



Homes &
Communities
Agency

SHARED OWNERSHIP AND AFFORDABLE HOMES PROGRAMME 2016 TO 2021 CONTRACT FOR RP CONSORTIUM

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

Registered Provider – Consortium

Heads of Terms

for the 2016-21 Shared Ownership and Affordable Homes Programme Contract

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 Giver	Homes and Communities Agency (Agency)
Lead Partner	[] (Lead Partner)
Consortium	<p>[Lead Partner]</p> <p>[<i>RP1</i>]</p> <p>[<i>RP2</i>]</p> <p>(each a Consortium Member)</p> <p>Each Consortium Member will be a party to the Contract so as to assume specific obligations under it in relation to individual schemes developed by it or on its behalf and to acknowledge that (a) monies received by the Consortium Member from the Lead Partner (together with utilised RCGF and DPF) in connection with the Contract constitute social housing assistance for the purposes of Sections 31-35 of the Housing and Regeneration Act 2008, (b) that the terms of this Agreement constitute the "events" for the purposes of Section 32 of that Act and (c) that the Contract's terms represent the conditions upon which the Agency's financial assistance is given.</p> <p>Reference to Consortium Members includes the Lead Partner.</p>
Additions to/ releases from Consortium membership	<p>Any additions to the Consortium will require prior Agency approval. Any additional or replacement Consortium Member will be obliged to execute a Deed of Adherence to record its acceptance of its obligations under this Agreement.</p> <p>Consortium Members may be released from the Contract subject to the Consortium:</p> <ul style="list-style-type: none"> (a) satisfying the Agency that the release of the relevant party will not affect the Consortium's ability to deliver the Approved Bid; or (b) renegotiating an Approved Bid satisfactory to the Agency; and (c) completion of a Deed of Release¹
Purpose of Grant	Grant is available to fund the following products ² :

¹ The form of Release Deed and Deed of Adherence will be included in the Contract.

² Where the schemes covered by Allocated Grant fall within scheme types described in paragraph 108 of the Shared Ownership and Affordable Homes Programme 16/21 Prospectus (the **Prospectus**), additional provisions may be required in the resulting contract to reflect the nature of the relevant scheme. For example, for Off the Shelf Schemes, grant will be paid in a single tranche.

	<p>a) Help to Buy: Shared Ownership³;</p> <p>b) Rent to Buy⁴</p> <p>c) Specialist Rent⁵.</p>
Allocated Grant	<p>£[]</p> <p>This represents the maximum amount of capital grant allocated by the Agency to the Consortium in relation to its bid (the Approved Bid) and represents the aggregate capital grant payable across the agreed firm schemes (Firm Schemes) and indicative schemes (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	<p>All capital costs and expenses properly and reasonably incurred by the relevant Consortium Member 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.</p>
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 Lead Partner must attend four (4) meetings (Review Meetings) with the Agency each year, organised on a quarterly basis, at which (as a minimum the Lead Partner's Development Director or another member of its executive management team familiar with the Approved Bid) must 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 Lead Partner and the Agency will 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</p>

³ As described in the Capital Funding Guide at the date of these Heads of Terms.

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

⁵ See paragraphs 25-29 (inclusive) of the Prospectus and as described in the Capital Funding Guide at the date of these Heads of Terms.

	<p>the Lead Partner in IMS (the Agency's on-line investment management system); (d) additional information submitted by the Consortium Member in IMS in response to paragraphs 60 and 81 of the Prospectus; and (e) whether there is scope for the Consortium to bring forward new supply.</p> <p>A representative of the Regulator⁶ may attend Review Meetings.</p> <p>Annually, the Lead Partner and the Agency 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 Lead Partner and the Agency shall work in good faith to seek to resolve issues which impact on the Consortium's ability to deliver the Approved Bid.</p>
<p>Officer's Certificate</p>	<p>A member of the Lead Partner's executive management team will be required to provide the Officer's Certificate in IMS each quarter.⁷ It shall be the Lead Partner's obligation to procure such information as it requires from each Consortium Member to enable it to provide the Officer's Certificate in accordance with the terms of the Contract. 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 by or on behalf of the Consortium to the Agency and/or Regulator in the previous quarter in connection with, or related to the Approved Bid, remains accurate (including, inter alia, details of any disposals or conversions); (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) unless expressly agreed by the Agency, no Firm Scheme which is a Section 106 Scheme is being subsidised by income generated by grant funds, RCGF, DPF⁸ or conversion capacity;⁹ and (f) all properties which (1) have received grant from the Agency under the Shared Ownership and Affordable Homes

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

⁷ 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. A template form of certificate will be provided in IMS with the opportunity for disclosure to be made against it.

⁸ See paragraph 71 of the Prospectus and applicable Disposals Fund Proceeds Guidance

⁹ See paragraph 70 of the Prospectus for explanation of "conversion capacity"

	<p>Programme (2016-21) (the Programme); (2) are Nil Grant Units¹⁰ and/or (3) are conversions (creating capacity for the Approved Bid) have been let on terms as agreed by the Agency in the Approved Bid.</p>
Provision of Information	<p>The Lead Partner must provide the Agency with such information as it shall require from time to time to allow the Agency to monitor the Consortium's performance under the Contract. The Agency will not act vexatiously in exercising this right. The Consortium Members will be obliged to cooperate with the Lead Partner to facilitate information provision.</p> <p>Failure to provide such information will be a Specified Default (see Default Events).</p>
Scheme submission and change procedures	
Approved Bid	<p>The bid approved by the Agency may contain Firm Schemes (i.e. named schemes) only, Indicative Schemes (i.e. schemes which the Consortium 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.</p>
Indicative Schemes	<p>The Lead Partner must submit or procure the submission on IMS of such details of Indicative Schemes as the Agency requires¹¹.</p> <p>If accepted by the Agency, a capital grant figure will be allocated to each Indicative Scheme. Once confirmed on IMS, an Indicative Scheme becomes deliverable in accordance with the terms of the Contract (i.e. obligations will be imposed upon the Lead Partner and relevant Consortium Member to use all reasonable endeavours (a) to ensure that the Indicative Scheme becomes a Firm Scheme by the Transition Longstop Date¹²; and (b) to notify the Agency of any likely delay to the transition).</p> <p>The Lead Partner may propose changes to an Indicative Scheme up to 40 Business Days 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 Lead Partner will have 20 Business Days to notify the Agency whether the relevant Consortium Member 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 made in relation to the withdrawn scheme.</p>
Withdrawal of Indicative	<p>The Lead Partner must notify the Agency promptly on becoming aware of any likely delay in an Indicative Scheme reaching Firm</p>

¹⁰ I.e. units for which Firm Scheme Grant is not sought

¹¹ See paragraph 47 of the Prospectus for further detail of the information required in IMS.

¹² See paragraph 46 of the Prospectus for the schedule of when Indicative Schemes will be expected to progress to Firm Schemes.

Scheme grant allocation	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 Consortium's performance and the impact of any extended Transition Longstop Date to the deliverability of the resulting Firm Scheme by the projected Firm Scheme completion date in IMS.
Firm Schemes	<p>The Lead Partner 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 permitting the Lead Partner to submit details of a Firm Scheme in IMS, the relevant Consortium Member will be deemed to have made certain specified representations in relation to that scheme including (but without limitation) as to the nature of its landholding at the site and the status of the consents required for 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 IMS¹³ 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 interest of the Lead Partner (or other Consortium Member (as applicable)) in the property the subject of the Firm Scheme is compliant with the requirements of the Capital Funding Guide.
Changes to Firm Schemes	The Lead Partner may propose (on behalf of the relevant Consortium Member) changes to any Firm Scheme at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS.

¹³ The Contract will provide that information submitted on IMS will be regarded as a representation that the information supplied is accurate.

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 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 will 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 Lead Partner and the Lead Partner will have 20 Business Days to notify the Agency whether it or the relevant Consortium Member (as applicable) wishes to (i) proceed with the Firm Scheme on the basis of the revised capital grant figure or (ii) withdraw the Firm Scheme. If the Firm Scheme is withdrawn the Agency will withdraw the grant allocation for the affected Firm Scheme. If the Lead Partner/relevant Consortium Member (as applicable) wishes to proceed, the Lead Partner 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 to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Lead Partner during the specified period to remind it 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 Lead Partner will have 20 Business Days to notify the Agency whether it or the relevant Consortium Member (as applicable) 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. 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 to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Lead Partner during the specified period to remind the Lead Partner 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.

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 Lead Partner and the Lead Partner will have 20 Business Days to notify the Agency whether it or the relevant Consortium Member (as applicable) 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 to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Lead Partner during the specified period to remind the Lead Partner 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;

If the Lead Partner or the relevant Consortium Member (as applicable) wishes to proceed, the Lead Partner 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 Firm Scheme. If the necessary adjustment would result in the second instalment being a negative figure, the relevant Consortium Member must repay a sum equivalent to the amount necessary to bring the second instalment to zero.

If the Firm Scheme is withdrawn, the Agency will withdraw the grant allocation in relation to that Firm Scheme and the relevant Consortium Member must repay any capital grant

	<p>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 Lead Partner will have 20 Business Days to notify the Agency whether it or the relevant Consortium Member (as applicable) 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. 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 to withdraw the Firm Scheme. The Agency will take reasonable steps to contact the Lead Partner during the specified period to remind the Lead Partner 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>
Extension of Milestone Dates and extensions	The Consortium will be expected to commit via IMS to specified dates for achieving Start on Site and Practical Completion in relation to each Firm Scheme (Milestone Dates). Provision will be made for delays caused by events beyond the relevant Consortium Member's reasonable control (Milestone Extension Events) but all affordable homes must be delivered by 31 March 2022.
Firm Scheme Substitution	<p>If it becomes apparent that a Firm Scheme will not meet the Milestone Dates for reasons which are not attributable to Milestone Extension Events the Lead Partner 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 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.</p>
Bringing forward additional schemes	The Lead Partner may propose bringing new named schemes into the Contract during the Term. Details of such schemes must be submitted in IMS and will be considered by the Agency through a process of Continuous Market Engagement ¹⁴ . If the Agency is satisfied with the

¹⁴ See paragraph 9 of the Prospectus

	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	
Delivery and operational obligations	<p>Obligations in respect of each Firm Scheme include but are not limited to the Lead Partner and/or (to the extent applicable) the relevant Consortium Member:</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 Lead Partner on IMS (as confirmed by the Agency)¹⁵. 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 and Recycled Capital Grant Fund Determination 2015 (or any successor determination)); (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 products¹⁶; (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 (as amended); (f) complying with the requirements of the Capital Funding Guide and with the Regulator's Rent Standard and Tenancy Standard where applicable¹⁷; (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

¹⁵ Any legislative changes (including changes to Building Regulations) which operate to enhance standards will be at the relevant Consortium Member's risk.

¹⁶ 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).

¹⁷ The Rent Standard and Tenancy Standard will only apply to Specialist Rent dwellings.

	<p>site of the Firm Scheme which does not constitute affordable housing;</p> <p>(h) promptly providing the Agency with all reasonably requested information and documentation in relation to the Approved Bid or any Firm Scheme;</p> <p>(i) if required, providing the Agency (or its nominee) with access to the site upon reasonable notice for inspection purposes;</p> <p>(j) procuring and complying with terms of all consents and permissions required for the lawful development of the Firm Scheme;</p> <p>(k) complying with applicable legislation including applicable procurement and equalities legislation and providing evidence of such compliance on reasonable request;</p> <p>(l) promptly notifying the Agency once Start on Site has occurred;</p> <p>(m) acting at all times with the utmost good faith with the intent to deliver or procure the delivery of 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;</p> <p>(n) promptly notifying the Agency in writing of any of the following:</p> <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 received under the Programme)¹⁸; 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 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 v any other information the Agency reasonably requires in relation to the Firm Scheme. <p>(o) complying (at its cost) with the Agency's requirements in respect of the conduct of the Compliance Audit as set out in the Capital Funding Guide;</p>
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¹⁸ This includes funding, assistance or subsidy in money or money's worth

	<p>(p) complying with the Agency's requirements from time to time in relation to communications and publicity;</p> <p>(q) supplying CORE¹⁹ data in respect of all affordable homes delivered pursuant to the Contract;</p> <p>(r) ensuring that where applicable:</p> <ul style="list-style-type: none"> i no more conversions or disposals²⁰ of existing stock are made than are necessary to create the Conversion Capacity identified in the Approved Bid²¹; ii rents are not charged at a higher level than set out in IMS (excepting increases permitted by the Tenancy Standard for the relevant property type²²);and iii Rent to Buy units are provided at an Intermediate Rent²³ for a minimum of 5 years after which the tenant in occupation has the first right to purchase the unit;²⁴ <p>(s) complying with Open Book and Transparency Obligations.</p> <p>Where a Consortium Member is aware that it is in breach of such obligations, it shall promptly notify the Agency and the Lead Partner of the existence of that breach and shall take such steps as are appropriate in the circumstances to remedy the breach as soon as is practicable.</p>
Open Book Obligations	Each Consortium Member 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 any Consortium Member under this or any other of the Agency's affordable housing programmes delivering outputs in 2016-2021 exceeds £3m, that Consortium Member 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 each Consortium Member to the publication of such data.</p>
Payment, withholding, adjustment and reallocation of capital grant in relation to Firm Schemes	

¹⁹ The national information source "Continuous Recording" that records information on new AHP Housing occupiers and the properties they rent or buy.

²⁰ Other than those necessary to the RP's wider asset management requirements – applicable only to Specialist Rent dwellings

²¹ Conversions to Affordable Rent are only available in support of Specialist Rent dwellings – see paragraph 70 of the Prospectus

²² Applicable only to any Specialist Rent dwellings

²³ A definition of Intermediate Rent is set out in the Capital Funding Guide.

²⁴ See paragraphs 22 - 24 of the Prospectus

<p>Payment of Grant by Agency in respect of Firm Schemes</p>	<p>The Agency will pay grant as follows:</p> <ul style="list-style-type: none"> (a) once Start on Site has been achieved, 50% of the agreed capital grant figure for the relevant Firm Scheme will be paid to the Lead Partner 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; (b) once Practical Completion has been achieved, 50% of the remaining agreed capital grant figure will be paid to the Lead Partner 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; (c) the Agency will make payment within 15 Business Days of receipt of a correctly certified and completed claim. <p>Each Consortium Member must allocate the grant it receives against units funded under the Contract (i.e. not against the Nil Grant Units). In allocating such grant, it must comply with the terms of the Capital Funding Guide in relation to the calculation of recoverable grant. This is necessary for the purposes of identifying the amount of grant in the units for the purposes of RCGF (see Grant Recovery Section of Capital Funding Guide).</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> <ul style="list-style-type: none"> (a) Registered Provider status (for applicable Firm Schemes)²⁵ of the relevant Consortium Member and Investment Partner status of the Lead Partner maintained; (b) completion of IMS requirements; (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; and (d) tranche specific drawdown conditions have been satisfied.

²⁵ i.e. where the Firm Scheme is delivering Specialist Rent dwellings.

<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 (ie fraud); ii Insolvency Event; iii the relevant Consortium Member ceases operation; iv Loss/removal/relinquishment of the Lead Partner's Investment Partner status; v Regulator directs/recommends that no capital grant should be paid to the relevant Consortium Member; vi the relevant Consortium Member's conduct (or that of its agents/subcontractors) harms the Agency's or the Programme's reputation; vii the relevant Consortium Member has failed to comply with its reporting or repayment obligations; viii there is a material breach of any other obligation under the Contract and satisfactory steps have not been taken to remedy such breach; ix any units are not delivered by 31 March 2022²⁶ x for applicable Firm Schemes²⁷ the loss/removal/relinquishment of the relevant Consortium Member's Registered Provider status; and/or xi any consent required to enable delivery of the Approved Bid is withdrawn or revoked; <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;
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²⁶ 31.3.2022 is the end of SOAHP 2016/21. The Agency has no guarantee of available resource for the programme after that date.

²⁷ I.e. where the Firm Scheme is delivering Specialist Rent dwellings

	<ul style="list-style-type: none"> iii where the relevant Consortium Member has failed to meet an agreed Milestone Date and the Agency has not agreed a revised date on IMS²⁸; iv where the relevant Consortium Member 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 delivery of the Firm Scheme is withdrawn or revoked <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-vi) and (ix-xi), the Agency shall be entitled permanently to withhold and re-allocate all capital grant allocated but as yet unpaid to the relevant Consortium Member under the Contract.</p> <p>In the event of the occurrence of a General Withholding Event of the type described in sub-paragraphs (a) (vii and viii), the Agency shall be entitled to suspend payment of all capital grant allocated but as yet unpaid under the Contract until the relevant obligation has been complied with or satisfactory steps have been taken 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 re-allocate such grant.</p> <p>Failure by the Lead Partner or relevant Consortium Member (as applicable) to comply/remedy within the required period will entitle the Agency to terminate the Firm Scheme and re-allocate the unpaid capital grant.</p> <p>In circumstances where the Agency's right permanently to withhold and re-allocate 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 Lead Partner or relevant Consortium Member (as applicable); or (ii) any grant paid to the Lead Partner or relevant Consortium Member (as applicable) other than in relation to completed Firm Schemes (Completed Firm Schemes).</p> <p>In the event of the occurrence of a Scheme Withholding Event of the type described in sub-paragraph (b)(i), the Agency shall (subject to any agreed adjustment under the implementation of any adjustment²⁹) be entitled permanently to withhold and re-allocate all capital grant allocated but as yet unpaid in relation to that Firm Scheme.</p>
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²⁸ 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.

²⁹ See Adjustments to capital grant section below.

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 re-allocate all capital grant allocated but as yet unpaid in relation to that Firm Scheme and recover any capital grant already paid in relation to that scheme.

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 under the Contract until the relevant condition has been satisfied or satisfactory steps taken 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 grant already paid in relation to that Firm Scheme.

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

The Agency's right to exercise its rights on the occurrence of a General Withholding Event of the type described in sub-paragraphs (a) (i-iii), (v-vi), (ix-x) shall be suspended for a 30 day period (the **Resolution Period**) to give the Consortium an opportunity to:

- (a) remove the defaulting Consortium Member³⁰ and/or replace the Lead Partner with a Registered Provider (if applicable) with Investment Partner status; and
- (b) satisfy the Agency that the removal of the relevant party will not affect the Consortium's ability to deliver the Approved Bid; or
- (c) seek to renegotiate an Approved Bid satisfactory to the Agency.

Where the actions contemplated above have been successfully achieved during the Resolution Period, the Agency's right to termination shall lapse.

³⁰ The Agency will require the removed Consortium Member to provide a Deed of Release executed by it and the other Consortium Members.

<p>Adjustment to capital grant</p>	<p>If at the point of receiving a claim for the second tranche grant, 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 second tranche grant due to the Lead Partner 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 relevant Consortium Member in relation to that Firm Scheme.</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 relevant Consortium Member must repay a sum equivalent to the amount necessary to bring the second instalment to zero.</p>
<p>Default, Termination and Repayment and reallocation of Capital Grant</p>	
<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 any Consortium Member to terminate the Contract in relation to an individual Firm Scheme rather than terminating the entire Contract; (b) Specified Default - a default which the Lead Partner / relevant Consortium Member (as applicable) 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 any Consortium Member 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 any Consortium Member to terminate the entire Contract; and (d) Fundamental Default – a default which entitles the Agency immediately and without any liability to any Consortium

	<p>Member to terminate the entire Contract.</p> <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 relevant Consortium Member to deliver the Firm Scheme is withdrawn or revoked; (c) a breach of specified delivery and operational obligations³¹; (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 Lead Partner/ relevant Consortium Member (as applicable) to comply with the grant drawdown conditions; (f) any other breach of the Contract which has a material adverse effect on the delivery of the Firm Scheme; and (g) a failure to deliver any Firm Scheme in its entirety by 31 March 2022. <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 Lead Partner on behalf of the relevant Consortium Member 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. <p>Where the Scheme Default is of the type described in sub-paragraphs (a) (c) and (f), an opportunity to remedy the default within a reasonable specified period will always be afforded to the relevant Consortium Member/Lead Partner, 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 includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) a failure to supply the Officer's Certificate/provide information
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³¹ The specific obligations will be set out in the final Contract.

	<p>in accordance with the terms of the Contract or persistent material deficiencies or inaccuracies in the Officer's Certificate or the provision of information³²;</p> <ul style="list-style-type: none"> (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 Lead Partner/ relevant consortium member (as applicable) to comply with any repayment obligation. <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); (b) withhold all capital grant then due to the relevant Consortium Member 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 relevant Consortium Member other than in relation to Completed Firm Schemes; <p>Where the Specified Default is capable of remedy, the defaulting party will always be afforded an opportunity to remedy the default within a reasonable specified period.</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 Bid Default will entitle the Agency to:</p> <ul style="list-style-type: none"> (a) terminate the Contract other than in relation to any Continuing Firm Scheme; (b) withhold all capital grant then due to be paid to the Lead Partner in relation to any Firm Scheme unless it is a Continuing Firm Scheme; (c) re-allocate the balance of the Allocated Grant; and/or
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³² 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.

- (d) reclaim any grant already paid to the relevant Consortium Member other than in relation to Completed Firm Schemes;

Prior to the exercise by the Agency of any entitlement following a Bid Default, the Agency will notify the Lead Partner 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 Consortium's 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** includes, but is not limited to:

- (a) an Insolvency Event in relation to any Consortium Member;
- (b) a Prohibited Act has occurred³³;
- (c) any consent required to enable delivery of the Approved Bid is withdrawn or revoked³⁴;
- (d) any Consortium Member ceases operating;
- (e) a relevant Consortium Member's status as a Registered Provider (for applicable Firm Schemes³⁵) is lost, relinquished or removed;
- (f) the Lead Partner's status as an Investment Partner is lost, relinquished or removed;
- (g) where the Regulator directs or recommends that grant is not to be paid to a Consortium Member; and
- (h) any Consortium Member brings the Agency or the Programme into disrepute.

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

- (a) terminate the Contract;
- (b) withhold all capital grant then due to the Lead Partner in relation to any Firm Scheme;

³³ Prohibited Act includes offences of fraud, deception or bribery.

³⁴ 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.

³⁵ I.e. where the Firm Scheme is delivering Specialist Rent dwellings

	<ul style="list-style-type: none">(c) re-allocate the balance of the Allocated Grant; and(d) reclaim grant already paid in accordance with the methodology in the Contract, which will specify the amount of grant recoverable according to the nature of the Fundamental Default. <p>The Agency's right to terminate the Contract for a Fundamental Default will be suspended for a 30 day period (Remediation Period) to give the Consortium an opportunity to:</p> <ul style="list-style-type: none">(a) remove the defaulting Consortium Member³⁶ and/or replace the Lead Partner with a Registered Provider) (if applicable) with Investment Partner status; and(b) satisfy the Agency that the removal of the relevant party will not affect the Consortium's ability to deliver the Approved Bid; or(c) seek to renegotiate an Approved Bid satisfactory to the Agency. <p>Where the actions contemplated above have been successfully achieved during the Remediation Period, the Agency's right to terminate shall lapse.</p>
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³⁶ The Agency will require the removed Consortium Member to provide a Deed of Release executed by it and the other Consortium Members.

<p>Consequences of Termination</p>	<p>Wholesale termination of the Contract will:</p> <ul style="list-style-type: none"> (a) absolve the Agency from any future obligation to make payment to any Consortium Member 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; (b) not absolve the relevant Consortium Member from complying with Post Termination Obligations³⁷; (c) unless (and to the extent that) the Regulator prescribes otherwise, not preclude the relevant Consortium Member from charging an Affordable Rent in respect of the Specialist Rent dwellings then delivered under the Approved Bid and any conversions agreed by the Agency as supporting their delivery; <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. In the event that the Contract is partially terminated, the parties' obligations under the Contract related to the terminated scheme will cease (other than with respect to the relevant Consortium Member's Post Termination Obligations (see below)) but the Consortium's other obligations under the Contract will not be released.</p>
<p>Consequences of release/ removal of Consortium Member from Contract</p>	<p>Where a Consortium Member has been released from the Contract (see above) or the Contract has not been terminated but the defaulting Consortium Member has been removed as a consequence of a Fundamental Default, unless and to the extent that the Regulator prescribes otherwise, any permission to convert units to an Affordable Rent to support the additional supply forming part of the Approved Bid by that Consortium Member shall be revoked save to the extent that the conversions are supporting units that have already been delivered under the Contract.</p> <p>The Consortium Member shall, notwithstanding its exit from the Contract, remain responsible for any social housing assistance received under the Contract and for the performance of specified ongoing obligations³⁸ in relation to dwellings developed with the benefit of Firm Scheme Grant paid under the Contract.</p>
<p>Repayment of Grant</p>	<p>The Lead Partner or relevant Consortium Member (as applicable) may be required to repay grant paid (plus interest)³⁹ under the Contract in circumstances where:</p> <ul style="list-style-type: none"> (a) a Prohibited Act has occurred;

³⁷ E.g. duty to use stock for the agreed purposes, grant repayment obligations etc.

³⁸ For example, continuing use as affordable housing; compliance with Compliance Audit; repayment of grant.

³⁹ The rate of interest will be set out in the Contract.

	<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 relevant Consortium Member or agree an adjustment to the grant amount with the relevant Consortium Member;</p> <p>(c) the Recovery of Capital Grants and Recycled Capital Grant Fund Determination 2015 (or any successor determination) applies – in which case the relevant Consortium Member may recycle or be required to repay in accordance with its terms;</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 Lead Partner/relevant Consortium Member;</p> <p>(f) Termination Events⁴⁰ have occurred; and</p> <p>(g) breaches of specified obligations have occurred⁴¹.</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 relevant Consortium Member. 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 Consortium Members.</p> <p>Representations and warranties to be given by each Consortium Member 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>

⁴⁰ A Termination Event is any event which triggers termination of the Contract either in whole or in part.

⁴¹ The form of contract will identify the relevant circumstances.

	<ul style="list-style-type: none"> (c) enforceability of obligations ; (d) no Prohibited Acts; (e) no default under any law or other agreement which may affect the relevant Consortium Member's ability to perform its obligations under the project documents or finance documents; (f) no litigation, arbitration or administrative or regulatory proceedings taking place, pending or, to the Consortium Member's knowledge, threatened against the Consortium Member or its assets which may have a material adverse effect; (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 Consortium Member; (h) insolvency of the Consortium Member; (i) all required authorisations have been and are being complied with and remain current; (j) 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 (or more) programmes; (k) capacity generated by or through the Approved Bid is being applied to the delivery of new supply under the Contract; (l) no financial capacity generated by conversions/disposals of units located in London is or will be used to support new supply out of London and vice versa; and (m) a binding consortium agreement (or equivalent) is in place.
<p>VAT</p>	<p>The payment of any Allocated Grant is inclusive of Value Added Tax.</p> <p>In all other cases:</p> <ul style="list-style-type: none"> (a) the amount of any payment or the value of any supply is expressed exclusive of VAT properly chargeable on it; and (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.

Assignment	<p>The Agency may transfer or assign all or part of the Contract at any time.</p> <p>No Consortium Member may 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>

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.