- 34.2 The parties acknowledge that money damages alone may not properly compensate the Agency for any breach of the Developer'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.

35 **Waiver**

- 35.1 Neither failure of any party at any one time to enforce any provision of this Agreement nor any payments by the Agency of the Firm Scheme Grant under Condition 10 in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
- 35.2 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.

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

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

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

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

36 **Survival of this Agreement**

36.1 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.

36.2 Insofar as any of the obligations of the Developer 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.

36.3 Without limitation the provisions of Conditions 2, 7, 8, 9, 11, 12, 14 to 16 and 18 to 20, 30.5, 30.7 and this Condition 36 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.

37 **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.

38 **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 23 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1
Approved Bid

Schedule 2

Officer's Certificate

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

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

As an authorised signatory of the Developer³, I hereby certify that as at the date hereof (save as disclosed in the Schedule to this Certificate):

- 1 all data or other information submitted on IMS in respect of the Approved Bid and each Firm Scheme is accurate and the Developer is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate;
- 2 the Developer is not in breach of its Transparency Obligations;
- 3 so far as the Developer is aware (having made all reasonable enquiries) the Approved Bid (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 Approved Bid.

This Certificate is given by virtue of my position as []⁴ and is given on behalf of the Developer. 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 Default and the rights that affords the Agency against the Developer.

Dated []

.....

Authorised signatory
[]

³ Under the terms of the Delivery Agreement, the signatory is to be the Development Director unless the Agency's consent has been obtained in advance that the certificate can be provided by another member of the Developer's management team.

⁴ See footnote 1

Schedule []

Paragraph Number	Disclosure

Schedule 3

Acknowledgements, Representations and Warranties

1 Powers, vires and consents

- 1.1 It is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.
- 1.2 It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it and the performance by it of its obligations under this Agreement;
- 1.3 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect.
- 1.4 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 1.5 The execution, delivery and performance by it of this Agreement do not:
 - 1.5.1 insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - 1.5.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
 - 1.5.3 contravene or conflict with its Memorandum and Articles of Association or Rules (as applicable) from time to time.
- 1.6 All consents, required by it in connection with the execution, delivery, issue, validity or performance or enforceability of this Agreement have been obtained and have not been withdrawn.
- 1.7 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.8 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.
- 1.9 To the best of its knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no Insolvency Event has occurred in relation to it.
- 1.10 It has not committed any Prohibited Act.

2 Programme Deliverability

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

3 Authority of Developer's Representative

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

Form of Deed of Adherence

Parties

- ## Introduction

- IT IS NOW HEREBY AGREED as follows:

1 Interpretation

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

Agreed Principles means the terms of clauses 2.1.1 to 2.1.10 (inclusive);

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

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

AHP Dwelling means a house, flat or maisonette developed pursuant to the terms of the Delivery Agreement and as more particularly described in Schedule 1;

AHP Housing means subsidised housing developed by the Developer that will be made permanently available as:

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

Confidential Information means in respect of the Agency all information relating to the Agency's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this deed in respect of which the Landlord becomes aware in its capacity as a party to this deed or which is received by the Landlord in relation to this deed from either Agency or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from the Agency or any of its advisers in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Landlord means such specific information as the Landlord shall have identified to the Agency in writing prior to the date hereof as confidential information for the purposes of this deed;

[Disposal] means a transaction the effect of which is that the legal or beneficial title in any AHP Dwelling is transferred to becomes vested in is leased to or reverts to another person;]⁵

DPF means the Disposal Proceeds Fund maintained by the Landlord in accordance with the requirements of Section 177 of the HRA;

Financial Assistance means the social housing assistance as at the date of this deed in the Firm Scheme as specified in clause 2.1.2 of this deed;

Firm Scheme means the development of []⁶ AHP Dwellings at []⁷ as more particularly described in Schedule 1 to this deed;

Fund Proceeds means those proceeds of the RCGF or DPF utilised by the Landlord in meeting in whole or in part any Development Costs or the acquisition costs of the AHP Dwellings;

Funding Conditions means the funding conditions set out within the Capital Funding Guide;

Insolvency Event means the occurrence of any of the following in relation to the Landlord;

- (d) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (e) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (f) a moratorium is declared in respect of any indebtedness or the Agency receives a notice under Section 145 of HRA 2008;
- (g) any corporate action, legal proceedings or other procedure or step is taken in relation to:

⁵ Delete where the Landlord is an ex RSL or where this is a Nil Grant Scheme.

⁶ Insert number of AHP Dwellings comprised in the Firm Scheme.

⁷ Insert description of the Site.

- i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by the Agency (such approval not to be unreasonably withheld or delayed);
- ii a composition, compromise, assignment or arrangement with any of its creditors;
- iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency (such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, administrator, compulsory manager or other similar officer);
- iv enforcement of any Security over any assets of the Landlord; or
- v any analogous procedure or step is taken in any jurisdiction;

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

any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Landlord which has a Material Adverse Effect;

[Landlord's Firm Scheme Conversion Capacity] means the sum of £[]⁸;

Nil Grant Scheme has the meaning given to it in the Delivery Agreement;

[Nil Grant Unit]¹⁰ has the meaning given to it in the Delivery Agreement and more particularly each of the AHP Dwellings designated as such in Schedule 1;]

Permitted Conversions means up to []¹¹ properties (other than the AHP Dwellings) which the Landlord intends to let as Affordable Rent and up to [] dwellings (other than the AHP Dwellings) that it intends to dispose of either on Affordable Home Ownership terms or on market sale terms to generate the Landlord's Firm Scheme Conversion Capacity;

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 deed; or
 - ii for showing or not showing favour or disfavour to any person in relation to this deed;

⁸ The figure to be inserted is that identified in the Firm Scheme Details under the heading of ["RP's conversion capacity"].

⁹ Delete where there is no Landlord's Firm Scheme Conversion Capacity

¹⁰ Delete if there are no Nil Grant Units in the Firm Scheme.

¹¹ Insert number of dwellings, the first being the number of conversions to affordable rent and the second being the number of disposals.

- (b) entering into this deed or any other agreement with the Agency relative to this deed in connection with which commission has been paid or has been agreed to be paid by the Landlord or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the Agency;
- (c) committing any offence:
 - i under Legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement; or
 - iii under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Agency or the Regulator;

RCGF means the Recycled Capital Grant Fund maintained by the Landlord in accordance with the Recovery Determination;

Recovery Determination means the Recovery of Capital Grants and Recycled Capital Grant Fund Determination 2012 (or any successor or amended determination);

[Recovery Event means any of the following circumstances:

- (a) where the Landlord has failed to comply with a condition attached to the making of the Financial Assistance;
- (b) where the Agency discovers that incorrect information has been supplied or errors made in connection with the calculation of the Financial Assistance payable or recoverable;
- (c) the de-registration of the Landlord by the Regulator under sections 118 or 119 of the HRA 2008;
- (d) a change of use of the Site or AHP Dwellings to one which would not qualify in principle for grant funding under the Affordable Homes Programme 2015/18 or a change to a use which might receive a significantly lower level of grant allocation including a change from use as Affordable Rent to use as Affordable Home Ownership or from supported to general needs housing);
- (e) cessation of use of property or land funded by Financial Assistance;
- (f) demolition of property funded by Financial Assistance;
- (g) Disposal of property funded by Financial Assistance except:

- i with the prior approval of the Agency to another Registered Provider (taking the property subject to liability for the Financial Assistance within it pursuant to Section 33 of the HRA 2008);
- ii the sale of the first share of an Affordable Home Ownership Dwelling under a Shared Ownership Lease where such dwelling is/was specifically provided for sale on Shared Ownership Lease terms;
- iii Disposal of an Affordable Rent Dwelling to a tenant of the Landlord with the assistance of grant under Section 35 of the HRA 2008;
- (h) a Disposal of property or land funded by Financial Assistance that would give rise to a repayment of discount under Section 55 of the Housing Act 1985.

[Recovery Principles means the principles set out in Schedule 2 to this deed;]¹²

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

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

Registered Provider means a body entered on the Register as a non-profit organisation (as such term is defined in Section 115 of the HRA 2008);

Regulator means the Agency acting through the Regulatory Committee established by it pursuant to Part 2 of the HRA 2008 or any other similar future authority (including any statutory successor) with responsibility for carrying on substantially the same regulatory or supervisory functions;

Request for Information shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Firm Scheme, this deed or any activities or businesses of the Agency;

Social Rent means a rent calculated in accordance with the formula for calculating social rent set out in the Rent Standard guidance published by the Regulator, as such guidance or associated explanatory notes may be amended, updated or replaced from time to time;

Social Rent Dwelling means an AHP Dwelling to be let at a Social Rent;

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

- (a) an employee acting independently of the Landlord; or
- (b) a subcontractor of any tier (or any employee of a subcontractor not acting independently of the subcontractor); or

¹² Delete where Landlord is an ex-RSL or where this is a Nil Grant Scheme

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

and the Agency is satisfied that the Landlord 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 board of management or senior management team of the Landlord or relevant subcontractor;

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 Deed 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 Deed.
- 1.2.4 Any reference to this Deed or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to this Deed such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A party means a party to this Deed.
- 1.2.9 The words includes or including are to be construed without limitation.
- 1.2.10 A paragraph in a Schedule or Appendix shall be construed as references to a paragraph in that particular Schedule or, as the case may be, Appendix.
- 1.2.11 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 Deed.
- 1.2.12 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 Deed or such other person as may be specified by the Agency by notice in writing to the Landlord.

- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 The term(s) Site and Firm Scheme includes each and every part of it.
- 1.2.16 When there are two or more persons affected by the obligations under this Deed such obligations are to bind each such person jointly and severally.
- 1.2.17 Save where a contrary intention is shown, or where an express discretion is given by this Deed, any reference to the Agency acting reasonably, shall be interpreted as requiring the Agency to act in a commercially reasonable manner.
- 1.2.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Deed then the express terms shall prevail.
- 1.2.19 The Landlord 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 contractor, sub contractor, employee or agent as if they were the acts or omissions of the Landlord.
- 1.2.20 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 Deed or agreed in writing by the Agency, relieve the Landlord of any of its obligations under this Deed or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of the Agency in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.21 In the event of any conflict between the Firm Scheme Details summarised in Schedule 1 and the Firm Scheme Details set out in IMS (and accepted by the Agency through IMS) the Firm Scheme Details in IMS shall prevail.

2 Acknowledgements

- 2.1 The Landlord acknowledges and agrees that the AHP Dwellings have been constructed with the benefit of financial assistance paid pursuant to Sections 19 and 31-34 of the HRA 2008 and that:
 - 2.1.1 the Affordable Rent Dwellings and the Social Rent Dwellings (including for the avoidance of doubt the Nil Grant Units) have been provided with public money for the purposes of Section 180 of the HRA 2008; and

- 2.1.2 the Landlord's right to convert dwellings let at a Social Rent within its housing stock or to dispose of such dwellings on Affordable Home Ownership or market sale terms in each case to create the Landlord's Firm Scheme Conversion Capacity is for the sole purpose of funding the development of the AHP Dwellings and their use for the Agreed Purposes (as defined in clause 3.1.3);
- 2.1.3 [notwithstanding that the Firm Scheme Grant for the Firm Scheme has or is to be paid to the Developer, the Landlord is deemed to have received, subject to clause 6 of this Deed, the sum of []¹³ being the Firm Scheme Grant paid in respect of the Firm Scheme] (**Financial Assistance**)¹⁴;
- 2.1.4 [the Financial Assistance is subject to the provisions of the HRA 2008 and any determination made under such provisions and the provisions of clause 5 of this deed represent the events and principles for recovery of such assistance determined by the Agency for the purposes of Sections 31- 34 of the HRA 2008]¹⁵;
- 2.1.5 the Funding Conditions apply to the Firm Scheme [and to the Financial Assistance]¹⁶;
- 2.1.6 the provisions of this Deed and those of the Delivery Agreement represent the conditions upon which the Agency makes and made the Financial Assistance available in relation to each Firm Scheme;
- 2.1.7 the Financial Assistance made in relation to each Firm Scheme is:
- (a) social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008 (**HRA 2008**); and
 - (b) subject to the provisions of that Act and any applicable determinations or directions made under it.
- 2.1.8 the provisions of clause 5 represent events and principles determined by the Agency for the purposes of Sections 32-34 HRA 2008;
- 2.1.9 all Fund Proceeds used for the purposes of funding in whole or in part each Firm Scheme constitute social housing assistance for the purposes of section 32 HRA 2008 and will be subject to the terms of clause 5;
- 2.1.10 any failure by the Landlord to comply with the terms of this Deed constitutes a failure to comply with a condition attaching to the making of capital grant.

3 **Representations by the Landlord**

3.1 The Landlord represents to the Agency that in executing this deed, it has received:

- 3.1.1 details of the Submitted Standards for the Firm Scheme from the Developer; and

¹³ Insert figure which is the "Firm Scheme Grant" figure identified on IMS for the Firm Scheme

¹⁴ Delete where this is a Nil Scheme Grant

¹⁵ Delete if this is a Nil Grant Scheme

¹⁶ Delete if this is a Nil Grant Scheme

3.1.2 written confirmation from an independent certifier or an employer's agent (in either case being a person who is entirely independent of the Landlord) that the AHP Dwellings have been constructed to a standard which is no less than the Submitted Standards; and

3.1.3 details of the agreed purposes specified in IMS by the Developer for which the AHP Dwellings are to be used (the **Agreed Purposes**).

3.2 The Landlord represents to the Agency that:

3.2.1 the DPF and RCGF proceeds which it is applying in respect of the acquisition from (or the construction by) the Developer (as applicable) of the AHP Dwellings are £[] and £[] respectively;

3.2.2 the initial rents to be charged in respect of the AHP Dwellings are:

[2 bed: £[] per week

3 bed: £[] per week

4 bed: £[] per week]

3.2.3 the acquisition price paid or to be paid to the Developer in respect of the AHP Dwellings is £[].¹⁷

4 **Covenants by the Landlord**

4.1 The Landlord covenants with the Agency that in operating and administering the Firm Scheme after Practical Completion it shall:

4.1.1 not use the AHP Dwellings for any purpose other than the Agreed Purposes without the Agency's prior consent;

4.1.2 comply with the Regulator's Tenancy Standard and Rent Standard in respect of the Affordable Rent Dwellings [and the Social Rent Dwellings]¹⁸;

4.1.3 observe and comply with the requirements of the Capital Funding Guide in relation to (i) the operation of the Firm Scheme and (ii) without prejudice to the generality of (i), any disposal of the Affordable Home Ownership Dwellings and ensure that such disposal takes effect only at arm's length and on market terms;

4.1.4 observe and comply with paragraphs 3, 6, 8, 9, 11, 12, 13, 14, 17, 18, 19, 26 to 29 and 33 of the Funding Conditions;

4.1.5 comply with the Agency's requirements in relation to Compliance Audit;

4.1.6 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 Dwellings;

¹⁷ Details to be inserted – they must reflect the information included on IMS for the Firm Scheme.

¹⁸ Delete if not applicable.

- 4.1.7 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 Landlord with its obligations under this deed;
 - 4.1.8 [save as otherwise agreed with the Agency, procure on any Disposal [(other than of a Nil Grant Unit)]¹⁹ a written acknowledgement from the donee in favour of the Agency that the Financial Assistance (or part thereof) in the property comprised in the Disposal is social housing assistance received by it for the purpose of Section 33(7) of the HRA 2008;
 - 4.1.9 provide written notification to the Agency of any Disposal within ten (10) Business Days of such Disposal taking place]²⁰;
 - 4.1.10 be bound by and observe the Agreed Principles;
 - 4.1.11 hold Registered Provider status at the point at which any Affordable Rent Dwelling or Social Rent Dwelling or Nil Grant Unit provided pursuant to the Delivery Agreement and this Deed is made available for rent.
- 4.2 Save as expressly agreed otherwise under any other deed of adherence entered into by the Landlord with the Agency pursuant to the Delivery Agreement, the Landlord covenants with the Agency that it shall not without the consent of the Agency:
- 4.2.1 convert more dwellings let as Social Rent within its housing stock to Affordable Rent beyond that required to create the Landlord's Firm Scheme Conversion Capacity; and
 - 4.2.2 Dispose of more dwellings let at a Social Rent within its housing stock on Affordable Home Ownership or market sale terms than are required to create the Landlord's Firm Scheme Conversion Capacity SAVE THAT nothing in this clause 4.2.2 is intended to preclude the Landlord 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 Regulator.
- 4.3 [Where the Landlord only has possessory title or good leasehold title of the land upon which the Firm Scheme is situate, the Landlord covenants that it has defective title indemnity insurance with a limit of indemnity which is no less than the Financial Assistance]²¹.
- 5 **[Repayment of Grant]²²**
- 5.1 The parties acknowledge and agree that:

¹⁹ Delete if there are no Nil Grant Units in the Firm Scheme.

²⁰ 4.1.8 and 4.1.9 to be deleted where the Landlord is an ex-RSL.

²¹ Delete if this is a Nil Grant Scheme

²² The text in clause 5 is to be retained (and 5A deleted) where the Landlord is an ex-RSL RP. 5A text is to be used (and 5 deleted) where the Landlord is a RP that is not an ex-RSL. Clause 5 can be deleted where this is a Nil Grant Scheme

- 5.1.1 the Recovery Determination and the Capital Funding Guide have effect (mutatis mutandis) in respect of the Financial Assistance in respect of the Firm Scheme and that each party has the respective rights and obligations described in such determination and under the Capital Funding Guide;
- 5.1.2 for the purposes of the Recovery Determination, the amount of "Capital Grant" referred to therein shall be determined by reference to the amount of Financial Assistance for that Firm Scheme; [and]
- 5.1.3 [there is no Financial Assistance in the Nil Grant Units.]²³
- 5.2 [Without prejudice to any other term of this deed, the Agency reserves the right to recover from the Landlord the Financial Assistance in circumstances where:
 - 5.2.1 a Prohibited Act has occurred and the Landlord has not satisfied the Waiver Condition in respect of such Prohibited Act];²⁴
 - 5.2.2 a Landlord Default has occurred.
- or**
- [5A Repayment of Grant]²⁵**
 - 5A.1 Without prejudice to any other term of this deed, the Agency reserves the right to recover from the Landlord the Financial Assistance or such part thereof as is determined in accordance with clause 5A.2 (the Recoverable Amount) in circumstances where:
 - 5A1.1 a Prohibited Act has occurred and the Landlord has not satisfied the Waiver Condition in respect of such Prohibited Act;
 - 5A1.2 a Landlord Default has occurred; or
 - 5A1.3 a Recovery Event occurs.
 - 5A.2 In the circumstances set out in:
 - 5A2.1 clauses 5A1.1 and 5A1.2 the Recoverable Amount shall be a sum equivalent to the Financial Assistance;
 - 5A2.2 clause 5A1.3, the Recoverable Amount shall be determined by the Landlord in accordance with the Recovery Principles.
 - [5A.3 The parties acknowledge and agree that there is no Financial Assistance in the Nil Grant Units.];²⁶
 - 5A.4 The parties:

²³ Delete if there are no Nil Grant Units.

²⁴ Delete if this is a Nil Grant Scheme

²⁵ Delete if this is a Nil Grant Scheme

²⁶ Delete if there are no Nil Grant Units.

5A.4.1 acknowledge that the Recovery of Capital Grants and Recycled Capital Grant Fund Determination 2012 and the associated terms of the Capital Funding Guide do not apply to the Landlord;

5A.4.2 agree that if such Determination is subsequently amended, updated or restated (the **Later Determination**) so as to apply to other classes of Registered Provider the terms of this Agreement shall be interpreted to give effect to such Later Determination (and any associated terms of the Capital Funding Guide) subject to the following principles being observed and given effect:

(a) under no circumstances shall the Agency be entitled to recover any amount under both this clause 5A.4 and the Later Determination which arises out of the same or similar event; and

(b) any right of recovery which the Agency enjoys under this clause 5A.4 which is not provided for in any Later Determination shall continue to be exercisable by the Agency.

5A.4.3 agree that the reference in Condition 5A.4.1 to the Recovery of Capital Grants and Recycled Capital Grant Fund Determination 2012 means that particular determination and shall not be interpreted to include any successor, restated or amended determination.

5A.5 The Landlord agrees, without prejudice to the generality of clause 12 and within fifteen (15) Business Days of the Agency's written request, to enter into, execute and deliver such further instrument or documents (including any variation deed) as may be necessary to give effect to the terms of Condition 5A.4.

6 **[Financial Assistance**

The Landlord acknowledges the rights of the Agency pursuant to Condition 12.1.5 and Condition 12.2.3(b) of the Delivery Agreement and further acknowledges that the Financial Assistance may be adjusted as a consequence thereof. The Agency shall notify the Landlord following the determination of any such adjustment and from the date of such notification, the figure stated in clause 2.1.1(b) of this deed shall be construed accordingly]²⁷.

7 **Landlord Default**

7.1 The following shall constitute a Landlord Default:

7.1.1 an Insolvency Event has occurred in relation to the Landlord;

7.1.2 the Landlord ceases operating;

7.1.3 the Landlord's status as a Registered Provider is lost or removed; or

7.1.4 any of the representations given by the Landlord pursuant to clause 3 of this deed are found to be inaccurate; or

7.1.5 the Landlord is in breach of any covenant contained in clause 4 of this deed.

²⁷ Delete where this is a Nil Grant Scheme

7.2 Where the Landlord Default is:

7.2.1 an occurrence specified in clause 7.1.1, 7.1.2, 7.1.3 and/or 7.1.4 the Agency shall [, without prejudice to its rights under clause [5/5A]²⁸ of this deed]²⁹ be entitled forthwith and without any liability to the Landlord terminate this deed; and

7.2.2 an occurrence specified in clause 7.1.5, the Agency may serve notice on the Landlord requiring the Landlord 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 Landlord has not given an undertaking to remedy the breach on terms satisfactory to the Agency; or
- (c) if it becomes apparent that the Landlord Default is incapable of remedy either within such period or at all

the Agency shall be entitled [, without prejudice to its rights under [clause 5/5A]³⁰ of this deed]³¹ on giving not less than (10) Business Days' notice and without any liability to the Landlord to terminate this deed.

7.3 Where the Agency purports to terminate this deed in accordance with this clause 7 and the Landlord disputes its entitlement to do so the provisions of clause 10 shall apply.

8 Information and confidentiality

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

8.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency arising or coming to its attention during the currency of this deed 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 deed.

8.3 The obligations of confidence referred to in clause 8.2 shall not apply to any Confidential Information which:

8.3.1 is in, or which comes into, the public domain otherwise than by reason of a breach of this deed or of any other duty of confidentiality relating to that information; or

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

²⁸ Delete as applicable.

²⁹ Delete where this is a Nil Grant Scheme.

³⁰ Delete as applicable.

³¹ Delete where this is a Nil Grant Scheme.

- 8.3.3 is lawfully in the possession of the other party before the date of this deed and in respect of which that party is not under an existing obligation of confidentiality; or
- 8.3.4 is independently developed without access to the Confidential Information of the other party.
- 8.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- 8.4.1 to enable the disclosing party to perform its obligations under this deed or any loan deed or proposed loan deed or funding documentation with a commercial lender; or
- 8.4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Landlord acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information; or
- 8.4.3 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
- 8.4.4 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.
- 8.5 The Landlord shall ensure that all Confidential Information obtained from the Agency under or in connection with this deed:
- 8.5.1 is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this deed as is strictly necessary for the performance of this deed and only to the extent necessary for the performance of this deed;
- 8.5.2 is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this deed;
- 8.5.3 where it is considered necessary in the opinion of the Agency the Landlord shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this deed.
- 8.6 Nothing in this clause 8 shall prevent the Agency:-
- 8.6.1 disclosing any Confidential Information for the purpose of:
- (a) the examination and certification of the Agency's accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or

8.6.2 disclosing any Confidential Information obtained from the Landlord:

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

provided that in disclosing information under clause 8.6.2(a) or 8.6.2(b) the Agency discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

8.7 Nothing in this clause 8 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the deed 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.

8.8 The Landlord acknowledges that the Agency is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.

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

8.9.1 any Information is Exempted Information or remains Exempted Information; or

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

and in no event shall the Landlord respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency unless otherwise expressly authorised to do so by the Agency.

8.10 Subject to clause 8.11 below, the Landlord acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:

8.10.1 without consulting the Landlord; or

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

8.11 Without in any way limiting clauses 8.9 and 8.10, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Landlord.

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

8.12.1 transfer any Request for Information received by the Landlord to the Agency as soon as practicable after receipt and in any event within two (2) Business Days of receiving a request for information;

- 8.12.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
 - 8.12.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five (5) Business Days (or such other period as the Agency may specify) of the Agency requesting that Information;
 - 8.12.4 permit the Agency to inspect such as requested from time to time
- 8.13 Nothing in this deed will prevent the Agency from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.
- 8.14 The obligations in this clause 8 will survive the expiry or termination of this deed 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 deed or of any other duty of confidentiality relating to that information.
- 9 **Data Protection**
- 9.1 The Landlord 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 deed.
- 9.2 The Landlord undertakes that to the extent that the Landlord 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 deed it will at all times 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 Landlord 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:
- 9.2.1 the Landlord 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 deed 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;
 - 9.2.2 the Landlord shall only process Personal Data for and on behalf of the Agency for the purpose of performing its obligations under this deed in accordance with this deed, 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;

- 9.2.3 the Landlord shall allow the Agency to audit the Landlord's compliance with the requirements of this clause 9 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Landlord's compliance with the obligations within this clause 9.

9.3 The Landlord undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to clause 9.2 the Landlord shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Landlord to performing its obligations under this deed, or to the extent required under a court order.

9.4 The Landlord shall:

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

- 9.4.2 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.

9.5 The Landlord 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:

- 9.5.1 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 deed in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;

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

- 9.5.3 notify the Agency (within five (5) Working Days) about the receipt of any such request received by the Landlord under Section 7 of the 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 such a request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;

9.5.4 provide the Agency with full co-operation and assistance in relation to any complaint of 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;

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

9.7 The Landlord 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 Landlord's destruction of and/or damage to any of the Agency's Personal Data processed by the Landlord, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this clause 9 by the Landlord, its employees, agents or sub-contractors.

9.8 The Landlord shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Landlord'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.

9.9 The Landlord undertakes to include obligations no less onerous than those set out in this clause 9, in all contractual arrangements with agents engaged by the Landlord in performing its obligations under this deed to the Agency.

9.10 For the purposes of this clause 9:

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 a 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 deed or any other affairs of the Agency;

10 **Dispute Resolution**

10.1 All disputes and differences arising out of or in connection with this deed (a **Dispute**) shall be resolved pursuant to the terms of this clause 10.

10.1.1 In the event that the Landlord 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 clause 10.

10.1.2 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.

10.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 10.1.2 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 Landlord and the Agency (the **Chief Executives**).

10.1.4 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.

10.1.5 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 clause 10.2

10.2 In the circumstances contemplated in clause 10.1.5, 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:

10.2.1 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.

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

10.2.3 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.

11 **Notices**

11.1 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 deed 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.

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

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

11.2.2 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.

12 **Further Assurance**

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

13 **Governing Law and Jurisdiction**

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

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

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

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

This Deed 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)
[the LANDLORD])
in the presence of:)

Authorised Officer

Schedule 1 to Deed of Adherence

[Scheme Details for Firm Scheme to be incorporated]³²

³² Nil Grant Units must be included in the Schedule and identified separately from the other AHP Dwellings comprised in the Firm Scheme.

[Schedule 2 to Deed of Adherence]³³

Recovery Principles

Part 1

1 Calculation of Recoverable Amount

- 1.1 In the case of the Recovery Event listed in limb (a) of the definition of Recovery Event, the Recoverable Amount shall be a sum equivalent to the Financial Assistance.
- 1.2 In the case of the Recovery Event listed in limb (b) of the definition of Recovery Event, the Recoverable Amount shall be a sum equivalent to the amount overpaid by the Agency as a result of the incorrect information supplied or error made.
- 1.3 In the case of the Recovery Events listed in limbs (c) to (i) of the definition of Recovery Event, the Recoverable Amount shall in the case of:
- 1.3.1 outright sales (which shall be deemed to include those events listed in paragraphs 2, 3, 4.1, 4.2, 7, 8, 10 and 11 of Part 2A of this Schedule) be calculated in accordance with the methodology set out in Part 3A of this Schedule save in the case of a change of use from supported housing to general needs in which case the Recoverable Amount shall be calculated in accordance with the terms of paragraph 12.2 of Part 2A of this Schedule;
 - 1.3.2 shared ownership staircasing disposals (including those events listed in paragraphs 4.3, 4.4 and 4.5 of Part 2A of this Schedule) be calculated in accordance with the methodology set out in Part 3B of this Schedule;
 - 1.3.3 recovery of tenants discounts be calculated in accordance with the methodology set out in Part 3C of this Schedule;
 - 1.3.4 Demolition be determined and applied in accordance with the terms of paragraph 12 of Part 2A of this Schedule;
 - 1.3.5 Deregistration by the Regulator be determined and applied in accordance with the terms of paragraph 13 of Part 2A of this Schedule,

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

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

³³ If the Landlord is an ex-RSL or if this is a Nil Grant Scheme, Schedule 2 is not required and can be deleted.

Part 2A

1 Deemed Loan Debt

- 1.1 For rented schemes the Landlord must apportion Deemed Loan Debt in the same way as they apportion the Financial Assistance between individual units (see Part 2B of this Schedule).
- 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 Landlord must not be below a valid valuation by an Independent Qualified Valuer.
- 2.2 The net sale receipt is the gross sale receipt less the eligible deductions, which are:
 - 2.2.1 the Deemed Loan Debt
 - 2.2.2 the reasonable valuation fees and expenses and
 - 2.2.3 reasonable legal fees and expenses of the disposal.
- 2.3 The Landlord 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 Financial Assistance, the shortfall may (with the Agency's consent) be written off by the Landlord.
- 2.5 Where grant is to be written off by the Landlord, 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 Landlord 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 Financial Assistance recovered will be calculated in the manner described in the preceding paragraph 2, EXCEPT:
 - 3.1.1 the gross sales receipts will be the HIGHER of either:
 - (a) the receipt from the disposal PLUS any compensation received PLUS any interest received as part of the CPO, or
 - (b) the amount obtained by a qualified valuer acting on behalf of the Landlord in negotiation with the body exercising compulsory powers.
 - 3.1.2 Eligible deductions will only include the Landlord's valuation and legal fees & costs, and an administrative allowance if the body exercising the CPO has not paid them as part of the CPO process.

- 3.2 The amount of interest to be included in the calculation of the gross sales received will be the interest paid by the acquiring body, less any tax on that interest that the Landlord may have to pay (if it is non-charitable).
- 3.3 The amount of Financial Assistance recovered will not normally be reduced in respect of any costs incurred by an Landlord 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 Financial Assistance attributable to that property or land, the amount of Financial Assistance recovered may, at the Agency's discretion, be reduced by the shortfall. The Landlord should discuss such cases with the Agency's operational area. However, if the Landlord makes net surpluses upon the sale of other 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 Financial Assistance recovered will be reduced by the shortfall, which may (with the Agency's consent) be written off by the Landlord. Where Financial Assistance is to be written off, the Landlord 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 The Landlord 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 Financial Assistance, 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 Landlord 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 Landlord 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, Financial Assistance 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 Financial Assistance will become recoverable immediately the share is sold and a sales receipt realised.
- 4.3.2 The resale of a Financial Assistance funded Protected Area repurchased property must be at market value. Following the resale of the initial share, recoverable Financial Assistance should be calculated according to the percentage of the share sold compared to the total grant/grant permitted to be applied under this Agreement used to fund the repurchase. From the gross sales receipt landlords can deduct staircasing allowance and any Deemed Loan Debt apportioned as appropriate as eligible deductions. For these purposes, Financial Assistance funded property includes one in which the Landlord was permitted to reapply grant which would otherwise have been repayable under this Agreement.
- 4.3.3 Upon staircasing the remaining Financial Assistance 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 Financial Assistance attributable to the staircased proportion of the dwelling plus any Financial Assistance previously deferred on initial or subsequent staircasing sales in respect of other properties within the same scheme.
- 4.4.4 If the net sales receipts are insufficient to enable the recovery of all the attributable and deferred Financial Assistance, then the shortfall of the recoverable Financial Assistance 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 sales receipts

were less than the Financial Assistance recoverable, the final shortfall will be written off by the Landlord.

- 4.4.6 Where there is a deferral or write off of Financial Assistance, the Landlord 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 Financial Assistance to be written off is the same as for any other shared ownership staircasing, although there are important differences:

- (a) the Landlord 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 Landlord by the defaulting leaseholder.

- 4.5.5 Where the leaseholder's mortgagee has used the Mortgagee Protection Clause, and the Landlord has suffered a shortfall on staircasing receipts recoverable Financial Assistance may (with the Agency's consent) be written off by the Landlord or deferred provided that the Landlord confirms in supporting documentation to the written calculation that they:

- (a) are in the process of obtaining legal advice, or have already obtained legal advice on prospect of recovering the money due from the leaseholder;
- (b) will take all necessary steps to recover the money due; and
- (c) undertake to pay the money to the Agency if applicable within fourteen days of receipt.

- 4.5.6 In deciding what action is reasonable to pursue the debt the Landlord 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 Landlord's solicitor, and no receipts are generated, any expenses or abortive costs will NOT be allowed against grant

recovery UNLESS the surpluses from shared ownership staircasing sales completed in the previous twelve months are insufficient to cover the costs.

- 4.5.8 Where the Landlord incurs such a loss, the Landlord may (with the Agency's consent) deduct the costs that it has incurred from a future Financial Assistance 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 Landlord with a surplus after full grant recovery then it is a matter for the Landlord to decide whether to seek to recover this amount when taking action to recover other monies due.
- 4.5.10 Where Financial Assistance 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 Landlord 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 **Right To Buy**³⁴

- 5.1 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.

6 **Right To Buy: Loans**

- 6.1 The deductions to be offset against the gross sale receipt shall be:
 - 6.1.1 the Deemed Loan Debt;
 - 6.1.2 reasonable expenses being the valuation and legal expenses of the disposal;
 - 6.1.3 the Right To Buy (RTB) sales allowance;
 - 6.1.4 any abortive RTB sales expenses.
- 6.2 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)).
- 6.3 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.
- 6.4 These net sales receipts shall be used to recover the Financial Assistance attributable to the dwelling in question. If the net sales receipt is insufficient to enable the recovery of all the attributable Financial Assistance, then the shortfall may (with the Agency's consent) be written off by the Landlord.

HOWEVER:

³⁴ The RTB provisions are only likely to be relevant to newbuild/refurbishment schemes by local authorities.

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

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

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

7 Repayment of Right to Buy Discount

7.1 Where Financial Assistance has been paid, or the recovery of Financial Assistance has been reduced to fund a Right to Buy discount, and a subsequent sale takes place which should give rise to a repayment of the discount, the Financial Assistance paid or reduced will be recovered on an equitable basis.

8 Voluntary sales to tenants not on Right to Buy terms

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

9 Change to non Affordable Housing use

9.1 A change of use will be a Recovery Event if the property in the ownership of the Landlord changes use to one which does not qualify for Financial Assistance (at the time of the change of use).

9.2 Financial Assistance will be recovered as if the property had been sold outright.

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

9.3.1 vacant possession

9.3.2 existing use

to determine the notional "gross sales receipt".

9.4 Eligible deductions are:

9.4.1 the Deemed Loan Debt

9.4.2 reasonable valuation fees and expenses and

9.4.3 reasonable legal fees and expenses of the disposal.

A Landlord may not deduct any administration allowance.

- 9.5 Financial Assistance 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 Landlord should consult with the Agency's relevant operational area in advance.

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

- 10.1 A change of use from Supported Housing to general needs is a Recovery Event.
- 10.2 This is not treated as a "notional sale", and so there are no gross sales receipts (real or notional) or eligible deductions. Instead, the Landlord will pay to the Agency 12% of all Financial Assistance paid on the Supported Housing units (net of any Financial Assistance previously recovered) subject to the exceptions set out immediately below.
- 10.3 If the Landlord 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.
- 10.4 The Agency reserves the right to recover Financial Assistance if, in the future, the replacement units ceased to be used for Supported Housing without further replacement units being made available.
- 10.5 Where a change of use of supported housing triggers Financial Assistance 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 Financial Assistance amount.
- 10.6 This deferral is at the discretion of the Agency (through agreement of the relevant Agency operational area). The Agency will consider:
- 10.6.1 any changes in revenue sources and amounts;
 - 10.6.2 the future needs of the current client group; changes in methods of supplying support, e.g. to floating;
 - 10.6.3 other potential client groups;
 - 10.6.4 the nature, type and condition of the building, currently and in future.

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

- 11.1 Where the Landlord has ceased to use the AHP Dwelling for six months, the Agency must be notified.
- 11.2 The Landlord must produce proposals for either bringing the property back into use, its demolition, or its disposal within 7 months of the property becoming void.
- 11.3 These proposals will be discussed with the Agency and a course of action agreed. If the Landlord does not implement the agreed course of action within a timetable and any extensions to it set by the Agency, the Financial Assistance will be recovered in accordance with the 'change to non Affordable Housing use' procedures above.

12 **Demolition**

- 12.1 The Agency's approval must be obtained prior to demolition of a property.
- 12.2 Demolition is a Recovery Event.
- 12.3 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 14.6) normally recover Financial Assistance at that time, but will defer it.
- 12.4 The Financial Assistance liability is deferred until a future Recovery Event occurs, in which case the recovery policy and procedures in force at that time will apply.
- 12.5 In the meantime Financial Assistance is treated as remaining in the land.
- 12.6 If the Landlord demolishes property so that the resultant vacant site:
- 12.6.1 remains in the ownership of the Landlord;
 - 12.6.2 is to be used for non-income earning purposes (such as forming an open space or facilitating the realignment of roads) and
 - 12.6.3 a compensation payment is received by the Landlord
- then Financial Assistance will be recovered.
- 12.7 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).
- 12.8 If the net sale receipt is insufficient to allow full grant recovery, the shortfall may not be written off by the Landlord, but will remain dormant in the land concerned.

13 **Deregistration by the Regulator**

- 13.1 Where the Landlord decides to deregister from the Regulator, this is a Recovery Event and all grant, previously paid (including Financial Assistance) to the Landlord is required to be repaid. However, there may be occasions where the deregistering Landlord does not intend to dispose of any of its grant funded stock. In this case the Agency anticipates there would be no sales receipt from which to recover grant vested in those properties. Where the Landlord is able to demonstrate to the Agency's local office that immediate repayment of Financial Assistance would result in financial hardship, the Agency may consider (in its discretion) other options such as payment deferral or repayment by instalments.
- 13.2 In all cases the Agency would expect any sums then due to be repaid to be repaid immediately. In circumstances where a Landlord has already entered into a written commitment to apply otherwise recoverable Financial Assistance to new AHP Housing supply and can demonstrate this to the Agency's satisfaction, it should approach the Agency's Operational Area to discuss the circumstances. The Agency will then consider (in its discretion) whether or not the spend of these committed sums can proceed.

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 (Grant/RCGF/DPF plus any Public Sector Subsidy);
- (b) Sales receipts (if applicable); or
- (c) the Landlord'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 Financial Assistance pursuant to Part 2B of this Schedule. This formula must not be altered by adding, for example, any penalty charged by a lender for premature redemption of a loan, or substituting the actual loan debt should it be greater;

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

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

Net Sales Receipt means the Gross Sales Receipt less any eligible deductions;

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

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

Staircasing means the acquisition by the shared owner of further equity in the relevant dwelling in accordance with the terms of the Shared Ownership 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 2015/18

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 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 AHP Dwelling or land, or the period of validity stated in the valuation, or the shared ownership lease if applicable;

Part 2B

Apportionment of Grant in Dwellings (excluding Nil Grant Units)

1 Apportionment of Grant: Rented Properties

- 1.1 The Landlord must apportion the Financial Assistance or, as applicable, the result of the calculation referred to in paragraph 2.1.2 of Part 1 of this Schedule (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 Financial Assistance 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 Financial Assistance 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 the Landlord:
- 4.1.1 sells the land or buildings that make up an entire Firm Scheme no apportionment of the Financial Assistance or the Resulting Amount (as applicable) is necessary, as the Recoverable Amount will be the entirety of the

Financial Assistance 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 Financial Assistance 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 Financial Assistance or the Resulting Amount (as applicable) in relation to the land and buildings being disposed of.

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 the Landlord 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 Financial Assistance allocated to the Affected AHP 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.

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 the Landlord 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 Financial Assistance allocated to the percentage of equity sold in the Affected AHP Dwelling.
- 3 Identification of any Financial Assistance 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.

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 the Landlord 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 Financial Assistance paid in respect of tenants discount/Financial Assistance recovery abated on original property sale.
- 3 Recoverable amount is the lower of the amounts identified in paragraphs 1 and 2 above.

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 Developer'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 Developer 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 Developer is common both to the development of the AHP Dwellings within any Firm Scheme and to any other activity, asset or property of the Developer, only such part of that cost as is attributable to the development of the AHP 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 the relevant design and quality standards in the Submitted 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.

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)
[DEVELOPER])
in the presence of:)

Authorised Signatory

Authorised Signatory