



Homes &
Communities
Agency

HEADS OF TERMS

Shared Ownership and Affordable Homes
Programme 2016 to 2021 contract for
unregistered provider (retention model)

August 2016

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Notice: Any application for funding approved by the Homes and Communities Agency will be on the basis of the final terms and conditions and subject to contract.

dated 2016

Homes and Communities Agency

and

Unregistered Grant Recipient

Heads of Terms

for the 2016-21 Shared Ownership and Affordable Homes Programme Contract (Retention Model)

THESE TERMS DO NOT CONSTITUTE OR IMPLY A COMMITMENT TO PROVIDE GRANT FUNDING BY THE AGENCY, NOR A REPRESENTATION THAT SUCH FUNDING WILL BE MADE AVAILABLE. ANY SUCH COMMITMENT WILL BE SUBJECT TO CONTRACT, THE AVAILABILITY OF AGENCY FUNDS AND SATISFACTORY DUE DILIGENCE AND DOCUMENTATION.

Heads of Terms for the 2016-21 Shared Ownership and Affordable Homes Programme Contract (the "Contract")

Date	[] 2016
Grant Recipient	[] (Grant Recipient) ¹
Grant Giver	Homes and Communities Agency (Agency)
Purpose of Grant	Grant is available to fund Help to Buy: Shared Ownership ² .
Allocated Grant	<p>£[]</p> <p>This represents the maximum amount of capital grant allocated by the Agency to the Grant Recipient in relation to its bid (the Approved Bid) and represents the aggregate capital grant payable across the agreed firm schemes and indicative schemes referenced within the Contract.</p> <p>Capital grant is payable only in relation to expenditure falling within the heads of expenditure referenced in the Development Costs (as set out below).</p>
Development Costs	All capital costs and expenses properly and reasonably incurred by the Grant Recipient in carrying out the Firm Scheme as set out in the scheme details, including, but not limited to land, housing-related infrastructure costs, construction costs, professional fees, sales and marketing costs, legal costs, any non-recoverable VAT and interest and administration charges incurred in connection with any senior finance.
Monitoring and Reviews	
Review meetings	<p>Performance against the Approved Bid and its constituent schemes will be monitored throughout the Term (being the period from the date of signature until 31 March 2022 (subject to earlier termination)).</p> <p>The Grant Recipient must attend four (4) meetings (Review Meetings) with the Agency each year, organised on a quarterly basis, at which the Grant Recipient's Development Director (or another member of its executive management team) shall attend.</p> <p>At least 5 Business Days in advance of each Review Meeting, an Officer's Certificate (in the form prescribed) must be supplied together with such other information as the Agency may reasonably request.</p> <p>At each Review Meeting the parties shall review (a) the Firm Schemes including, inter alia, details of Development Costs, progress against agreed delivery milestones and agreed scheme composition information; (b) the Indicative Schemes including progress against the</p>

¹ The final form of contract, may include some different/additional provisions to reflect the specific nature of the Grant Recipient and/or to reflect consortium arrangements.

² As described in the Capital Funding Guide at the date of these Heads of Terms.

	<p>indicative data in relation to delivery timelines; (c) cost information and scheme location and composition submitted by the Grant Recipient in IMS (the Agency's on-line investment management system); (d) additional information submitted by the Grant Recipient in IMS in response to paragraphs 60 and 81 of Shared Ownership and Affordable Homes Programme 16/21 Prospectus (the Prospectus); and (e) whether there is scope for the Grant Recipient to bring forward new supply.</p> <p>Annually, the parties shall meet to assess overall strategic performance of the Approved Bid (including any threats to future delivery), all variations made during the previous financial year and potential future adjustments.</p> <p>The parties shall work in good faith to seek to resolve issues which impact on the Grant Recipient's ability to deliver the Approved Bid.</p>
<p>Officer's Certificate</p>	<p>A member of the Grant Recipient's executive management team will be required to provide the Officer's Certificate in IMS each quarter³ The Officer's Certificate will certify that in all material respects:</p> <ul style="list-style-type: none"> (a) information currently submitted on IMS in respect of the Firm Schemes and Indicative Schemes is accurate; (b) all information supplied to the Agency in the previous quarter in connection with, or related to the Approved Bid, remains accurate; (c) all relevant spend information has been published in accordance with the Transparency Obligations (see below); (d) the Approved Bid (including the profile for projected start and completion dates) is capable of being delivered without the need for change; (e) it is not aware of any occurrence which may have jeopardised the effectiveness of the Fixed Charge/Guarantee/Performance Bond⁴; (f) unless expressly agreed by the Agency, no Firm Scheme which is a Section 106 Scheme is being subsidised by income generated by grant funds; and (g) all properties which (1) have received grant from the Agency under the Shared Ownership and Affordable Homes

³ The Officer's Certificate is not intended to create any personal liability. It is however viewed as an essential mechanism to ensure that targeted information is provided to the quarterly meetings in the interests of their efficient conduct. It is anticipated that a template form of certificate will be provided in IMS with the opportunity for disclosure to be made against it.

⁴ Where grant is to be paid to the Grant Recipient as a single instalment at Practical Completion (see "Payment of Grant by Agency in respect of Firm Schemes" below), no security of this nature will be required.

	Programme (2016-21) (the Programme); and/or (2) are Nil Grant Units ⁵ have been let on terms as agreed by the Agency in the Approved Bid.
Provision of Information	<p>The Grant Recipient must provide the Agency with such information as it shall require from time to time to allow the Agency to monitor the Grant Recipient's performance under the Contract. The Agency will not act vexatiously in exercising this right.</p> <p>Failure to provide such information will be a Specified Default (see "Default Events").</p>
Scheme submission and change procedures	
Approved Bid	The bid approved by the Agency will contain Firm Schemes (i.e. named schemes) only, Indicative Schemes (i.e. schemes which the Grant Recipient anticipates bringing forward as firm schemes in the future) only, or a combination of Firm Schemes and Indicative Schemes. The Approved Bid will be summarised in the Contract and further detailed in IMS.
Indicative Schemes	<p>The Grant Recipient must submit on IMS such details of Indicative Schemes as the Agency requires⁶.</p> <p>If accepted by the Agency, a capital grant figure will be allocated to the Indicative Scheme. Once confirmed on IMS, the Indicative Scheme becomes deliverable in accordance with the terms of the Contract (ie obligations will be imposed upon the Grant Recipient to use all reasonable endeavours (a) to ensure that the Indicative Scheme becomes a Firm Scheme by the Transition Longstop Date⁷; and (b) to notify the Agency of any likely delay to the transition).</p> <p>The Grant Recipient may propose changes to any Indicative Scheme at any time prior to it becoming a Firm Scheme. The Agency will be entitled to accept or reject such changes. If the Agency rejects the proposed changes, the Grant Recipient will have 10 Business Days to notify the Agency whether it wishes to proceed with the Indicative Scheme on the original basis or to withdraw it. If the Indicative Scheme is withdrawn, the Agency will be entitled to withdraw the grant allocation from the Grant Recipient in relation to the withdrawn scheme.</p>
Withdrawal of Indicative Scheme grant allocation	The Grant Recipient must notify the Agency promptly on becoming aware of any likely delay in the Indicative Scheme reaching Firm Scheme status by the Transition Longstop Date. On receipt of such notification (or on otherwise becoming aware of a delay), the Agency will be entitled acting reasonably either to extend the Transition Longstop Date or to withdraw the grant allocation in relation to that

⁵ I.e. units for which Firm Scheme Grant is not sought

⁶ See paragraph 47 of the Prospectus for further detail of the information required in IMS.

⁷ See paragraph 46 of the Prospectus for the schedule of when Indicative Schemes will be expected to progress to Firm Schemes.

	<p>Indicative Scheme. In determining whether to extend the Transition Longstop Date or withdraw the grant allocation, the Agency will consider (amongst other things) the availability of resources, the Grant Recipient's performance and the impact of any extended Transition Longstop Date to the deliverability of the Firm Scheme by the projected Firm Scheme completion date in IMS.</p>
Firm Schemes	<p>The Grant Recipient must submit details on IMS of individual named schemes in respect of which it is seeking to drawdown capital grant. Such details (which must be consistent with the Approved Bid) must be entered into the IMS system in good time prior to the Start on Site date. Grant payment in relation to a Firm Scheme is conditional on the scheme details having been submitted within the timeframe outlined above.</p> <p>In submitting details of a Firm Scheme in IMS the Grant Recipient will be deemed to have made certain specified representations and warranties in relation to that scheme including (but without limitation) as to the nature of its landholding at the site and the planning status of the scheme.</p> <p>The Agency has no obligation to fund any Firm Scheme prior to the scheme being confirmed as such on IMS.</p> <p>Once confirmed on IMS, the Firm Scheme becomes deliverable in accordance with the terms of the Contract.</p>
Conditions to Agency acceptance of a Firm Scheme	<p>The following conditions are indicative and not limited to those which need to be met (in form and substance satisfactory to the Agency) prior to Agency acceptance of a Firm Scheme:</p> <ul style="list-style-type: none"> (a) certification on IMS⁸ that all necessary consents required to enable the Firm Scheme to be developed have been obtained or will be obtained by completion; (b) certification on IMS that the Grant Recipient holds either a freehold or leasehold (of at least 99 years unexpired duration) interest in the property; (c) Agency satisfaction with the security being offered by way of a Fixed Charge over land, a Guarantee or a Performance Bond.⁹
Changes to Firm Schemes	<p>The Grant Recipient may propose changes to any Firm Scheme at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS.</p> <p>Where a change is proposed prior to the Start on Site Date and prior to payment of the first tranche of capital grant, the Agency will be</p>

⁸ The Contract will provide that information submitted on IMS will be regarded as a representation that the information supplied is accurate.

⁹ Where security is to be made available, it is assumed that it will be offered on a scheme specific rather than global basis. If this assumption is incorrect, consequential changes will need to be made to the resulting agreement.

entitled to accept or reject such changes or to accept them subject to adjustments.

If the Agency:

- (a) accepts the proposed change in principle, it shall be entitled to review the capital grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that review is a lower capital grant figure, the Agency will notify the Grant Recipient and the Grant Recipient will have 20 Business Days to notify the Agency whether it wishes to (i) proceed with the Firm Scheme on the basis of the revised capital grant figure, (ii) withdraw the Firm Scheme or (iii) withdraw the Firm Scheme and propose a Firm Scheme Substitution. If the Firm Scheme is withdrawn and no Firm Scheme Substitution is proposed or the Firm Scheme Substitution proposed is not accepted by the Agency, the Agency will withdraw the grant allocation for the Scheme from the Grant Recipient. If a Firm Scheme Substitution is accepted by the Agency and the Grant Recipient wishes to proceed, it must change the Firm Scheme Details in IMS accordingly. The Firm Scheme Details will be deemed to have been amended with effect from the date of the Agency's acceptance of the changed IMS information. Failure to notify the Agency within the specified period (**Notification Failure**) will (unless otherwise agreed by the Agency in writing) be deemed to be a decision by the Grant Recipient to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Grant Recipient during the specified period to remind the Grant Recipient of the need for the notification, but any failure on the Agency's part to do so will not preclude the Agency from treating a Firm Scheme as withdrawn where there has been a Notification Failure;
- (b) accepts the proposed change (including any change to the capital grant figure) as it stands, it will accept the change through IMS. The Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;
- (c) rejects the proposed changes, the Grant Recipient will have 20 Business Days to notify the Agency whether it wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If the Firm Scheme is withdrawn, the Agency will withdraw the grant allocation for the Scheme from the Grant Recipient. Failure to notify the Agency within the specified period (**Notification Failure**) will (unless otherwise agreed by the Agency in writing) be deemed to be a decision by the Grant Recipient to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Grant Recipient during the specified period to remind the Grant Recipient of

the need for the notification, but any failure on the Agency's part to do so will not preclude the Agency from treating a Firm Scheme as withdrawn where there has been a Notification Failure.

Under no circumstances will the Agency be required to accept any change which would have the result of increasing the amount of the Allocated Grant or the Firm Scheme grant or which would impact adversely on the security offered by the Grant Recipient.

Where a change is proposed after the Start on Site Date and payment of the first tranche of capital grant but prior to the Firm Scheme Completion Date, the Agency will be entitled to accept or reject such changes or to accept them subject to adjustments.

If the Agency:

- (a) accepts the proposed change in principle, it shall be entitled to review the capital grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that review is a lower capital grant figure, the Agency will notify the Grant Recipient and the Grant Recipient will have 20 Business Days to notify the Agency whether it wishes to proceed with the Firm Scheme on the basis of the revised capital grant figure, to withdraw it or to retract the proposed change so that the Firm Scheme continues as originally contemplated. Failure to notify the Agency within the specified period (**Notification Failure**) will (unless otherwise agreed by the Agency in writing) be deemed to be a decision by the Grant Recipient to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Grant Recipient during the specified period to remind the Grant Recipient of the need for the notification, but any failure on the Agency's part to do so will not preclude the Agency from treating a Firm Scheme as withdrawn where there has been a Notification Failure;
 - (i) If the Grant Recipient wishes to proceed, it must change the Firm Scheme Details (including the capital grant figure) in IMS accordingly. The Firm Scheme Details will be deemed to have been amended with effect from the date of the Agency's acceptance of the changed IMS information. The second instalment of capital grant will be adjusted downwards to take account of any reduction in the overall capital grant figure allocated to the scheme. If the necessary adjustment would result in the second instalment being a negative figure, the Grant Recipient must repay a sum equivalent to the amount necessary to bring the second instalment to zero.
 - (ii) If the Firm Scheme is withdrawn, the Agency will

	<p>withdraw the grant allocation in relation to that Firm Scheme from the Grant Recipient and the Grant Recipient must repay any capital grant received in relation to that scheme.</p> <p>(b) accepts the proposed change (including any change to the capital grant figure) as it stands, it will accept the change through IMS. The Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;</p> <p>(c) rejects the proposed changes, the Grant Recipient will have 20 Business Days to notify the Agency whether it wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If the Firm Scheme is withdrawn, the Agency will withdraw the grant allocation from the Grant Recipient. Failure to notify the Agency within the specified period (Notification Failure) will (unless otherwise agreed by the Agency in writing) be deemed to be a decision by the Grant Recipient to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Grant Recipient during the specified period to remind the Grant Recipient of the need for the notification, but any failure on the Agency's part to do so will not preclude the Agency from treating a Firm Scheme as withdrawn where there has been a Notification Failure.</p> <p>Under no circumstances will the Agency be required to accept any change which would have the result of increasing the amount of the Allocated Grant or Firm Scheme Grant.</p> <p>If the changes to the Firm Scheme will entail any increase in grant or extension of the Scheme, the Agency may require additional security.</p>
<p>Extension of Milestone Dates and extensions</p>	<p>The Grant Recipient will be expected to commit via IMS to specified dates for achieving Start on Site and Practical Completion in relation each Firm Scheme (Milestone Dates). Provision will be made for delays caused by events beyond the Grant Recipient's reasonable control (Milestone Extension Events) but all affordable homes must be delivered by 31 March 2022.</p>
<p>Firm Scheme Substitution</p>	<p>If:</p> <p>(a) it becomes apparent that a Firm Scheme will not meet the Milestone Dates for reasons which are not attributable to Milestone Extension Events; or</p> <p>(b) the Grant Recipient has opted to withdraw a Firm Scheme pursuant to the Changes to Firm Schemes provisions</p> <p>the Grant Recipient may request that the relevant Firm Scheme be substituted by another scheme.</p>

	The Agency will be obliged to consider (but not accept) any such request. Where it accepts a request, the failing Firm Scheme will be replaced by the incoming substitute scheme. Any capital grant already paid out in relation to the outgoing scheme will be treated as having been paid towards the incoming scheme and the capital grant sum payable in relation to the incoming scheme adjusted accordingly.
Bringing forward additional schemes	The Grant Recipient may propose bringing new named schemes into the Contract. Details of such schemes must be submitted in IMS and will be considered by the Agency through a process of Continuous Market Engagement ¹⁰ . If the Agency is satisfied with the scheme information, it shall be entitled (but not obliged) to accept the proposed scheme into the scope of the agreement. From the point of acceptance by the Agency, the new scheme will be treated as a Firm Scheme for the purposes of the Contract.
Delivery and on-going obligations of the Grant Recipient	
Delivery and operational obligations	<p>Obligations on the Grant Recipient in respect of each Firm Scheme include but are not limited to:</p> <ul style="list-style-type: none"> (a) delivering the Firm Scheme in accordance with agreed milestones and to the standards put forward by the Grant Recipient on IMS (as confirmed by the Agency)¹¹. All affordable homes must be delivered by 31 March 2022; (b) permanently using the delivered homes for the purposes for which the grant was paid (subject to the application of the Recovery of Capital Grants Determination (or any successor determination))¹²; (c) disposing of any Help to Buy: Shared Ownership units: <ul style="list-style-type: none"> i only at arm's length and on market terms; and ii in accordance with the provisions of the Capital Funding Guide in relation to Help to Buy: Shared Ownership products¹³; (d) entering into a Help to Buy Agency agreement and working with the Help to Buy Agent in the area in which the Firm Scheme is located; (e) not seeking possession of a Help to Buy: Shared Ownership unit under Ground 8 of Schedule 2 of the Housing Act 1988

¹⁰ See paragraph 9 of the Prospectus

¹¹ Any legislative changes (including changes to Building Regulations) which operate to enhance standards will be at the Grant Recipient's risk.

¹² The Agency will issue the above Determination prior to entering into the Contract with the Grant Recipient. Amongst other things, the Determination will set out the events which will trigger the Agency's entitlement to the recovery of the capital grant paid to the Grant Recipient. Please also see the explanatory note at the end of these Heads of Terms.

¹³ This will include an obligation to ensure that the terms of any Shared Ownership lease incorporates the prescribed "Fundamental Clauses" (see the Capital Funding Guide).

	<p>(as amended);</p> <ul style="list-style-type: none"> (f) complying with the requirements of the Capital Funding Guide; (g) maintaining full and accurate accounts and records (including receipts and expenditure) in relation to the Firm Scheme and the grant paid in respect of it and permitting inspection (if required) by the Agency and/or its advisors. Records must be maintained for 10 years from the date of grant payment in compliance with State Aid requirements. Separate accounts to be maintained in respect of any other development at the site of the Firm Scheme which does not constitute affordable housing; (h) promptly providing the Agency with all reasonably requested information and documentation in relation to the Approved Bid or any Firm Scheme; (i) if required, providing the Agency (or its nominee) access to the site upon reasonable notice for inspection purposes; (j) procuring and complying with terms of all consents and permissions required for the lawful development of the Firm Scheme; (k) complying with applicable legislation including applicable procurement and equalities legislation and providing evidence of such compliance on reasonable request; (l) promptly notifying the Agency once start on site has occurred; (m) acting at all times with the utmost good faith with the intent to deliver the units set out in the Approved Bid and with proper regard to the need for efficiency and effectiveness in the use of public funds; (n) promptly notifying the Agency in writing of any of the following: <ul style="list-style-type: none"> i the receipt of (or an offer of) public sector financial assistance or guarantees in relation to the Firm Scheme (other than Agency grant)¹⁴; ii any event which might adversely affect the timely delivery and completion of any part of the Firm Scheme; iii the occurrence of any Default Event; iv any breach of the Contract or failure or likely failure to
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¹⁴ This includes funding, assistance or subsidy in money or money's worth

	<p>deliver a Firm Scheme in accordance with the Firm Scheme Details or the failure or likely failure of an Indicative Scheme to meet the Transition Date; and</p> <p>v any other information the Agency reasonably requires in relation to the Scheme.</p> <p>(o) complying at its cost with the Agency's requirements in respect of the conduct of Compliance Audit as set out in the Capital Funding Guide;</p> <p>(p) complying with the Agency's requirements from time to time in relation to communications and publicity;</p> <p>(q) supplying CORE¹⁵ data in respect of all affordable homes delivered pursuant to the Contract;</p> <p>(r) complying with Open Book and Transparency Obligations.</p>
Open Book Obligations	The Grant Recipient must supply details relating to the Development Costs to the reasonable satisfaction of the Agency which the Agency reserves the right to verify on an Open Book basis.
Transparency Obligations	<p>Where the grant received by the Grant Recipient under this or any other of the Agency's affordable housing programmes delivering outputs in 2016-2021 exceeds £3m, the Grant Recipient must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Firm Schemes.</p> <p>The Agency will be entitled to publish such information as it considers appropriate in relation to the Programme including, but without limitation, details of the Approved Bid, Development Costs and funding for Firm Schemes. Entry into the Contract will be deemed to be consent by the Grant Recipient to the publication of such data.</p>
Payment, withholding, adjustment and reallocation of capital grant in relation to Firm Schemes	
Payment of Grant by Agency in respect of Firm Schemes	<p>The Agency may pay grant in either of the following manners:</p> <p>1 Two Tranche Payments</p> <p>(a) once Start on Site has been achieved, 50% of the agreed capital grant figure will be paid to the Grant Recipient on receipt of a properly certified and completed claim and subject to satisfaction of specified conditions to grant drawdown and supported by substantiating documentation if required; and</p> <p>(b) once Practical Completion has been achieved 50% of the</p>

¹⁵ The national information source "Continuous Recording" that records information on new AHP Housing occupiers and the properties they rent or buy.

	<p>agreed capital grant figure will be paid to the Grant Recipient on receipt of a properly certified and completed claim and subject to satisfaction of specified conditions to grant drawdown and supported by substantiating documentation if required.</p> <p>2 One Tranche Payment¹⁶</p> <p>(a) once Practical Completion has been achieved 100% of the agreed capital grant figure will be paid to the Grant Recipient on receipt of a properly certified and completed claim and subject to satisfaction of specified conditions to grant drawdown and supported by substantiating documentation if required.</p> <p>The Agency will make payment within 15 Business Days of receipt of a correctly certified and completed claim.</p> <p>The Agency will have no obligation to pay any tranche of grant prior to the payment date set out and accepted in IMS.</p> <p>The Agency reserves the right to amend the percentages attributable to tranche payments. Such right will not be exercisable, however, in relation to any Firm Scheme which has started on site and in respect of which the first tranche of grant has been paid.</p>
<p>Conditions to drawdown of grant in relation to a Firm Scheme</p>	<p>The following conditions are indicative and not limited to those which need to be met (in form and substance satisfactory to the Agency) prior to drawdown of capital grant in relation to a Firm Scheme:</p> <p>(a) Investment Partner status maintained;</p> <p>(b) completion of IMS requirements;</p> <p>(c) confirmation that all consents necessary to commence the development of the Firm Scheme have been obtained or are in the process of being obtained;</p> <p>(d) registration of a first fixed charge in favour of the Agency on the title of the site on which the Firm Scheme will be delivered (the Site) together with the Agency's prescribed form of certificate of title or provision of a parent company guarantee in a form acceptable to the Agency (Guarantee) coupled with appropriate restriction on title ((e) below) or a performance bond acceptable to the Agency (Performance Bond) coupled with appropriate restriction on title ((e) below); and</p> <p>(e) registration of a restriction on the title of the Site prohibiting disposal unless specific conditions are met¹⁷. Where land is</p>

¹⁶ Where grant is to be paid in one instalment at PC, no security of the types identified will be required from the Grant Recipient

¹⁷ The above principle will apply equally to the requirement to register a restriction on the title of the Site.

	<p>transferred to a third party, the transferee may be required to enter into a prescribed form of Deed of Covenant with the Agency protecting the user and grant contained within the grant funded units;</p> <p>(f) tranche specific drawdown conditions have been satisfied.</p>
<p>Withholding of payment by Agency</p>	<p>Payment of any tranche of grant may be withheld in circumstances which include the following:</p> <p>(a) in relation to any and all Firm Schemes where there is a Default Event of the following kind:</p> <ul style="list-style-type: none"> i Prohibited Act (i.e. fraud); ii Insolvency Event; iii Grant Recipient ceases operation; iv Loss/removal/relinquishment of Grant Recipient's Investment Partner status; v Grant Recipient's conduct (or that of its agents/subcontractors) harms the Agency's or Programme's reputation; vi Grant Recipient has failed to comply with its reporting or repayment obligations; vii Grant Recipient is in material breach of any other obligation under the Contract and has not taken satisfactory steps to remedy such breach; viii Any units are not delivered by 31.3.2022¹⁸ ix Any consent required to enable the Grant Recipient to deliver the Firm Scheme is withdrawn or revoked; x The Agency considers that the Fixed Charge/Guarantee/Performance Bond (as applicable) has or may become unenforceable <p>(each a General Withholding Event)</p> <p>(b) in respect of any Firm Scheme, where:</p> <ul style="list-style-type: none"> i the Firm Scheme is not delivered in accordance with the Firm Scheme Details or to the standards approved by the Agency via IMS; ii conditions for drawdown of grant in relation to a Firm Scheme are not satisfied;

¹⁸ 31.3.2022 is the end of Affordable Homes Programme 2016/21. The Agency has no guarantee of available resource for the programme after that date.

	<ul style="list-style-type: none"> iii where the Grant Recipient has failed to meet an agreed milestone date and the Agency has not agreed a revised date on IMS¹⁹; and/or iv where the Grant Recipient is in material breach of any other obligation in relation to the relevant Firm Scheme and has not taken satisfactory steps to remedy such breach; and/or v any consent required to enable the Grant Recipient to deliver the Firm Scheme is withdrawn or revoked; and/or vi the Agency considers that the Fixed Charge/Guarantee/Performance Bond (as applicable) has become unenforceable <p>(each a Scheme Withholding Event).</p> <p>In the event of the occurrence of a General Withholding Event of the type described in sub-paragraphs (a) (i-v) and (viii-x), the Agency shall be entitled permanently to withhold and reallocate all capital grant allocated but as yet unpaid to the Grant Recipient under the Contract.</p> <p>In the event of the occurrence of a General Withholding Event of the type described in sub-paragraphs (a) (vi and vii), the Agency shall be entitled to suspend payment of all capital grant allocated but as yet unpaid to the Grant Recipient under the Contract until the Grant Recipient has complied with the relevant obligation or taken satisfactory steps to remedy the relevant breach within (in each case) such timescale as the Agency shall reasonably require. Failure to comply or take the necessary steps within the prescribed timescale will entitle the Agency permanently to withhold and reallocate such grant.</p> <p>Failure by the Grant Recipient to comply/remedy within the required period will entitle the Agency to terminate the Firm Scheme and reallocate the unpaid capital grant.</p> <p>In circumstances where the Agency's right permanently to withhold and reallocate capital grant has arisen, the Agency shall (depending on the nature of the General Withholding Event) be entitled to recover either (i) all grant already paid to the Grant Recipient; or (ii) any grant paid to the Grant Recipient other than in relation to completed Firm Schemes (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond (as applicable)) (Completed Firm Schemes).</p> <p>In the event of the occurrence of a Scheme Withholding Event of the</p>
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¹⁹ The Agency would not seek to refuse a revised date provided it would not (a) materially and adversely affect the delivery of the Approved Bid, the Firm Scheme and/or the Agency's spend profile nor (b) occur after 31.3.2022.

type described in sub-paragraph (b)(i), the Agency shall (subject to any agreed adjustment under the implementation of any adjustment²⁰) be entitled permanently to withhold and reallocate all capital grant allocated but as yet unpaid to the Grant Recipient in relation to that Firm Scheme.

In the event of the occurrence of a Scheme Withholding Event of the type described in sub-paragraph (b) (iii), the Agency shall be entitled permanently to withhold and reallocate all capital grant allocated but as yet unpaid to the Grant Recipient in relation to that Firm Scheme and recover any capital grant already paid in relation to that scheme (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond (as applicable)).

In the event of the occurrence of a Scheme Withholding Event of the type described in sub-paragraphs (b) (ii iv and v), the Agency shall be entitled to suspend payment of all capital grant allocated but as yet unpaid to the Grant Recipient under the Contract until the Grant Recipient has satisfied the relevant condition or taken satisfactory steps to remedy the relevant breach within such timescale as the Agency shall reasonably require in each case; Failure to satisfy the condition/remedy within the relevant timescale will entitle the Agency to terminate the Firm Scheme, re-allocate any unpaid grant and recover any capital grant already paid in relation to that scheme (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond (as applicable)).

The Agency will not be obliged to make any payment to the Grant Recipient following any withholding of capital grant where such payment would fall after 31 March 2022.

²⁰ See Adjustments to capital grant section below.

<p>Adjustment to capital grant</p>	<p>If at the point of receiving a claim following Practical Completion, the Agency becomes aware by whatever means that the Firm Scheme has not been delivered in accordance with the Firm Scheme Details or to the standards approved by the Agency via IMS, then the Agency (at its discretion) shall have the option of adjusting the capital grant payable in relation to that Firm Scheme by such amount as it considers appropriate (acting reasonably and having regard to what has in fact been delivered) or withholding and re-allocating the amount of grant due to the Grant Recipient and terminating the Firm Scheme.</p> <p>If the Agency selects the withholding option, it shall be entitled to recover any first tranche grant paid to the Grant Recipient in relation to that Firm Scheme (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond (as applicable)).</p> <p>If the Agency selects the adjustment option, under no circumstances will the Agency be obliged to pay more by way of capital grant in relation to the Firm Scheme than the Firm Scheme Grant allocated to such scheme in IMS (the Original Grant Sum). Where the effect of the adjustment would be a lower overall grant figure for the Firm Scheme than the Original Grant sum, the second instalment of capital grant will be adjusted downwards. If the necessary adjustment would result in the second instalment being a negative figure, the Grant Recipient must repay a sum equivalent to the amount necessary to bring the second instalment to zero.</p>
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Default, Termination and Repayment and reallocation of Capital Grant

<p>Default Events</p>	<p>The Contract includes four classes of Default Event:</p> <ul style="list-style-type: none"> (a) Scheme Default – a default which entitles the Agency immediately and without any liability to the Grant Recipient to terminate the Contract in relation to an individual Firm Scheme rather than terminating the entire Contract; (b) Specified Default - a default which the Grant Recipient is given the opportunity to remedy within a prescribed period but which if not remedied within such period will entitle the Agency immediately and without any liability to the Grant Recipient to terminate the entire Contract; (c) Bid Default - a default which entitles the Agency (acting reasonably) to seek to agree adjustments to the Allocated Grant and which in default of agreement entitles the Agency on notice within a prescribed period and without liability to the Grant Recipient to terminate the entire Contract; and (d) Fundamental Default – a default which entitles the Agency immediately and without any liability to the Grant Recipient to terminate the entire Contract.
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	<p>A Scheme Default includes but is not limited to:</p> <ul style="list-style-type: none"> (a) a breach of the representations/warranties which has a material adverse effect on the Firm Scheme; (b) any consent required to enable the Grant Recipient to deliver the Firm Scheme is withdrawn or revoked; (c) a breach of specified delivery and operational obligations²¹; (d) a failure to agree revised capital grant figures in relation to adjustments made to second tranche grant at claim stage (see above) or post-delivery grant adjustments following the Agency becoming aware of non-compliance with Firm Scheme Details (e.g. post Compliance Audit); (e) the inability of the Grant Recipient to comply with the grant drawdown conditions; (f) a failure to register the charge or the restriction on the title of Site within the time periods required; (g) any other breach of the Contract which has a material adverse effect on the delivery of the Firm Scheme; and (h) a failure to deliver any Firm Scheme in its entirety by 31 March 2022; and (i) the Fixed Charge/Guarantee/Performance Bond becomes unenforceable²². <p>A Specified Default includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) a failure to supply the Officer's Certificate/provide information in accordance with the terms of the Contract or persistent material deficiencies or inaccuracies in the Officer's Certificate or the provision of information²³; (b) a breach of the representations/warranties which has a material adverse effect on the Approved Bid; (c) a failure to comply with the Open Book Obligations in the Contract; (d) any other breach of the Contract which has a material adverse effect on the delivery of the Approved Bid; and (e) a failure by the Grant Recipient to comply with any
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²¹ The specific obligations will be set out in the final Contract.

²² See footnote 4;

²³ The Officer's Certificate is fundamental to the Agency's quarterly monitoring regime. Failure to provide it or persistent inaccuracies in it will therefore be treated as Default Events.

	<p>repayment obligation.</p> <p>A Bid Default includes, but is not limited to the Agency (acting reasonably) determining that proper progress has not been made in delivering the Approved Bid;</p> <p>A Fundamental Default includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) an Insolvency Event; (b) a Prohibited Act has occurred²⁴; (c) any consent required to enable the Grant Recipient to comply with the Approved Bid is withdrawn or revoked²⁵; (d) the Grant Recipient ceases operating; (e) the Grant Recipient's status as an Investment Partner is lost, relinquished or removed; and (f) the Grant Recipient brings the Agency or the Programme into disrepute. <p>A Scheme Default will entitle the Agency to:</p> <ul style="list-style-type: none"> (a) terminate the Contract in relation to the relevant Scheme; (b) withhold all capital grant then due to the Grant Recipient in relation to that Firm Scheme; (c) re-allocate the balance of the Allocated Grant; and/or (d) recover the Firm Scheme Grant for affected Firm Schemes (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond). <p>Where the Scheme Default is of the type described in sub-paragraphs (a) (c) and (f), the Grant Recipient will always be afforded an opportunity to remedy the default within a reasonable or specified period, provided that such action would not materially and adversely affect the delivery of the Firm Scheme and/or the Agency's spend profile.</p> <p>A Specified Default will entitle the Agency to:</p> <ul style="list-style-type: none"> (a) terminate the Contract other than in relation to any Firm Scheme that has started on site and received the first tranche payment (a Continuing Firm Scheme);
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²⁴ Prohibited Act includes offences of fraud, deception or bribery.

²⁵ This provision is intended to apply to consents to the bid itself such as Board approvals or Regulatory consent. Individual scheme approvals are dealt with under Firm Scheme obligations.

- (b) withhold all capital grant then due to the Grant Recipient in relation to any Firm Scheme unless it is a Continuing Firm Scheme;
- (c) re-allocate the balance of the Allocated Grant; and/or
- (d) reclaim any grant already paid to the Grant Recipient other than in relation to Completed Firm Schemes (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond);

The Grant Recipient will always be afforded an opportunity to remedy the default within a reasonable specified period.

A **Bid Default** will entitle the Agency to:

- (a) terminate the Contract other than in relation to any Continuing Firm Scheme;
- (b) withhold all capital grant then due to the Grant Recipient in relation to any Firm Scheme unless it is a Continuing Firm Scheme;
- (c) re-allocate the balance of the Allocated Grant; and/or
- (d) reclaim any grant already paid to the Grant Recipient other than in relation to Completed Firm Schemes (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond);

Prior to the exercise by the Agency of any entitlement following a Bid Default, the Agency will notify the Grant Recipient of its intention to call a Bid Default. The parties will agree to meet within ten (10) Business Days of the date of such notification to discuss and agree in good faith whether any changes need to be made to the Approved Bid and/or the Allocated Grant to reflect the Grant Recipient's under performance in relation to delivery of the Approved Bid.

Where such changes are agreed, IMS will be updated accordingly and the Contract will continue. In default of agreement within a reasonable time, the Agency may exercise the rights described in sub-paragraphs (a) to (c) above. The Agency considers that a reasonable time should not exceed fifteen (15) Business Days from the date of the meeting.

A **Fundamental Default** will entitle the Agency to:

- (a) terminate the Contract;
- (b) withhold all capital grant then due to the Grant Recipient in relation to any Firm Scheme;
- (c) re-allocate the balance of the Allocated Grant; and

	<p>(d) reclaim grant already paid to the Grant Recipient in accordance with the methodology in the Contract, which will specify the amount of grant recoverable according to the nature of the Fundamental Default (including taking enforcement action pursuant to the Fixed Charge/Guarantee/Performance Bond (where applicable)).</p>
<p>Consequences of Termination</p>	<p>Wholesale termination of the Contract will:</p> <p>(a) absolve the Agency from any future obligation to make payment to the Grant Recipient in respect of any new supply under the Approved Bid other than a Continuing Firm Scheme which has been approved on IMS and where start on site has occurred; and</p> <p>(b) not absolve the Grant Recipient from complying with post termination obligations²⁶;</p> <p>Wholesale termination or partial termination (following Scheme Default) of the Contract will entitle the Agency to require repayment and/or reallocation of Grant in the circumstances specified in the Contract.</p>
<p>Repayment of Grant</p>	<p>The Grant Recipient may be required to repay grant paid (plus interest)²⁷ under the Contract in circumstances where:</p> <p>(a) a Prohibited Act has occurred;</p> <p>(b) the conduct of self-assessment procedural compliance tests reveals that the Firm Scheme has not complied with the relevant IMS details or a material misrepresentation has been identified in which case the Agency can (depending upon the nature of the misrepresentation) recover all the grant paid from the Grant Recipient or agree an adjustment to the grant amount with the Grant Recipient;</p> <p>(c) the Recovery of Capital Grants Determination (or any successor determination) applies – in which case the Grant Recipient may recycle or be required to repay in accordance with its terms;²⁸</p> <p>(d) an overpayment has been made or a payment has been made in error or following a misrepresentation;</p> <p>(e) an Insolvency Event has occurred in relation to the Grant</p>

²⁶ E.g. duty to use stock for the agreed purposes, grant repayment obligations etc.

²⁷ The rate of interest will be set out in the Contract.

²⁸ As noted above, the Agency will issue the Determination prior to entering into the contract with the Grant Recipient. Amongst other things, the Determination will set out the events which will trigger the Agency's entitlement to the recovery of the capital grant paid to the Grant Recipient. Please also see the explanatory note at the end of these Heads of Terms.

	<p>Recipient;</p> <p>(f) Termination Events²⁹ have occurred; and</p> <p>(g) breaches of specified obligations have occurred³⁰.</p>
State Aid	<p>If the Agency is required pursuant to the Decision of the Commission of the European Communities published on 20 December 2011 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) the Agency will be entitled to recover any such amount from the Grant Recipient. Public sector compensation includes payments through CIL.</p>
Nil Grant Units	<p>It is anticipated that Nil Grant Units will be made available as part of the Approved Bid.</p>
Acknowledgements Representations and warranties	<p>Specified acknowledgements in relation to capital grant will be required from the Grant Recipient.</p> <p>Representations and warranties by the Grant Recipient that are usually included in grant documentation including but not limited to:</p> <p>(a) performance of obligations under the Contract will not breach or conflict with any law, regulation or other agreement;</p> <p>(b) vires;</p> <p>(c) enforceability of obligations ;</p> <p>(d) no Prohibited Acts;</p> <p>(e) no default under any law or other agreement which may affect the Grant Recipient's ability to perform its obligations under the project documents or finance documents;</p> <p>(f) no litigation, arbitration or administrative or regulatory proceedings taking place, pending or, to the Grant Recipient's knowledge, threatened against the Grant Recipient or its assets which may have a material adverse effect;</p> <p>(g) full disclosure and accuracy of all information that might reasonably be thought would influence the Agency's decision to make financial accommodation available to the Grant Recipient;</p> <p>(h) solvency of the Grant Recipient;</p>

²⁹ A Termination Event is any event which triggers termination of the Contract either in whole or in part.

³⁰ The form of contract will identify the relevant circumstances.

	<p>(i) all required authorisations have been and are being complied with and remain current; and</p> <p>(j) no overlap in provision between AHP 16/21 units and those contracted to be provided under earlier HCA programmes.</p>
VAT	<p>The payment of any Allocated Grant is inclusive of Value Added Tax.</p> <p>In all other cases:</p> <p>(a) the amount of any payment or the value of any supply is expressed exclusive of VAT properly chargeable on it; and</p> <p>(b) where any payment or taxable supply falls to be made pursuant to the Contract 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.</p>
Assignment	<p>The Agency may transfer or assign all or part of the Contract at any time.</p> <p>The Grant Recipient may not transfer or assign all or any part of the Contract at any time without the prior written consent of the Agency.</p>
Boilerplate	<p>The Contract will include standard boilerplate provisions, including but not limited to, confidentiality, FOIA, intellectual property, information provision, health and safety, waiver, dispute resolution, notices, amendments, Construction Industry Scheme, CDM regulations, set off and severability.</p>
Governing law	<p>Laws of England and Wales.</p>
Other	<p>All other terms and conditions standard or desirable for a Grant Allocation of this type shall be included.</p>

Explanatory note: In exercise of the powers conferred on it by sections 32, 33 and 34 of the Housing and Regeneration Act 2008, the Agency is required to set out in a statutory determination (inter alia) the occasions when it may recover capital grant and the principles which it will apply to the recovery procedure. In order to fulfil this requirement, the Agency will issue a Determination prior to entering into a grant agreement with an Unregistered Body, and this, along with the associated terms of the Capital Funding Guide, will detail the grant recovery process applicable.

THE ABOVE TERMS DO NOT CONSTITUTE OR IMPLY A COMMITMENT TO PROVIDE GRANT FUNDING BY THE AGENCY, NOR A REPRESENTATION THAT SUCH FUNDING WILL BE MADE AVAILABLE. ANY SUCH COMMITMENT WILL BE SUBJECT TO CONTRACT, THE AVAILABILITY OF AGENCY FUNDS AND SATISFACTORY DUE DILIGENCE AND DOCUMENTATION.

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The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.