



Homes &  
Communities  
Agency

# HEADS OF TERMS

for the 2016 to 2021 Shared Ownership and  
Affordable Homes Programme

June 2016

# DRAFT

**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**

**[Developer]**

## **Heads of Terms**

**for the Shared Ownership and Affordable Homes Programme 2016-21-  
(Developer) Contract for Agreed Transfer 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 Shared Ownership and Affordable Homes Programme 2016-21 (Developer) Contract for Agreed Transfer model (the "Contract")

<b>Date</b>	[ ] 2016
<b>Developer</b>	[ ] (Developer) <sup>1</sup>
<b>Grant Giver</b>	Homes and Communities Agency ( <b>Agency</b> )
<b>Purpose of Grant</b>	Grant is available to fund the following products <sup>2</sup> :  (a) Help to Buy: Shared Ownership <sup>3</sup> ;  (b) Rent to Buy <sup>4</sup> ; and  (c) Specialist Rent <sup>5</sup> .
<b>Allocated Grant</b>	£[ ].  This represents the maximum amount of capital grant allocated by the Agency to the Developer in relation to its bid (the <b>Approved Bid</b> ) and represents the aggregate capital grant payable across the agreed firm schemes and indicative schemes referenced within the Contract.  Capital Grant is payable only in relation to expenditure falling within the heads of expenditure referenced in the Development Costs.
<b>Development Costs</b>	All capital costs and expenses properly and reasonably incurred by the Developer in delivering 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.
<b>Monitoring and Reviews</b>	
<b>Review meetings</b>	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)). The Developer must provide an officer's certificate ( <b>Officer's Certificate</b> ) in IMS (the Agency's on-line investment management system) quarterly together with any additional information which is required by

<sup>1</sup> In common with the Affordable Homes Programme 15-18, the final forms of contract will include some different/additional provisions to reflect the specific nature of the grant recipient (e.g. Local Authority; developer) and/or to reflect consortium arrangements.

<sup>2</sup> Where the schemes covered by Allocated Grant fall within scheme types described in Chapter 2 of the Affordable Homes Programme 16/21 Prospectus (the **Prospectus**), additional provisions may be required in the resulting contract to reflect the nature of the products funded.

<sup>3</sup> See paragraphs 13-21 (inclusive) of the Prospectus and as described in the Affordable Housing Capital Funding Guide at the date of these Heads of Terms.

<sup>4</sup> See paragraphs 22-24 (inclusive) of the Prospectus and as described in the Affordable Housing Capital Funding Guide at the date of these Heads of Terms.

	<p>the Agency to facilitate monitoring.</p> <p>Within five (5) Business Days of receipt of the Officer's Certificate and the additional information, the Agency and Developer shall attend a review meeting (<b>Review Meeting</b>).</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 indicative data in relation to delivery timelines; (c) cost information and scheme location and composition submitted by the Developer in IMS; (d) additional information submitted by the Developer in IMS in response to paragraphs 60 and 81 of the Prospectus; and (e) whether there is scope for the Developer to bring forward new supply.</p> <p>A representative of the Regulator<sup>6</sup> may attend Review Meetings.</p> <p>Annually, the parties shall meet to assess overall performance against the Approved Bid (including any threats to future delivery), all variations made during the previous financial year and potential future adjustments.</p> <p>A Review Meeting can be called outside of the quarterly cycle provided that the party requesting the meeting gives reasonable prior written notice to the other of such meeting and includes with the notice an agenda for such meeting.</p> <p>The parties to work in good faith to seek to resolve issues which impact on the Developer's ability to deliver the Approved Bid.</p>
<p><b>Officer's Certificate</b></p>	<p>A member of the Developer's executive management team will be required to provide the Officer's Certificate in IMS each quarter. The Officer's Certificate will certify that in all material respects<sup>7</sup>:</p> <ul style="list-style-type: none"> <li>a) information currently submitted on IMS in respect of the Firm Schemes and Indicative Schemes 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;</li> <li>b) the Developer is not in breach of its Transparency Obligations; and</li> <li>c) the Approved Bid (including the profile for projected start and completion dates) is capable of being delivered without the need for change.</li> </ul>

<sup>6</sup> I.e. the Agency in its capacity as Regulator of Social Housing (see Part 2 of the Housing and Regeneration Act 2008)

<sup>7</sup> 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 with the opportunity for disclosure to be made against it.

<b>Provision of Information</b>	<p>The Developer must provide the Agency and its auditors with such information as is required from time to time to allow (a) the Agency to monitor the Developer's performance under the Contract and (b) its auditors to perform their audit functions. The Agency will not act vexatiously in exercising this right.</p> <p>Failure to provide such information will be a Default (see "Default Events").</p>
<b>Scheme submission and change procedures</b>	
<b>Approved Bid</b>	<p>The bid approved by the Agency will contain Firm Schemes (ie named schemes) only or (at the Agency's discretion) a combination of Firm Schemes and Indicative Schemes (ie schemes which the Developer anticipates bringing forward as firm schemes in the future). The Approved Bid will be summarised in the Contract and further detailed in IMS.</p>
<b>Indicative Schemes</b>	<p>The Developer must submit on IMS such details of Indicative Schemes as the Agency requires<sup>8</sup>.</p> <p>If accepted by the Agency, a capital grant figure will be allocated from the overall Allocated Grant amount 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 Developer to use all reasonable endeavours (a) to ensure that the Indicative Scheme becomes a Firm Scheme by the Transition Longstop Date<sup>9</sup>; and (b) to notify the Agency of any likely delay to the transition).</p> <p>The Developer 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 Developer 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 Developer in relation to the withdrawn scheme.</p>
<b>Withdrawal of Indicative Scheme grant allocation</b>	<p>The Developer 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 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 Developer's performance and any adverse impact of the extension to the Transition Longstop Date</p>

<sup>8</sup> See paragraph 47 of the Prospectus for further detail of the information required in IMS.

<sup>9</sup> See paragraph 46 of the Prospectus for the schedule of when Indicative Schemes will be expected to progress to Firm Schemes.

	to the deliverability of the Firm Scheme by the projected Firm Scheme completion date in IMS.
<b>Firm Scheme</b>	<p>The Developer 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 Developer 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 and evidence (and associated details) of a binding sale and purchase agreement with a prospective purchaser of the SOAHP Dwellings.</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>
<b>Changes to the Firm Schemes</b>	<p>The Approved Bid may be changed by agreement. Changes may take the form of:</p> <ul style="list-style-type: none"> <li>a) revisions to: <ul style="list-style-type: none"> <li>i. the profile of projected Start on Site Dates and dates for Practical Completion; and/or</li> <li>ii. the type, location, number or tenure mix or the design and quality standards of SOAHP dwellings; and/or</li> <li>iii. the rent levels forecast for such dwellings included in the Approved Bid;</li> </ul> </li> <li>b) a reduction in the Allocated Grant;</li> <li>c) the Developer or the acquiring landlords committing more of its or their own resources to underpin the delivery of the Approved Bid;</li> <li>d) fewer or more SOAHP dwellings being included in the Approved Bid; or</li> <li>e) a change in the number, location or rate of Permitted Conversions or Conversion Capacity generated by the</li> </ul>

	<p>acquiring landlord (where applicable)<sup>10</sup>;</p> <p>f) such other change as either party may propose.</p> <p>Each party must give written notice on becoming aware of a circumstance which would necessitate a change being made to the Approved Bid. The notice must identify the proposed change and the reasons for it.</p> <p>Where a change is agreed, the Developer must update IMS as soon as is practicable and in any event within five (5) Business Days of the date of agreement. The change is effective only after it is accepted by the Agency in IMS.</p> <p>In default of agreement, the Agency will be entitled to terminate the Contract.</p>
<b>Conditions to Agency acceptance of a Firm Scheme</b>	<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> <p>i. certification on IMS<sup>11</sup> that all necessary consents required to enable the Firm Scheme to be developed have been obtained or will be obtained by completion;</p> <p>ii. certification on IMS that the interest of the Developer in the property which is subject of the Firm Scheme is compliant with the requirements of the Capital Funding Guide.</p>
<b>Firm Scheme Substitution</b>	<p>If:</p> <p>i. 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>ii. the Developer has opted to withdraw a Firm Scheme pursuant to the "Changes to Firm Schemes" provisions</p> <p>the Developer may request that the relevant Firm Scheme be substituted by another scheme.</p> <p>The Agency will be obliged to consider (but not accept) any such request. Where it accepts a request, the ongoing 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.</p>
<b>Bringing forward</b>	<p>The Developer may from time to time propose adding new named</p>

<sup>10</sup> See paragraph 70 of the prospectus

<sup>11</sup> The Contract will provide that information submitted on IMS will be regarded as a representation that the information supplied is accurate.

<b>additional schemes</b>	schemes into the contract. Details of such additional schemes must be submitted in IMS and will be considered by the Agency through a process of Continuous Market Engagement <sup>12</sup> . 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 in IMS, the new scheme will be treated as a Firm Scheme for the purposes of the Contract
<b>Delays and Time Extensions</b>	
<b>Extension of Milestone Dates and extensions</b>	The Developer will be expected to commit via IMS to specified dates for achieving Start on Site and Practical Completion in relation each Firm Scheme ( <b>Milestone Dates</b> ). Provision will be made for delays caused by events beyond the Developer's reasonable control ( <b>Milestone Extension Events</b> ) but all affordable homes must be delivered by 31 March 2022.
<b>Delivery and on-going obligations of the Developer</b>	
<b>Delivery and Developer Obligations</b>	<p>Obligations on the Developer in respect of each Firm Scheme include but are not limited to:</p> <ol style="list-style-type: none"> <li>i. delivering the Firm Scheme in accordance with agreed milestones and to the standards put forward by the Developer on IMS (as confirmed by the Agency)<sup>13</sup>. All affordable homes must be delivered by 31 March 2022;</li> <li>ii. promptly providing the Agency with all reasonably requested information and documentation in relation to the Approved Bid or any Firm Scheme;</li> <li>iii. complying with applicable legislation including applicable procurement and equalities legislation and providing evidence of such compliance on reasonable request;</li> <li>iv. promptly notifying the Agency once start on site has occurred;</li> <li>v. 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;</li> <li>vi. promptly notifying the Agency in writing of any of the</li> </ol>

<sup>12</sup> See paragraph 9 of the Prospectus

<sup>13</sup> Any legislative changes (including changes to Building Regulations) which operate to enhance standards will be at the Developer's risk.



	<p>following:</p> <ul style="list-style-type: none"> <li>i the receipt of (or an offer of) public sector financial assistance or guarantees in relation to the Firm Scheme (other than Agency grant)<sup>14</sup>;</li> <li>ii any event which might adversely affect the timely delivery and completion of any part of the Firm Scheme;</li> <li>iii the occurrence of any Default Event;</li> <li>iv any breach of the Contract or failure or likely failure to deliver a Firm Scheme in accordance with the Firm Scheme Details or the failure or likely failure of an Indicative Scheme to achieve Firm Scheme status by the Transition Longstop Date; and</li> <li>v any other information the Agency reasonably requires in relation to the Scheme.</li> </ul> <p>vii. complying at its cost with the Agency's requirements in respect of the conduct of self-assessment procedural compliance tests as set out in the Capital Funding Guide;</p> <p>viii. complying with the Agency's requirements from time to time in relation to communications and publicity;</p> <p>ix. supplying CORE<sup>15</sup> data in respect of all affordable homes delivered pursuant to the Contract;</p> <p>x. complying with Open Book and Transparency Obligations; and</p> <p>xi. 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;</p>
<b>Open Book Obligations</b>	The Developer 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.
<b>Transparency Obligations</b>	Where the grant received by the Developer under this Contract or other HCA affordable housing programmes delivering in the 2016/21 period exceeds £3m, the Developer must publish details quarterly of

<sup>14</sup> This includes funding, assistance or subsidy in money or money's worth

<sup>15</sup> The national information source "Continuous Recording" that records information on new SOAHP Housing occupiers and the properties they rent or buy.

	<p>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 Contract 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 Developer to the publication of such data.</p>
<p><b>Acknowledgements Representations and warranties</b></p>	<p>Specified acknowledgements in relation to capital grant will be required from the Developer.</p> <p>Representations and warranties by the Developer that are usually included in grant documentation include but are not limited to:</p> <ul style="list-style-type: none"> <li>a) performance of obligations under the Contract will not breach or conflict with any law, regulation or other agreement;</li> <li>b) vires;</li> <li>c) capacity generated by or through the Approved Bid is being applied to the delivery of new supply under the Contract;</li> <li>d) enforceability of obligations ;</li> <li>e) no prohibited acts;</li> <li>f) no default under any law or other agreement which may affect the Developer's ability to perform its obligations under the project documents or finance documents;</li> <li>g) no litigation, arbitration or administrative or regulatory proceedings taking place, pending or, to the Developer's knowledge, threatened against the Developer or its assets which may have a material adverse effect;</li> <li>h) 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 Developer;</li> <li>i) solvency of the Developer;</li> <li>j) all required authorisations have been and are being complied with and remain current;</li> <li>k) no overlap in provision between SOAHP 16/21 units and those contracted to be provided under earlier HCA programmes nor in conversion capacity across the two programmes; and</li> <li>l) no financial capacity generated by conversions/disposals</li> </ul>

	of units located in London is or will be used to support new supply out of London and vice versa .
<b>Grant Claim Procedures, Payment, withholding and adjustment of capital grant in relation to Firm Schemes</b>	
<b>Grant Claim Procedures</b>	<p>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.</p> <p>The Agency will pay grant as follows:</p> <ol style="list-style-type: none"> <li>i. once Practical Completion has been achieved, the Firm Scheme Grant will be paid to the Developer on receipt of a properly certified and completed claim and subject to satisfaction of specified conditions to grant drawdown (including but not limited to those noted below) and supported by substantiating documentation if required<sup>16</sup>;</li> <li>ii. the Agency will make payment within 15 Business Days of receipt of a correctly certified and completed claim.</li> </ol> <p>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.</p> <p>In submitting an application for Grant or submitting a confirmation of Practical Completion, the Developer is deemed to make or repeat identified representations and warranties including (but not limited to) confirmation that:</p> <ol style="list-style-type: none"> <li>a) the Firm Scheme has been procured, designed, constructed and delivered in accordance with the requirements of the Contract;</li> <li>b) the Firm Scheme has reached Practical Completion;</li> <li>c) 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;</li> <li>d) the Developer retains its status as an Investment Partner;</li> <li>e) it, a Group Company or the acquiring landlord (as applicable), has obtained all Consents necessary for the lawful development of the Firm Scheme to the Submitted</li> </ol>

<sup>16</sup> In exceptional circumstances, the Agency may agree to pay grant in two tranches (at start on site and practical completion). See Explanatory Note on page 18.

	<p>Standards;</p> <p>f) save where the Site is already in the ownership of the acquiring 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);</p> <p>g) [where the acquiring landlord is not a Registered Provider the Developer has procured that they will enter a restriction on the title in favour of the Agency in a prescribed form (<b>Restriction</b>)];</p> <p>h) all the SOAHP 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;</p> <p>i) the Firm Scheme is covered by the terms of a current Help to Buy Agency Agreement (where applicable); and</p> <p>j) no Default Event has occurred and there are no reasons why the Agency is able to withhold the grant monies.</p>
<p><b>Condition to Drawdown - Agreed Transfer</b></p>	<p>The Developer must procure a transfer of the SOAHP dwellings to an acquiring landlord on practical completion of the Firm Scheme (<b>Agreed Transfer</b>).<sup>17</sup></p>
<p><b>Condition to Drawdown - Deed of Adherence</b></p>	<p>In addition to the Agreed Transfer (where relevant), the Landlord will enter into a Deed of Adherence (in a prescribed form) on practical completion, which sets out the ongoing obligations of the landlord to the Agency in relation to the grant funded units. The Deed of Adherence duly executed by the acquiring landlord must be provided together with irrevocable authority from the landlord permitting the Agency to complete the deed following its execution by the Agency.</p> <p>The Deed of Adherence to be entered into on practical completion will include (but not be limited to) the following:</p> <ul style="list-style-type: none"> <li>a) representations by the Landlord confirming that they have received various details from the Developer in relation to the Firm Scheme;</li> <li>b) confirmation of the rents in respect of the SOAHP dwellings;</li> <li>c) confirmation of the acquisition price of the SOAHP dwellings;</li> <li>d) confirmation of the amount of Disposal Proceeds Funds or Recycled Capital Grant funds which the landlord is applying in</li> </ul>

<sup>17</sup> Where a scheme has been built out on the landlord's land the dwellings constructed by the Developer must have been handed over to the landlord.

	<p>respect of the acquisition from (or the construction by) the Developer (as applicable) of the SOAHP dwellings;</p> <p>e) various covenants relating to use of the SOAHP dwellings, regulation and compliance, along with obligations to provide information and notice on the occurrence any disposal;</p> <p>f) restrictions on conversions of the Affordable Homes Programme products (as applicable) and disposals;</p> <p>g) mechanics and requirements for repayment of grant;</p> <p>h) Landlord Default Events; and</p> <p>i) confidential information and data protection provisions;</p> <p>j) where there is to be a disposal of Help to Buy: Shared Ownership units, an obligation on the landlord to dispose of the units:</p> <ul style="list-style-type: none"> <li>i. only at arm's length and on market terms; and</li> <li>ii. in accordance with the provisions of the Capital Funding Guide in relation to Help to Buy: Shared Ownership products<sup>18</sup>; and</li> </ul> <p>k) for a landlord which is not a Registered Provider, an obligation to register a restriction on title in a prescribed form against its title (<b>Restriction</b>). The primary purpose of the restriction is to secure the long term use of the grant funded dwellings as affordable housing and to protect the public investment in them.</p> <p>A failure by the Landlord to register the Restriction after being obliged to do so, will result in the landlord becoming liable to repay any capital grant which becomes due on any disposal of grant funded property.</p>
<p><b>Payment of Grant by Agency in respect of Firm Schemes</b></p>	<p>The Agency will make payment of 100% of the Firm Scheme Grant figure within ten (10) Business Days of receipt of a correctly completed claim, the executed Deed of Adherence and completion authority.</p> <p>The Agency shall not be obliged:</p> <ul style="list-style-type: none"> <li>a) to pay the Firm Scheme Grant to the Developer before the Firm Scheme Completion Date has occurred;</li> <li>b) to make payment by way of Firm Scheme Grant to the Developer where: <ul style="list-style-type: none"> <li>i. the Landlord's status as a Registered Provider is</li> </ul> </li> </ul>

<sup>18</sup> This will include an obligation to ensure that the term of any Shared Ownership lease incorporates the prescribed "Fundamental Clauses" (see the Capital Funding Guide)

	<p>lost or removed in circumstances where the transferring SOAHP dwellings are rented dwellings;</p> <p>ii. the Regulator directs the Agency not to give financial assistance to the acquiring landlord of that Scheme or formally recommends to it that it should not do so; or</p> <p>iii. an Insolvency Event has occurred in relation to the Landlord.</p> <p>c) 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 2022.</p> <p>Where the situation described in (b) occurs, the parties will work together to find an alternative purchaser (approved by the Regulator) to take the affected SOAHP dwellings at no lower a price than had been agreed with the original acquiring landlord. Where an alternative purchaser is not found, then either the Agency or Developer may determine that the Firm Scheme is to be withdrawn and the Change Notice mechanism will be invoked.</p> <p>If a purchaser is found and the agreed acquisition price is higher than that agreed with the original purchaser, the Agency reserves the right to adjust the relevant grant allocation for the scheme downwards to ensure that the Developer is not receiving more public money than is required.</p>
<p><b>Withholding of payment by Agency</b></p>	<p>Payment of the Firm Scheme Grant may be withheld in circumstances which include the following:</p> <p>a) 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);</p> <p>b) 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 the Contract;</p> <p>c) the Developer transfers any SOAHP dwellings which are designated as Specialised Rent or Rent to Buy to an unregistered body (an entity which is not a Registered Provider);</p> <p>d) a Prohibited Act (eg fraud) has been committed by or on behalf of the Developer;</p> <p>e) an Insolvency Event has occurred;</p>

	<p>f) the Developer has ceased to operate;</p> <p>g) the Developer's Investment Partner status is removed or withdrawn; or</p> <p>h) the Developer is in material breach of any of its obligations and/or it has not taken steps to remedy it to the Agency's satisfaction (acting reasonably).</p> <p>In the circumstances set out in (a) and (b), the Agency may elect to agree a revised Firm Scheme Grant figure with the Developer. Where a revised figure cannot be agreed, the Agency will be entitled permanently to withhold the Firm Scheme Grant.</p>
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**Default, Termination and Repayment and reallocation of Grant**

<b>Default Events</b>	<p>A Default includes but is not limited to:</p> <p>a) failure by the Developer to comply with its monitoring, reporting, notification or open book obligations in the Contract and/or any information supplied in connection with its monitoring, reporting, notification or open book obligations whether in an Officer's Certificate, the open book obligations or otherwise, is materially deficient, misleading or inaccurate;</p> <p>b) the Developer is unable to make the representations and give the warranties set out in the Contract (in any case in whole or in part) and there is a resulting Material Adverse Effect;</p> <p>c) an Insolvency Event has occurred in relation to the Developer;</p> <p>d) a Prohibited Act has been committed by or on behalf of the Developer (in respect of which the Waiver Condition has not been satisfied);</p> <p>e) a breach of the Open Book Obligations and/or Transparency Obligations;</p> <p>f) 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;</p> <p>g) the Developer ceases operating/trading;</p> <p>h) the Developer's Investment Partner status is lost or removed;</p> <p>i) Failure to agree a Change Notice;</p> <p>j) The Developer has failed to comply with its Compliance</p>
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	<p>Audit, Grant repayment or grant claim validation obligations;</p> <p>k) Failure to agree revised Firm Scheme Grant figures where the delivered Firm Scheme does not reflect the Firm Scheme Details;</p> <p>l) Failure by the Developer to take adequate steps to ensure the registration by the acquiring landlord of the Restriction (where applicable); and/or</p> <p>m) any other breach of the Contract or event which has a Material Adverse Effect.</p> <p>The occurrence of the events in (c); (d); (g); (h) or (k) will entitle the Agency immediately to terminate the Contract without any liability to the Developer.</p> <p>For the remaining events, the Agency's right to termination will be suspended to allow time for the Developer to remedy the breach. If the Developer fails to remedy the Event of Default, the Agency will have the right to partially terminate the Contract. In such case, the Agency will have no further obligations in respect of any Firm Schemes which have not yet reached start on site.</p>
<p><b>Consequences of Termination</b></p>	<p>Wholesale termination of the Contract will:</p> <p>i. absolve the Agency from any future obligation to make payment to the Developer 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;</p> <p>ii. not absolve the Developer from complying with post termination obligations<sup>19</sup>;</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><b>Repayment of Grant</b> <sup>20</sup></p>	<p>The Agency reserves the right whether following termination of the Contract otherwise (which right the Developer expressly acknowledges and agrees) to recover from the Developer the Firm Scheme Grant or such part or aggregation thereof in circumstances where:</p> <p>i. a Prohibited Act has occurred and the Developer has not satisfied the Waiver Condition in respect of such Prohibited Act;</p> <p>ii. the Firm Scheme Grant has been paid to the Developer on the basis of a misrepresentation made by or on behalf of the</p>

<sup>19</sup> e.g. duty to use stock for the agreed purposes, grant repayment obligations etc.

<sup>20</sup> See explanatory note on page 18



	<p>Developer other than in the circumstances specified in Condition vi;</p> <p>iii. the Agency has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Developer;</p> <p>iv. the Developer fails to take adequate steps to ensure the registration by the acquiring landlord of the Restriction (where applicable);</p> <p>v. a balancing sum has arisen; or</p> <p>vi. 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.</p> <p>Repayment must be made within 10 Business Days of demand and carries interest a 2% above the RBS base rate.</p>
<b>State Aid</b>	<p>If the Agency is required pursuant to the December 2011 SGEI Decision (or any successor instrument) 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.</p>
<b>Nil Grant Units</b>	<p>It is anticipated that Nil Grant Units will be made available as part of the Approved Bid.</p>
<b>VAT</b>	<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>
<b>Assignment</b>	<p>The Agency may transfer or assign all or part of the Contract at any time.</p> <p>The Developer may not transfer or assign all or any part of the Contract at any time.</p>
<b>Boilerplate</b>	<p>The Contract will include standard boilerplate provisions, including but not limited to, confidentiality, the Freedom of Information Act,</p>

	intellectual property, information provision, health and safety, waiver, dispute resolution, notices, amendments, Construction Industry Scheme, CDM regulations; set off and severability.
<b>Governing law</b>	Laws of England and Wales.
<b>Other</b>	All other terms and conditions standard or desirable for a Grant Allocation of this type shall be included.

**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.**

#### **Explanatory Note**

In exceptional circumstances, the Agency may agree for the SOAHP grant funding to be payable in two tranches; a payment at start on site and a payment on practical completion.

In such circumstances, the Contract will be amended to reflect that arrangement and consequential amendments. Amendments are likely to include changes to the payment mechanics, representations and warranties, recovery events, events of default and withholding events.

In particular, bidders should note that the Agency will require the Developer to provide a form of security (through a parent company guarantee, first fixed charge or performance bond) for the advanced amount. In the event that the security is a first fixed charge the Developer will need to provide the Agency with a short form certificate of title (in a form acceptable to the Agency).

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## Homes & Communities Agency

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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.