



Homes England

STAGE 2 – SIFTING BRIEF



DEVELOPMENT OF HOMES ENGLAND LAND AT:

**Fence Avenue,
Macclesfield, Cheshire SK10 1DT**

9th October 2018

SECTION 1 – OVERVIEW

This 'Sifting Brief' represents the second stage of a three stage procurement process being coordinated by Homes England (HE).

HE is seeking to procure a single preferred Development Partner concerning the development of its 13.50ha part brownfield/ part greenfield site located at Fence Avenue, Macclesfield, Cheshire SK10 1DT (known as 'King's School').

You have received this Sifting Brief as you are one of 9 parties from the HE's Delivery Partner Panel 3 (DPP3) that have expressed an interest in the site.

Section 6 of this brief sets out a total of 4 questions which interested parties are asked to provide responses to by **1pm, Friday 26th October 2018**. Your written responses to this Sifting Brief must be submitted via the online e-tendering system.

The intention of the Sifting Brief is to reduce the number of interested parties down from 9 to a final tender list of 5 – 6 bidders. The 5 – 6 bidders selected will then be invited to participate in the third stage of the procurement process, namely the Invitation to Tender (ITT).

It is HE's preferred intention to select 5 committed Panel Members for the ITT. However, where scoring of the Sifting Brief responses does not provide a significant difference between the bids ranked 5th and 6th, then 6 bidders will be invited to participate in the ITT.

SECTION 2 – THE SITE

A brochure for the site was made available to DPP3 members as part of the initial 'Expression of Interest' stage – which provided key details pertaining to the site.

Key points of note concerning the site / project are detailed below:

- The site comprises 13.50ha of part Greenfield, part brownfield land currently occupied and operated as King's School Macclesfield.
- Access to the site is readily available via adopted highways running adjacent to the site
- The land at Fence Avenue secured outline planning consent for up to 300 homes as part of application ref. 15/4287M – which was approved by Cheshire East Council on 23rd January 2017
- Access to the application documents is provided [HERE](#)
- The planning permission includes the demolition of the existing school buildings whilst retaining Fence Avenue for conversion to residential apartments
- The s106 stipulates that 10% of the first 280 units at Fence Avenue are required to be delivered specifically to the market at 20% discount to open market value
- 30% of the additional units provided at Fence Avenue above the first 280 are to be provided as affordable

- The site is located approximately half a mile east of Macclesfield town centre, and closer still to Macclesfield Railway Station providing connections to the West Coast Mainline.

The site's indicative masterplan is provided below:

Figure 1: Indicative Masterplan



SECTION 3 – THE DISPOSAL PROCESS

The site is to be sold via a conventional building lease approach with an emphasis on speed of delivery and the use of Modern Methods of Construction – which will be considered as part of the qualitative assessment of ITT submissions.

ITT submissions will be assessed using the following scoring criteria:

Price	70%
Non-Price / Quality	30%

Bidders should be aware that the assessment of Price will be made on a proportionate basis with the highest offer receiving full marks and all other bids being awarded marks reflecting a pro rata of their offer versus the highest offer i.e. if the highest bid is £10,000,000, this will be awarded full marks (70%) with an under bidder at £8,000,000 being awarded 56% ($[\pounds 8,000,000 / \pounds 10,000,000] \times 70\%$).

We would anticipate that the land value for this disposal will be in excess of £20,000,000 with staged payments permissible over 2-5 years and assessed on the

basis of Net Present Value. Respondents will be asked to demonstrate their ability to undertake a transaction of this scale and deliver a large scale site of high quality dwellings.

The preferred bidder will be required to enter into a deed of overage with HE.

HE's land at Fence Avenue is currently occupied by King's School's Girls', Infant and Junior Divisions. The school will remain in occupation whilst their new-build campus is developed on a new site close to Prestbury. The lease to the school includes the provision of a long-stop date for vacant possession in December 2020, however it is anticipated that the school will relocate to their new campus prior to the commencement of the 2020/21 academic year (i.e. from September 2020).

Bidders are asked to note that the school will remain in occupation until December 2020 at the latest.

SECTION 4 – THE PROCUREMENT TIMETABLE

The procurement timetable that HE is working towards is set out below. Please note that this timetable is indicative and may be subject to change.

Figure 2: Procurement Timetable

Milestone	Date From	Date to	Duration
Expression of Interest Stage	w/c 1 st October 2018	5 th October 2018	1 weeks
Sifting Brief Stage	w/c 8 th October 2018	26 ^h October 2018	3 weeks
Evaluation of Sifting Brief responses	w/c 29 th October 2018	w/e 22 nd October 2018	1 week
Notification of Sifting Brief Outcome	w/c 26 th November 2018	w/c 26 th November 2018	1 day
Release of ITT Documents to Shortlisted Bidders	w/c 10 th December 2018	1pm, 18 th February 2019	11 weeks
Evaluation of Initial Tenders & Post-Tender Clarification Process	w/c 18 th February 2019	w/e 15 th March 2019	4 weeks
Homes England Internal Approval Processes	25 th March 2019	26 ^h April 2019	6 weeks
Notification of Preferred Bidder	w/c 29 th April 2019	w/c 29 th April 2019	1 day
10 Day 'Standstill' Procurement Process	3 rd May 2019	20 ^h May 2019	2 weeks
Commencement of Legal Contracting	21 st May 2019	26 th July 2019	12 weeks

SECTION 5 – SIFTING QUESTIONS

Bidders are asked to prepare responses to the following 4 questions. Responses must be relevant to the Fence Avenue project; however bidders may draw on / reference their previous experience relating to other schemes they have worked on.

QUESTION 1	
<p>Quality Factors and Scheme Composition</p> <p>HE is keen to understand your views on the type of product that you regard as appropriate for the Fence Avenue scheme.</p> <p>Accordingly, bidders are asked to please provide the following information:</p> <ul style="list-style-type: none"> • <i>Confirmation of the housing numbers you would seek to deliver (the cap under the outline consent being 300)</i> • <i>A summary of the type of accommodation and mix of dwellings you would propose as appropriate for the scheme (i.e. listing the dwelling type, indicative sq.ft. size, and bedroom number)</i> • <i>A summary of how you would propose to deliver the conversion of Fence House as part of the whole scheme.</i> • <i>Layout plans and CGI images / photos of the dwelling types you are proposing in your schedule of accommodation</i> • <i>The estimated range of sales values you would expect to achieve for each of your proposed house types</i> • <i>Cite examples of previous schemes where you have delivered the types of product you have proposed as part of your answer to this question</i> • <i>Given the scale of the Fence Avenue project, HE is keen to avoid repetition of house types. Accordingly, please state why you believe the product types and marketing brands within your portfolio is sufficient to avoid monotony and maintain buyer interest across the lifetime of the project</i> 	<p style="text-align: center;"><u>Max score</u></p> <p style="text-align: center;">40%</p>
<p>Notes regarding the scoring of this question:</p> <p>The written response must be clear, comprehensive and well presented.</p> <p>Bidder's responses will be scored according to how well they respond to each of the individual requirements set out within the question.</p>	

The products you put forward as appropriate for the scheme will be assessed by HE's appointed agents – who will consider whether the quality of product you have proposed would likely achieve the price point you have stated would be achievable.

Highest marks will be awarded to the bidder who, in HE's agent's opinion, proposes a price point and sales pace for their product that is in keeping with its quality.

Marks will also be awarded to bidders that can demonstrate that their product range and sales strategy for the site will ensure that buyer interest in the scheme can be maintained through to the 300th dwelling.

QUESTION 2

Pace of Delivery

Please outline your proposed approach to delivery of the Fence Avenue project (e.g. phasing approach, proposals for concurrent construction outlets, proposals for concurrent sales outlets, etc...).

Based on this approach, please state (in months) the shortest timeframe you believe you could realistically develop the entire 300 dwelling scheme (i.e. start on site date through to sale of the final dwelling) without unduly harming land values.

What rate of sales per month do you believe you could achieve across the scheme based on your proposed product mix and suggested price points?

Max score

25%

Notes regarding the scoring of this question:

The written response must be clear, comprehensive and well presented.

Bidder's responses will be scored according to how well thought out their delivery strategy for the scheme is, the extent of pace ambition shown in their delivery programme (based on their delivery strategy).

Bidders must provide a clear and definitive timescale indication of their build programme and sales period. The build programme and sales programme must be clearly disaggregated to show the number of months attributed to each (and how these two time periods overlap).

Bidders should note that a consensus of the responses given to this question will be used as the basis for HE determining the fixed timeframe in which the Fence Avenue scheme must be delivered.

This timeframe will then be set as the fixed build period that the preferred developer will be contractually obliged to deliver the scheme.

QUESTION 3

Capacity to Deliver

Given the scale of the Fence Avenue project, HE is keen to understand the capacity of your organisation to deliver at this scale.

Accordingly, please provide responses to the following:

- ***Give your high level estimation of the site's Current Use Value***
- ***Provide evidence of your track for having completed land acquisitions of a similar value – specifically stating the land value paid, the unit size of the scheme, the construction costs of the scheme, its location and the year you completed the purchase***
- ***Please indicate the sources of funding you would call upon to resource delivery of the Fence Avenue scheme – confirming whether this funding is currently available to you via a pre-agreed loan facility / existing equity or whether your offer for Fence Avenue would be made on a 'subject to funding' basis***
- ***Provide evidence of your track record for having delivered schemes that include the retention and conversion of existing building(s) for residential use – or where you have partnered with another organisation to deliver this element. Please state the name, location and size of the scheme and the partnering arrangement (if any) with another organisation including your proposed development partner (if applicable)***
- ***Please find an overview of the proposed technical pack (Appendix B) to be released via data room to shortlisted parties at ITT stage – we would ask you review and provide details of any additional information you would see benefit from at ITT stage to inform a robust financial offer without conditionality.***

Max score

20%

Notes regarding the scoring of this question:

The written response must be clear, comprehensive and well presented.

HE is seeking to understand the capacity of your organisation to deliver on the scale required at Fence Avenue. Bidders are invited to prove this by demonstrating

their previous track record in delivering sites of an equivalent nature – with higher marks being awarded for examples provided which are recent and which are similar to or larger than the scale of the opportunity at Fence Avenue.

We are also keen to understand the circumstances of your funding – with higher marks being given to those who can provide evidence of having a high value flexible / revolving credit facility and / or high volumes of existing cash held on account.

HE is keen to understand your capacity and experience in delivering residential conversions – bidders are invited to provide examples of schemes that demonstrate a strong track record for delivery.

QUESTION 4

Modern Methods of Construction

What is your company's experience of delivering housing using modern methods of construction? In particular, please cite examples of the elements of your company's housing product that are typically pre-fabricated off site – providing images of these (if applicable).

What innovative construction methods would you seek to use at the Fence Avenue scheme?

What proportion of dwellings at the Fence Avenue scheme would you seek to apply the innovative construction technique referred in your answer to the above?

Please provide an indication of the cost and build pace related implications that you believe your use of these technologies might have.

Max score

15%

Notes regarding the scoring of this question:

The written response must be clear, comprehensive and well presented.

Bidder's responses will be scored according to how well they demonstrate how they are embracing modern methods of construction, what elements of their homes currently involve some form of modern / innovative construction and what their ambitions are to expand on this in the future.

Highest marks will be awarded to bidders that are able to demonstrate an intention to use modern construction techniques which are 1) cost effective 2) able to increase the pace of delivery and 3) can be delivered across a high proportion of the scheme / the entire scheme.

The answers that bidders provide to this question will be used to fix a defined MMC specification benchmark within the ITT – and therefore bidders are encouraged to

be realistic in regard to their answers to this question.

SECTION 6 – EVALUATION CRITERIA

Each question will be scored out of 5 in accordance with the below methodology. It will then be multiplied by a weighting. For example, Q1 is weighted at 40%, therefore an agreed score of 3 out of 5 would generate $3/5 \times 40\% = 24$.

The bidder's score for each question will then be added together to give a score out of a maximum of 100. The following scoring methodology will apply:

5 – Excellent: Satisfies the requirement and demonstrates exceptional understanding and evidence of their ability / proposed methodology to deliver a solution to the question posed. The response identifies factors that will offer potential added value, with evidence to support the response.

4 – Good: Satisfies the requirement with minor additional benefits. Above average demonstration by the bidder of understanding the challenge and providing evidence of their ability / proposed methodology to deliver a solution to the question posed. Response identifies factors that will offer potential added value, with evidence to support the response.

3 – Acceptable: Satisfies the requirement. Demonstration by the bidder of understanding the challenge and providing evidence of their ability / proposed methodology to deliver a solution to the question posed.

2 – Minor Reservations: Satisfies the requirement with minor reservations. Some minor reservations of the bidder's understanding of the challenge and proposed methodology, with limited evidence to support the response.

1 – Serious Reservations: Satisfies the requirement with major reservation(s). Major reservation(s) of the bidder's understanding and proposed methodology, with little or no evidence to support the response.

0 – Unacceptable / Non-compliant Does not meet the requirement or no response provided. Does not comply and/or provide sufficient information to demonstrate that the bidder has the understanding or suitable methodology to tackle the challenge, with little or no evidence to support the response.

Evaluation of the returned Sifting Brief responses will initially be undertaken independently by the individual assessors (comprising HE staff and agents from Savills).

Once this initial exercise has been completed, the independent scores will be shared and collectively discussed amongst the assessors at a moderation session. This session will result in a single agreed score being awarded to each bidder.

HE reserves the right to disqualify any Panel Member as non-compliant that

scores 0 or 1 in any of the categories

Those bidders ranking 1 to 5 will be invited to participate in the ITT. In the event of there being negligible difference between the score of the 5th and 6th ranked bidder – the 6th ranked bidder (at HE's own discretion) will also be invited to participate in the ITT.

SECTION 7 – QUERIES

Bidders are asked to submit any queries they may have to the site agents via the online e-tendering system. From there, a response will be provided within 3 working days.



Homes
England

Delivery Partner Panel Member
North West Lot

1st October 2018

Dear Delivery Partner Panel Member,

**SITE DISPOSAL TENDER OPPORTUNITY RELATING TO:
LAND AT FENCE AVENUE, MACCLESFIELD, CHESHIRE SK10 1DT**

Homes England is pleased to provide you with notice of its intention to commence procurement activities relating to its residential development land located at Fence Avenue, Macclesfield, Cheshire SK10 1DT.

Background

Homes England has stepped in to acquire the Fence Avenue site to support the planned relocation of King's School from their current site to an entirely new school facility at Derby Fields in Prestbury.

The land at Fence Avenue, Macclesfield, forms one of three parcels of land in operation as The King's School Macclesfield. Fence Avenue is set within a highly attractive residential street with the benefit of Victoria Park immediately adjacent to the subject site, with Macclesfield Canal bordering the eastern boundary of the site.

The site extends to a site area of 13.53ha (33.43 acres) and benefits from outline planning consent for the partial demolition of existing buildings and the erection of up to 300 dwellings, landscaping and supporting infrastructure, and a means of access (planning ref 15/4287M). This planning consent will lapse in January 2020.

Fence Avenue will remain operated as a school by King's School's Girls, Infant and Junior cohorts occupied on a leasehold basis. It is anticipated the school will relocate out of Fence Avenue and into their new campus during the 2020 summer holiday – with full vacant possession of the site expected by December 2020.

Accordingly, Homes England is seeking to run the following procurement exercise to dispose of this site at Fence Avenue for residential development.

Homes England
Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 4DJ

0300 1234 500
homesengland.gov.uk

s. 40(2)

s. 40(2)

@homesengland.gov.uk

A brochure for the site is provided in Appendix A and the boundary of the land to be sold under this procurement exercise is described in Appendix B.

Why Should I be Interested in this Opportunity?

Fence Avenue is located to the east of Macclesfield close to the border with the Peak District – and represents one of Homes England’s most exciting development opportunities in the region. Specifically, the site is:

- The site comprises 13.53ha of part greenfield, part brownfield land currently occupied and operated as King’s School Macclesfield – the school buildings are home to the Girls, Infant and Junior Divisions – to be vacated by December 2020
- Set in a highly attractive semi-rural location adjacent to Victoria Park and offering access to the Peak District National Park just to the east of the site via the existing road network (A537)
- Only 0.5km from Macclesfield town centre – which provides access to a wide range of local amenities, schools and public transport connections
- Access to the site is readily available via adopted highways running adjacent to the site
- The site benefits from outline planning consent for up to 300 homes

As part of the tender packs, Homes England will seek to simplify the approach to tendering by providing:

- A full suite of technical information – including the results of intrusive ground investigations, flood risk and drainage information, ecology information, transport and highways information, etc...
- Full transferrable warranties in respect of this information such that it can be relied upon by bidders for tendering purposes
- A planning brief which sets out instructions to bidders as to which planning conditions the developer must discharge, their timing and the staging of payments relating to the S106, etc...

Homes England’s Approach to Disposal

The site will be disposed of by way of a conventional Building Lease. However, acknowledging that Homes England is committed to promoting the development of its sites at pace – the Building Lease will include additional obligations on the developer to deliver the scheme at a specified accelerated pace of delivery.

Homes England is also committed to the use of innovative / modern methods of construction (e.g. volumetric systems, panelised systems, systems which use pre-manufactured components, etc...), and therefore the Building Lease will also place obligations on the

developer to incorporate an agreed schedule of modern building techniques into their scheme.

The agreed pace of delivery and specification of construction approach will be those that the preferred developer tenders to Homes England at part of its tender submission.

Legal Contracting Arrangements

Legal agreements relating to the sale will cover 3 forms of contract, namely:

- An Agreement to Lease
- A Standard Building Lease
- An Overage Agreement

The developer's obligations under the Agreement to Lease will be to secure a reserved matters approval and to discharge all pre-start planning conditions. Upon satisfaction of these conditions, the developer will draw down the Building Lease.

The developer's obligations under the Building Lease will involve building out of the planning consented scheme. The scheme must be developed at the pace of build prescribed by Homes England and using the modern methods of construction agreed with the developer.

The developer's obligations related to pace of build will be managed through the Overage Agreement – whereby the developer's share of overage will vary according to whether the scheme is built out by the developer quicker or slower than the prescribed pace of build.

Homes England welcomes financial offers for the site on payment terms that suit the bidder. This can involve a full upfront payment, or payments on deferred terms. Bidders are also welcome to register charges against the Building Lease as a means of providing security to lenders.

The Procurement Process

The procurement process for this development opportunity will be run in three stages – namely:

- Expression of interest (EOI)
- Sifting Stage
- Invitation to tender (ITT)

The circulation of this letter represents Homes England's launch of the EOI stage. This EOI has been circulated to all 39 members of the DPP3 (NW) and invites panel members to confirm if they are interested in this opportunity. The EOI stage is otherwise known as the 'self-sifting' stage and simply asks panels members to either confirm their interest in the opportunity or else rule themselves out of the bidding process (a non-response to the EOI by the EOI deadline will be taken as the panel member ruling themselves out of the opportunity).

If more than 6 panel members express interest in the opportunity before the EOI deadline, it will be necessary to conduct a 'Sifting' stage. The sifting stage will ask panel members to provide short responses to questions set by Homes England – and will be used by the Agency to determine a shortlist of 6 bidders who will go forward to the ITT stage.

If 6 or fewer panel members express interest in the opportunity at the EOI stage, then the procurement process will move straight to the ITT stage.

The procurement process for Fence Avenue is being managed on Homes England's behalf by its agents Savills, and is being conducted through the e-tendering format.

Interested panel members must therefore provide their response to this EOI via the e-tendering system.

Alongside this letter, the following information is provided to assist panel members in deciding whether they would like to express interest in the site:

- A brochure for the opportunity (**Appendix A**)
- A red line boundary plan for the site (**Appendix B**)
- The site's illustrative masterplan (**Appendix C**)
- An indicative timetable for the procurement competition (**Appendix D**)

EOI Responses

DPP3 panel members interested in this opportunity are invited to confirm their wish to participate in the future procurement stages (Sifting and ITT). Bidders are not required to elaborate any further at this stage regarding their thoughts on the opportunity, etc...

The EOI bid deadline for this opportunity is **1pm, Friday 5th October 2018**. Confirmation of your interest must be made via the e-tendering process by this deadline in order for your company to be invited to participate in the Sifting / ITT stages.

Those bidders not interested in the opportunity need not respond to this EOI.

Any questions at EOI stage should be made through the discussion area on the e-tendering system.

Whilst I trust that the information provided in this EOI is sufficient to inform your company's decision making process, please do not hesitate to register any queries you might have via the e-tendering system.

Yours sincerely,

s. 40(2)

Development Manager



PRIME DEVELOPMENT OPPORTUNITY

Fence Avenue, Macclesfield, SK10 1DT
On the instruction of Homes England

savills

KEY CONSIDERATIONS

- Opportunity to acquire a prime residential development site in the centre of Macclesfield
- The site benefits from an outline planning consent for 300 units
- Part of the wider redevelopment of The Kings's School, Macclesfield
- The site is surrounded by residential development, although there is a corridor of open greenfield land extending to the east
- Highly attractive predominantly greenfield site with the school buildings occupying the front of the site
- The site extends to 13.53ha (33.43ac) gross
- The site will be sold in line with the Homes England Tender process
- A full suite of technical information will be made available at ITT stage.



LOCATION AND DESCRIPTION

Macclesfield is an historic market town located on the edge of the Peak District National Park and lying approximately 16 miles south of Manchester city centre.

The site at Fence Avenue extends to 13.53 ha (33.43 acres) gross. It is located approximately 0.5km east of the centre of Macclesfield and currently comprises The King's School's Girls, Infant and Junior Divisions. The boundary to the east is formed by the Macclesfield Canal. The western edge of the site, fronting Fence Avenue and including the original school building, is bounded by Victoria Park to the west.

The site benefits from outline consent, for the delivery of up to 300 units. As part of this consent, the front part of the main school known as Fence House, which currently comprises the girls senior school, is to be retained.

PLANNING CONSIDERATIONS

Fence Avenue has the benefit of outline consent, for the partial demolition of existing buildings and the delivery of up to 300 units. The application can be found on the local authority website under reference number 15/4287M and will run until January 2020. The land is currently occupied by The King's School Girls, Infants and Junior Divisions, who will be relocating to a site at Derby Fields where they will occupy a new purpose built school. Vacant possession is anticipated in the 2020 school summer holiday, with full vacant possession required by December 2020.

The S106 Agreement stipulates that 10% of the first 280 units at Fence Avenue are required to be delivered as affordable units. Specifically they are required to be delivered to the market at a 20% discount to open market value into perpetuity.

30% of any additional units provided above the 280 unit threshold are to be provided as affordable. The tenure type and unit size of these units shall be agreed with the Council before the development commences.

In addition to affordable housing, an education contribution is required at a rate of £1,222.22 per unit. This excludes any dwellings which are to be provided for people over 55 years old or for any units which include only a single bedroom.



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Building to be Retained



Aerial Image of School Buildings

TENURE

Predominantly freehold, with a small 1 acre parcel held on a 999 year lease from 1925.

SERVICES

Prospective purchasers should make their own enquiries to the relevant Authorities as to the suitability, capacity and exact location of services to the site. Some services information is available in the tender pack.

LEGAL COSTS

Each party will be responsible for their own legal costs associated with this transaction.

VAT

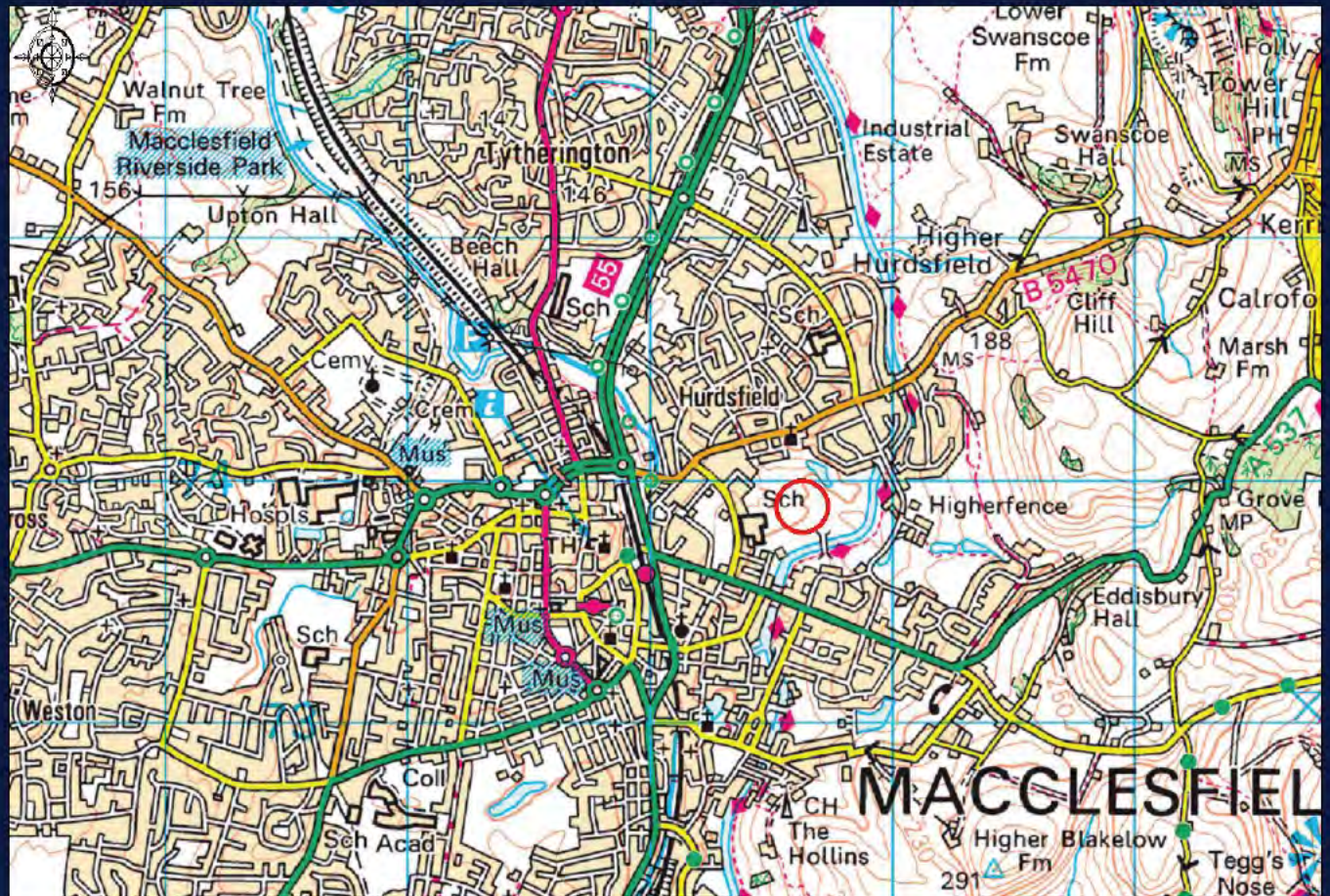
We understand the property has been elected for VAT.

VIEWING

On-site viewing is strictly by appointment with Savills only.

DISPOSAL PROCESS

The site is being sold by way of the Homes England's conventional building lease. Parties will be requested to acknowledge the obligations on the developer to deliver the scheme at an accelerated pace of delivery.



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IMPORTANT NOTICE

Savills, their clients and any joint agents give notice that: 1. They are not authorised to make or give any representations or warranties in relation to the property either here or elsewhere, either on their own behalf or on behalf of their client or otherwise. They assume no responsibility for any statement that may be made in these particulars. These particulars do not form part of any offer or contract and must not be relied upon as statements or representations of fact. 2. Any areas, measurements or distances are approximate. The text, photographs and plans are for guidance only and are not necessarily comprehensive. It should not be assumed that the property has all necessary planning, building regulation or other consents and Savills have not tested any services, equipment or facilities. Purchasers must satisfy themselves by inspection or otherwise.

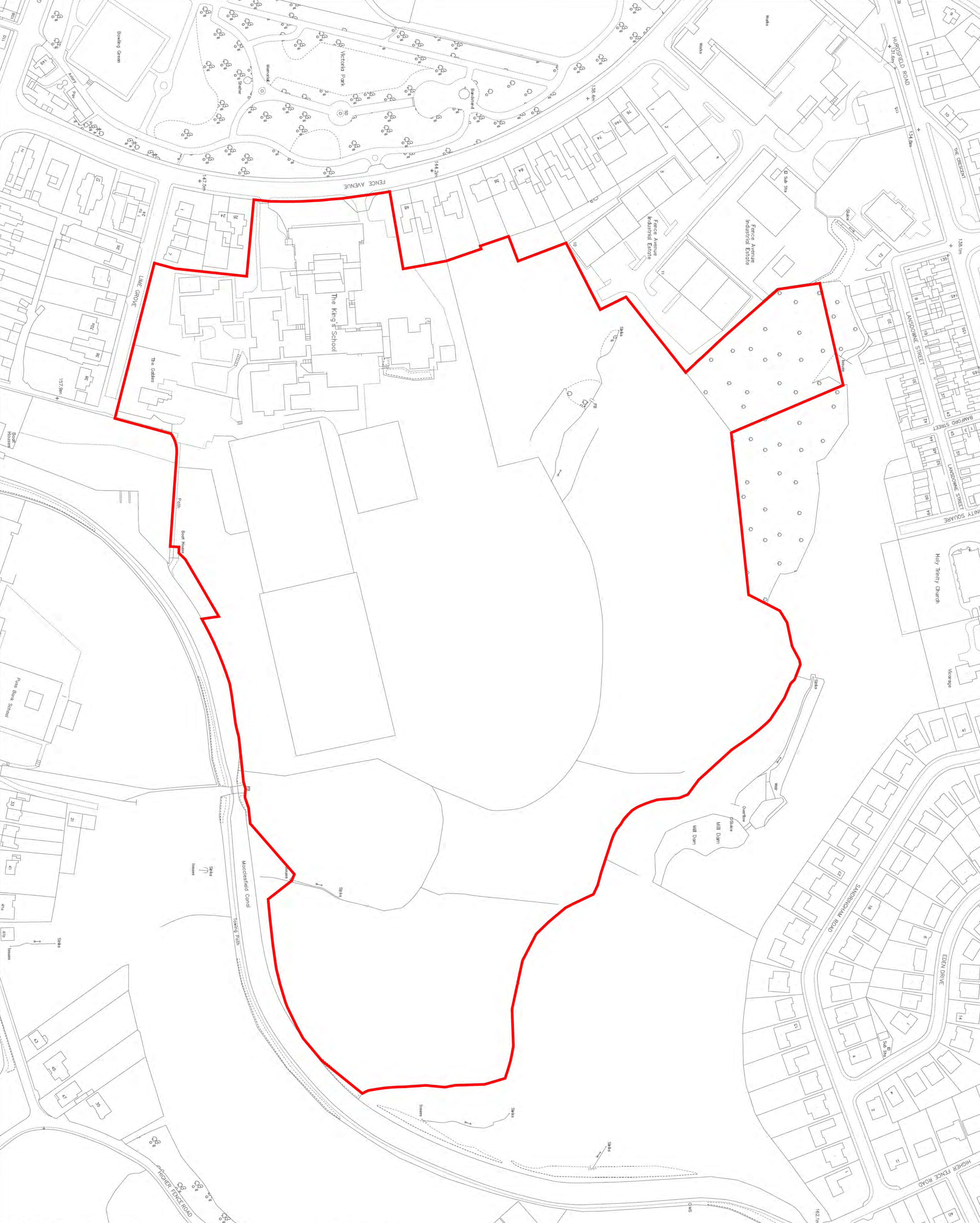


SELLING AGENT: SAVILLS

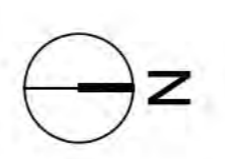
Savills Manchester
Belvedere
12 Booth Street
Manchester
M2 4AW

s. 40(2)

s. 40(2)



Site boundary (13.5ha)



REV.	DESCRIPTION	DATE	BY	CHKD

CHESHIRE EAST COUNCIL

Consultant



Drawing Title
EXISTING SITE PLAN

Project Title
Fence Avenue

Drawn	Checked	Approved

Date	Scale	Site
16/07/14	1:1000	A1

Purpose of Drawing
FOR INFORMATION

Drawing No.	Rev.
60277615/01001	A



- Circus reflects a formal Victorian approach **a**
- Formal court to Fence House **b**
- Green links connecting Victoria Park to the canal **c**
- Opportunity for wharf style development **d**
- Informal open space **e**
- Play area **f**
- Views of Holy Trinity Church **g**
- Opportunity for community food growing **h**
- Enhanced pond and opportunity for SUDs **i**
- Existing canal bridge opened **j**

Copyright Savills (UK). No dimensions are to be scaled from this drawing. All dimensions to be checked on site. Area measurements for indicative purposes only.

savills planning & regeneration

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savills.com/urbandesign

project | The King's School, Macclesfield
 client | The King's School, Macclesfield
 date | 17/07/2015
 drawn by | ████
 checked by | ████

drawing | Illustrative Masterplan
 job no. | MNPC336615
 drawing no. | (FAJMP001
 rev | c 27/07/2015

scale | 1:2000 @A3



Appendix D: Indicative Procurement Timetable

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Commencement of Legal Contracting	21 st May 2019	w/e 26th July 2019	12 weeks

Appendix B: Proposed Information Pack (ITT Stage)

Folder	Documents	Notes
Planning Consent	<ul style="list-style-type: none"> • Decision Notice • S106 Agreement • Site Plan 	
Technical Reports	<ul style="list-style-type: none"> • Interpretive Ground Investigation Report • Foundation Zoning Plan • Utility Capacity Survey • CCTV Survey (culvert) Report • Flood Risk Assessment (updated) • Outline Drainage Strategy • Schedule of Areas (all buildings) • Asbestos Management Plan 	
Title Information	<ul style="list-style-type: none"> • Report on Title • Local Searches 	
Legal Documents	<ul style="list-style-type: none"> • Heads of Terms • Agreement for Lease • Residential Building Lease (with associated Schedules) 	
Topographical	<ul style="list-style-type: none"> • Topographical Survey 	In pdf. and dwg. format
Fence House	<ul style="list-style-type: none"> • Floor Plans • Condition Survey (M&E) • Photographic Schedule of Condition • Energy Performance Certificate 	In pdf. and dwg. format
Outline Planning Application	<ul style="list-style-type: none"> • <i>All documents associated with outline planning permission 15-278M</i> • Planning Guide 	
Tender Forms	<ul style="list-style-type: none"> • Homes England's Tender Forms (1-6) 	To be used by shortlisted parties at ITT stage



Homes England

Homes England Standard Building Agreement for Lease (Residential/Mixed Use/Commercial) Developer Procured (Conditional upon the Developer obtaining reserved matters approval (with appeal))

Draft: 6 December 2018

Agreement for Lease

in respect of land at [■]

Dated

**The Homes and Communities Agency (trading as Homes
England)**
(Homes England)

.....
(Developer)

.....
[(Surety)]

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Agreement for Lease

Dated

Between

- (1) **The Homes and Communities Agency (trading as Homes England) (Homes England)** (which expression shall where the context so admits include the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby agreed to be granted) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH; and
- (2) [■] (the **Developer**) ([registered in England with number ** whose registered office is at **] [a corporation organised and existing under the laws of ** whose principal place of business is at **] [of **]; and]
- (3) [[■] (the **Surety**) ([registered in England with number ** whose registered office is at **] [a corporation organised and existing under the laws of ** whose principal place of business is at **] [of **]]

RECITALS

A Homes England [is the freehold owner of the Land and] has agreed to let the Land to the Developer on the following terms and conditions

It is agreed:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the recitals above) the following definitions apply

Act means the Town and Country Planning Act 1990 (as amended)

Adjusted Price means the Price varied in accordance with **Clause 6** and/or **Clause 7.5**

[Affordable Dwelling] means units of Affordable Housing to be constructed as part of the Development (taking due account of the Affordable Housing Tenure Mix [and the Affordable Housing Strategy])

[Affordable Housing] means housing provided by means of a subsidy enabling the asking sale price or rent to be lower than the prevailing market prices or market rents in the Borough of [■] and to be made available to people who because of their low incomes cannot afford to buy or rent houses generally available on the open market]

[Affordable Housing Tenure Mix] means the provision of Affordable Housing to be constructed as part of the Development (comprising [■]% of the aggregate of all Dwellings to be constructed on the Land) in the following tenure proportions:

- (a) [■]% Shared Ownership Units

(b) [■]% Rental Units

[or such alternative Affordable Housing provision as may be agreed between the parties (acting reasonably) with the Local Planning Authority Provided Always that such Affordable Housing shall be so configured so that there shall be no more than [6] contiguous Affordable Dwellings (Homes England (acting reasonably) in determining what 'contiguous' means for these purposes)]

[Affordable Housing Strategy] means the strategy published by the Local Planning Authority (and which is current at the date of the [Reserved Matters Application]) for the inclusion of Affordable Housing and which is applicable to the Development]

Appeal means an appeal to the Secretary of State under section 78 of the Act against a Planning Refusal of a Reserved Matters Application or the grant of a Reserved Matters Approval which is not a Satisfactory Reserved Matters Approval

Approved Compliance Inspector means a firm that appears on the list that appears at Annexure 1 or such other firm that Homes Eng;and may approve from time to time

Approved Plans means the Detailed Design Plans from time to time approved in writing by Homes England and signed on behalf of Homes England and the Developer (with such amendments as may be approved in writing by Homes England from time to time) in accordance with the provisions of this Agreement

Approved Plans Schedule has the same meaning as in the Lease

Challenge means Proceedings have been issued and 'Challenged' shall be construed accordingly

Challenge Period means six weeks and 10 Working Days following the date of issue of the Reserved Matters Approval

Completion Date means the 10th Working Day after the later of :

- (a) the day on which the last of the Conditions for the grant of the Lease has been satisfied and/or waived (where permitted by this Agreement); and
- (b) the day on which the Target House Build Commencement Date and the Target Start on Site Date have been agreed or determined pursuant to **Clause 9.2**

Compliance Certificate shall have the same meaning as in the Lease

Compliance Inspector means a suitably qualified professional or professionals who:

- (a) is an Approved Compliance Inspector
- (b) is/are qualified to certify the matters required to be certified in the Compliance Certificate as set out in **Clause 7**; and
- (c) is/are qualified to certify matters required to be certified in the Final Completion Certificate as set out in the Lease
- (d) is/are appointed by the Developer using a contract in the form of the appointment annexed to this Agreement as **Annexure 3**; and

Compliance Inspector Allowed Costs means the sum of £[] ([] pounds)¹

Compliance Inspector Actual Costs means the actual costs of the Compliance Inspector bid by the Compliance Inspector pursuant to **Clause 7.2**

Compliance Inspector Brief means the brief annexed to this Agreement as **Annexure 2**

Conditions means

- (a) a Satisfactory Reserved Matters Approval has been granted and is Free from Challenge
- (b) Homes England being satisfied (acting reasonably) that there is in existence a set of Approved Plans which adequately define and delineate in sufficient detail to Homes England's satisfaction the Development and all matters relating to the Development (including the requirements of any relevant Reserved Matters Approval and any Planning Agreements)
- (c) the production by the Developer to Homes England of a statement from the Local Planning Authority confirming that the Affordable Housing provisions proposed by the Developer are acceptable to it in all respects including the identity of the proposed Registered Provider
- (d) the appointment of the Compliance Inspector by the Developer in accordance with **Clause 7.4** in the form of the draft appointment annexed to this Agreement as **Annexure 3**
- (e) [the production by the Developer to Homes England of a Landscape Works Specification in a form acceptable to Homes England (acting reasonably)]
- (f) the Developer [or the Surety] demonstrating to the satisfaction of Homes England (acting reasonably) that it has in place sufficient funding to meet all the Developer's obligations under the Lease including the obligation to complete the Development and having regard to Homes England's financial requirements in relation to the procurement of developers
- (g) *[insert any other relevant pre-conditions (e.g. affordable housing conditions/S.106 conditions)]*

and **Condition** means any one of them.

Conditions Satisfaction Date² means the date [200 (two hundred)] Working Days after the date of this Agreement (subject to any extension as provided by **Clauses 4.10, 4.11 or 4.12**)

Contract Rate means [4%] above Barclays Bank Plc base rate from time to time in force as well after as before judgment which rate shall also be the "contract rate" referred to in the Standard Commercial Conditions

Council means [the Borough of []]

Detailed Design Plans means the detailed drawings specifications layout plans landscaping layout and scheme constraints plans the house types [Modern Methods

¹ To be confirmed by Homes England as the CI Costs allowed in the Development Brief

² Consider whether any ecology assessment is required to be submitted as part of the Reserved Matters Approval. The Conditions Satisfaction Date will need to be amended to ensure that such assessment can be carried out at the appropriate time of year

of Construction^{3]} programme of works highways drainage and other infrastructure works Employment and Skills Plan and any other plans and specifications or other documents as may be required by Homes England comprising or describing the Development and all matters relating or ancillary to it (all of the foregoing also adding detail to and being in accordance and consistent with any Outline Design Plans Building for Life 12 and any other design statements design codes supplementary planning guidance the Development Brief the Developer's Submission the Outline Permission and all Planning Agreements [and] the Minimum Development [and the Affordable Housing Tenure Mix] unless otherwise agreed by Homes England and being in a form suitable for submission for Reserved Matters Approval) together with such amendments as may from time to time be approved by Homes England (such approval not to be unreasonably withheld or delayed)

[Deed of Guarantee means a deed made on the same date as this Agreement between (1) Homes England (2) the Developer and (3) the Surety]

Developable Area means the aggregate floor area of all [Dwellings] [and Non-Residential Units] [Units] permitted to be erected on the Land pursuant to any Reserved Matters Approval and for this purpose the floor area of a [Dwelling] [or Non-Residential Unit][Unit] shall mean the gross internal floor area of the [Dwelling] [or Non-Residential Unit][Unit] measured from the inside face of an external or party wall (as the case may be) and measured in accordance with the RICS Code of Measuring Practice current as at the date of this Agreement [but excluding the area of any garage]

Developer's Solicitors means [■] (ref: [■])

Developer's Submission means the proposal submitted by the Developer in response to the Development Brief (including any subsequent variation or addition thereto already agreed or subsequently approved by Homes England)

Developer's Warranties means collateral warranties to be obtained by Homes England in favour of the Developer from the parties listed in column 3 of the table that appears in Schedule 3 in respect of the contract for services or reports listed in column 2 of the table that appears in Schedule 3⁴

Development Brief means the stage [■] brief issued by Homes England dated [■] as varied by the provisions of this Agreement

Development means the erection and completion on the Land of all buildings erections structures highways drainage infrastructure and other works in accordance with the Approved Plans [the Development Brief and the Developer's Submission and the relevant Satisfactory Reserved Matters Approval and all Planning Agreements including site preparation and demolition of any existing buildings to provide for the erection of the Number of [Dwellings] [and the Number of Non-Residential Units][Units for use within Use Classes [■] of the Town and Country Planning (Use Classes) Order 1987] specified in the Particulars to the Lease

³ If there are any other development strategies, these should be separately defined and included within the definition of Detailed Design Plans (e.g. as for Modern Methods of Construction)

⁴ N.B. solicitors must check with the project manager which contracts and appointments/reports Homes England is able to procure a warranty for on completion of the lease and the table in Schedule 3 should be completed

[Dwelling means any house, bungalow, flat, maisonette or other single unit of residential accommodation to be constructed on the Land together with any land forming its curtilage and any other appurtenant structures.]

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made thereunder from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation

EIR Exception means any applicable exemption to EIR

Employment and Skills Plan⁵ means the employment and skills plan for the Development incorporating the Method Statement and the Developer's Employment Commitments.

Employment Commitments means the employment and skills opportunities to be offered by the Developer during the course of the Development in satisfaction of the commitments made in the Employment and Skills Plan.

Encumbrances means the encumbrances and matters affecting the Land (to the extent that such are still subsisting and capable of being enforced) mentioned contained or referred to in the documents listed in **Schedule 2**

Enquiry Replies means any written replies made by Homes England's Solicitors in reply to written questions or enquiries made by the Developer's Solicitors in relation to the Land

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

Final Completion Certificate shall have the same meaning as in the Lease

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

FOIA Exemption means any applicable exemption to FOIA

Free from Challenge means that the Challenge Period has expired without Proceedings having been issued or where Proceedings have been issued that they have been determined and any time for appealing or further appealing has expired or they have been withdrawn and in any case the outcome is that the Reserved Matters Approval remains in place.

Homes England's Solicitors means [■] (Ref: **)
) or such other firm of solicitors employed by Homes England from time to time

Homes England Unacceptable Condition means a condition imposed in a Reserved Matters Approval or required in any Planning Agreement which contains an obligation or restriction which:

⁵ The Employment and Skills Plan should take account of Procurement Policy Note – Supporting Apprenticeships and Skills [Through Public Procurement Action Note](#) 14/15 27 August 2015 (as updated or replaced from time to time). This currently states that the Government's expectation is for contractors and consultants to aim for 3-5% of the workforce to be apprentices, sponsored students and/or on graduate programmes, with a focus on apprentices.

- (a) provides (or would have the effect) that the Development if implemented in accordance with the terms of the Reserved Matters Approval would provide a development scheme which would achieve less than the Minimum Development;
- (b) provides (or would have the effect) that the Development if implemented in accordance with the terms of the Reserved Matters Approval would be for a development materially different to that envisaged in the Detailed Design Plans; and
- (c) [provides that the Development if implemented in accordance with the terms of the Reserved Matters Approval would provide for a development scheme which would achieve less than the Affordable Housing Tenure Mix]

[Infrastructure Works means the works as detailed on the attached specification at Annex ■]⁶

Information means in relation to:

- (a) FOIA, the meaning given under section 84 of the FOIA; or
- (b) EIR, the meaning given under the definition of “environmental information” in section 2 of EIR

Land means the development site at [■] [as more particularly described in the Lease] [registered at the Land Registry under title number [■]]

[Landscape Phasing Plan has the meaning ascribed to it in the Lease]

[Landscape Works Specification means a specification (incorporating the Landscape Phasing Plan) detailing the landscaping to be carried out [in relation to public open space]]

Lease means the lease for the construction and delivery of the Development on the Land in the form of the draft annexed in this Agreement as **Annexure 5** to be granted by Homes England to the Developer pursuant to this Agreement (subject to such amendments thereto (including any draft document annexed to the draft Lease) as may be required consequential upon any changes to the Development agreed between the Developer and Homes England prior to completion of the grant of the Lease)

Local Planning Authority means ■ or such other authority as shall have during the currency of this Agreement jurisdiction to deal with planning applications in respect of the Land

Method Statement means the method statement for the Development which sets out in detail how the Developer will implement the Employment and Skills Plan.

Minimum Development means a comprehensive development of the Land which comprises as a minimum:

⁶ As part of the tender pack provided by Homes England, there will be information as to the proposed infrastructure works and it is envisaged that the contract for these Infrastructure Works may have been entered into prior to the grant of the Lease. This definition will therefore need to be updated for this Agreement with the accurate detail of these works and a specification appended or deleted if there are no infrastructure works

- (a) [■] Dwellings [Units];
- (b) [■] square feet of gross internal area (measured from the inside face of an external or party wall (as the case may be) and measured in accordance with the RICS Code of Measuring Practice current as at the date of this Agreement) of [Non-Residential] Units [(such figure to be pro-rated against the number of Dwellings)]; and

[Modern Methods of Construction] means the Developer's proposals for the use of off-site manufacturing and other advance construction technologies proposed for the Development and set out in the Developer's Submission]

[Non-Residential Unit] means any buildings and structures erected on or refurbished on the Land that are not Dwellings including but not limited to shops, offices and community facilities and their immediate curtilage and any garages, parking spaces, private spaces, private drives or forecourts relating to such buildings/structures][*If purely commercial scheme use definition of Units instead*]

Outline Design Plans means the drawings specifications layout plans landscaping layout and scheme constraints plans the house types [Modern Methods of Construction] programme of works highways drainage and other infrastructure works Employment and Skills Plan and any other plans and specifications or other documents forming part of the Developer's Submission comprising or describing the Development and all matters relating or ancillary to it (all of the foregoing also adding detail to and being in accordance and consistent with Building for Life 12 and any other design statements design codes supplementary planning guidance the Development Brief the Outline Permission and all Planning Agreements [and] the Minimum Development [and the Affordable Housing Tenure Mix] (a copy of which is annexed to this Agreement)

Outline Permission means the outline planning permission dated [**] issued to Homes England by the Local Planning Authority under reference [**]

Performance Criteria has the same meaning as in the Lease

[Plan] means the plan annexed to this Agreement as Annexure 4]

Planning Acts means the statutes and statutory instruments from time to time in force relating to town and country planning

Planning Agreement means any agreement and/or undertaking required by the Local Planning Authority or other competent public authority or body, and which is to be entered into as a condition of the grant or implementation of the Outline Permission or the Reserved Matters Approval, including any agreement pursuant to any one or more of section 38 or section 278 of the Highways Act 1980, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 111 of the Local Government Act 1972, section 106 of the Act (as amended by the Planning and Compensation Act 1991) or section 104 of the Water Industry Act 1991 or any agreement with a water or sewerage undertaker or other appropriate authority as to water supply or to drainage or surface water and/or effluent from the Land or any provision of similar intent

Planning Counsel means a specialist planning counsel who has been working continuously as a planning barrister for at least 10 years since call as agreed by

Homes England and the Developer (acting reasonably) or in default of agreement by the Chairman (or other senior officer) of the Bar Council for England and Wales

Planning Refusal means a refusal of Reserved Matters Approval (including a deemed refusal arising under section 78(2) of the Act) or the grant of Reserved Matters Approval which is not a Satisfactory Reserved Matters Approval

Price means [■] POUNDS (£ [■])

Proceedings means all or any one or more of the following:

- (a) call-in proceedings consequent upon a direction by the Secretary of State that the Reserved Matters Application be referred to him for determination under section 77 of the Town and Country Planning Act 1990
- (b) an application to the court for judicial review or for permission to apply for judicial review:
- (c) an application or appeal to the court pursuant to section 288 of the Act

[Registered Provider means [■] or such other independent housing organisation listed on the register maintained by Homes England as “Regulator” under section 111 of the Housing and Regeneration Act 2008 and approved by Homes England (such approval not to be unreasonably withheld or delayed)]

[Rental Unit means a Dwelling to be used as low cost rental accommodation as defined in section 69 of the Housing and Regeneration Act 2008]

Representation means any written oral or implied representation warranty confirmation or statement in relation to the Land or to any matter contained or referred to in this Agreement made by or on behalf of Homes England to the Developer or to any agent adviser or other person acting for the Developer

Request for Information shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Land, this Agreement, or any activities or business of Homes England

Reserved Matters means matters reserved pursuant to or arising from the Outline Permission

Reserved Matters Application means an application for Reserved Matters Approval for the Development in a form acceptable to Homes England (acting reasonably) including any amendment thereof, fresh application for Reserved Matters made in substitution therefor or an alternative application for Reserved Matters, in each case made pursuant to the provisions of this Agreement and with the consent of Homes England provided always that no application amendment or substituted or alternative application shall be other than consistent with and in accordance with [the Development Brief] and the Approved Plans [and the Affordable Housing Tenure Mix] [add any other relevant documents] nor shall it be other than an application for Reserved Matters Approval

Reserved Matters Approval means the approval of Reserved Matters granted pursuant to the Reserved Matters Application, and whether granted by the Local Planning Authority (or by the Secretary of State)

Reserved Matters Pack means the Detailed Design Plans and the Reserved Matters Application

Satisfactory Reserved Matters Approval means a Reserved Matters Approval which is either unconditional or subject only to conditions which are acceptable to the Developer and Homes England (both parties acting reasonably and not arbitrarily) and which are not Homes England Unacceptable Conditions and subject always to the provisions of **Clause 4.9**

Secretary of State means the Secretary of State for Housing Communities and Local Government or other minister or authority for the time being having or entitled to exercise the powers now conferred on the Secretary of State for Housing Communities and Local Government by Sections 77, 78 and 79 of the Act or an inspector appointed to act on behalf of him

[Section 106 Agreement means the agreement dated [■] made between (1) [■] and (2) [■] relating to [■]

Senior Representatives means Homes England's General Manager for the [insert area] and a director or senior executive officer of the Developer

[Shared Ownership Unit means a Dwelling to be disposed of by way of a lease on shared ownership terms or in accordance with shared ownership arrangements as defined by section 70(4) of the Housing and Regeneration Act 2008]

Standard Commercial Conditions means the Standard Commercial Property Conditions (Second Edition) and any reference to a Standard Commercial Condition shall be construed accordingly and have the same meaning as the expression "condition" in the Standard Commercial Conditions

[Surety means ■ (company registered number ■) whose registered office is at ■ .]⁷

Title Matters means the matters as set out or referred to in the registers of the title to the Land at the Land Registry and those document(s) which the Land is subject to notwithstanding such document(s) are not registered or are not registrable interests at the Land Registry [including ■]

Unconditional Date means the date on which the last of the Conditions to be satisfied has been satisfied or waived (where expressly provided for in this Agreement)

[Unit means any Dwelling or Non-Residential Unit][*or if purely a commercial scheme* means any buildings and structures to be erected or refurbished on the Land and their immediate curtilage and any parking spaces, drives or forecourts relating to such buildings/structures]

Value Added Tax means value added tax charged under the Value Added Tax Act 1994 and shall include any interest fine penalty or surcharge in respect of value added tax charged

Working Day has the same meaning as in the Standard Commercial Conditions

⁷ Include only if the Surety is entering into a stand-alone deed of guarantee

1.2 Headings

Headings are for ease of reference only and shall not affect the construction of this Agreement

1.3 Statutes

References to laws statutes bye-laws regulations orders and delegated legislation shall include any law statute bye-law regulation order or delegated legislation modifying amending re-enacting consolidating or made pursuant to the same

1.4 Construction

In this Agreement:

- (a) references to Clauses and Schedules shall be references respectively to the Clauses of and Schedules to this Agreement;
- (b) references to "this Agreement" include any Schedules;
- (c) the expression "this Agreement" used in this Agreement shall include any document or the terms of any document which are incorporated by reference into this Agreement and shall have the same meaning as the expression the "contract" referred to in the Standard Commercial Conditions;
- (d) the words "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words;
- (e) where the consent or approval of Homes England is required such consent or approval must be in writing and be signed by Homes England's General Manager for the [■ *state which area*] (or such other officer as shall have been notified in writing by Homes England to the Developer as being the appropriate officer for such purposes);
- (f) in this Agreement expressions used in this Agreement but defined in the Lease (and not in this Agreement) have the meaning set out in the Lease
- (g) where the context so admits, words importing the singular number include the plural number and vice versa, wording importing one gender include all genders and references to a "**person**" are deemed to include any individual, firm, unincorporated association or body corporate; and
- (h) provisions are to be construed independently and, if any provision is void or wholly or partly unenforceable, then that provision, to the extent that it is unenforceable, shall be deemed not to form part of this Agreement, but the validity and enforceability of the remainder of that provision or of this Agreement shall not be affected

1.5 [By virtue of:

- (i) the Housing and Regeneration Act 2008;
- (ii) the Housing and Regeneration Act 2008 (Commencement No.1 and Transition Provision) Order 2008 (SI 2008 No. 2358 (c.103)) dated 2nd September 2008

- (iii) the Housing and Regeneration Act 2008 (Commencement No.2 and Transitional, Saving and Transitory Provisions) Order 2008 (SI 2008 No. c3068 (c.132)) dated 26th November 2008; and
- (iv) Homes and Communities Agency, Tenants Services Authority and the Welsh Ministers Transfer Scheme

all assets, liabilities and interests were transferred from [Commission for the New Towns] [The Urban Regeneration Agency] to Homes England with effect from 1st December 2008]

or

- 1.5 [By virtue of a Transfer Scheme dated 25 August 2011 made under section 51 of the Housing and Regeneration Act 2008 ("**Scheme**") all assets, liabilities and interests detailed in the schedules to the Scheme were transferred from [South East England Development Agency][South West Regional Development Agency][East of England Development Agency][East Midlands Development Agency][Advantage West Midlands][North West Development Agency][Yorkshire Forward][One North East] to Homes and Communities Agency with effect from 19 August 2011]

2 CONDITIONS

- 2.1 The grant of the Lease is conditional on satisfaction or waiver (where expressly provided for in this Agreement) of all of the Conditions
- 2.2 The Developer shall use reasonable endeavours to procure the satisfaction of the Conditions in accordance with but subject to the terms of this Agreement and in any event no later than the Conditions Satisfaction Date and Homes England shall use reasonable endeavours to promptly review and consider any matter which requires its approval under the terms of this Agreement
- 2.3 If all of the Conditions shall be satisfied or waived (where expressly provided for in this Agreement) then this Agreement shall become unconditional unless it shall have been first determined in accordance with the provisions of this Agreement
- 2.4 Save for **Clauses 9, 11 and 12** which shall not come into effect until the Conditions have been satisfied or waived (where expressly provided for in this Agreement), all provisions of this Agreement shall be of immediate effect
- 2.5 If any of the Conditions shall not have been satisfied or waived (where expressly provided for in this Agreement) by the Conditions Satisfaction Date then either Homes England or the Developer may at any time thereafter (but before all of the Conditions have been satisfied or waived (where expressly provided for in this Agreement)) terminate this Agreement by giving not less than 10 Working Days' notice in writing to the other party [provided that the party serving the notice has acted in accordance with **Clause 2.2**] and on the expiry of such notice this Agreement shall cease to have effect and the parties shall be released from their respective obligations hereunder but without prejudice to any right of action available to either Homes England or the Developer in respect of any antecedent breach by the other of its obligations under this Agreement. [Upon determination of this Agreement pursuant to this **Clause 2.5** provided that the Developer has acted in accordance with its obligations in **Clause 2.2** Homes England will within 7 Working Days return to the Developer's Solicitors the deposit paid under **Clause 3**]

- 2.6 Homes England (for itself only) may in its absolute discretion elect to waive the Conditions upon written notice to the Developer (but Conditions (a) [and ■ [any others?]] shall only be treated as waived for the purposes of this Agreement when the Developer also waives the same)
- 2.7 The Developer (for itself only) may elect to waive Condition (a) [and ■ [any others?]] (it being accepted that Conditions (b) [and][,] (c) [and ■ [others?]] [is][are] for the sole benefit of Homes England) (but Condition (a) [and ■ [any others?]] shall only be treated as waived for the purposes of this Agreement when Homes England also waives the same)

3 DEPOSIT

[The deposit payable on exchange of this Agreement shall be [■] POUNDS (£ [■]) (being [■ %] of the Price) and shall be paid to Homes England's Solicitors who shall hold such deposit as stakeholders]

[No deposit is payable on the exchange of this Agreement]

4 APPLICATION AND NEGOTIATIONS FOR RESERVED MATTERS APPROVAL

- 4.1 The Developer will use reasonable endeavours to secure the grant of a Satisfactory Reserved Matters Approval as soon as possible and in any event by the Conditions Satisfaction Date and without prejudice to the generality of this obligation the Developer shall:
- (a) submit the Reserved Matters Pack to Homes England for approval [within 60 (sixty)⁸] Working Days after the date of this Agreement and make any changes to it which may be reasonably required by Homes England (and Homes England shall be deemed to have provided its approval on the [10th (tenth)] Working Day following receipt by Homes England of the draft Reserved Matters Pack where it fails to respond to the Developer advising the Developer whether or not it approves the draft Reserved Matters Pack within [10 (ten)] Working Days following receipt by Homes England of the draft Reserved Matters Pack);
 - (b) at its own expense submit the Reserved Matters Application in the joint names of Homes England and the Developer (being in a form acceptable to Homes England) to the Local Planning Authority within 5 (five) Working Days after the date of Homes England's approval (including deemed approval pursuant to **Clause 4.1(a)** above) of the Reserved Matters Pack (subject always to **Clause 4.3**);
 - (c) Before and/or following the submission of the Reserved Matters Application (if so required by Homes England in order to increase the likelihood of the grant of a Satisfactory Reserved Matters Approval) enter into discussions or negotiations with the Local Planning Authority (and the Developer shall in consequence of such discussions or negotiations with the Local Planning Authority if it appears requisite or desirable in order to obtain a Satisfactory Reserved Matters Approval amend or withdraw and immediately submit a fresh application or an additional application for Reserved Matters Approval in a form previously approved by Homes England) as amended with the approval

⁸ Consider whether any ecology assessment is required to be submitted as part of the Reserved Pack Approval. This date will need to be amended to ensure that such assessment can be carried out at the appropriate time of year

of Homes England to reflect the discussions or negotiations with the Local Planning Authority]

- 4.2 The Developer may only with the written consent of Homes England agree with the Local Planning Authority the extension of the statutory period for the giving of notice of its decision under the Act
- 4.3 No Reserved Matters Application (including without limitation any resubmission substitute or additional application) amendment drawings or any other document or thing shall be submitted to the Local Planning Authority without the prior approval of Homes England (acting reasonably) (nor save with the prior written approval of Homes England until the Detailed Design Plans have been approved by Homes England either expressly or deemed in accordance with this Agreement) [*and add any other pre-conditions*]
- 4.4 Other than a Reserved Matters Application made in accordance with this Agreement no application for planning permission shall be made in respect of the Land by or on behalf of the Developer
- 4.5 In complying with its obligations in this **Clause 4** the Developer will
- (a) keep Homes England fully informed of the progress of all Reserved Matters Applications
 - (b) give reasonable prior notice to Homes England of any meetings with the Local Planning Authority so as to allow them to attend at such meetings and to participate at them
 - (c) have due regard to the requirements of Homes England (acting reasonably);
 - (d) promptly following receipt supply Homes England with copies of any:
 - (i) Reserved Matters Application
 - (ii) Reserved Matters Approval
 - (iii) Planning Refusal
 - (iv) Planning Agreement
 - (v) Material correspondence
 - (vi) notes of material meetings including meetings of any committees of the Local Planning Authority
 - (vii) Committee reports of the Local Planning Authority relating to the Development and the Reserved Matters Application (including any drafts of the same);
 - (e) notify Homes England within [5] Working Days of the receipt of any planning decision in relation to the Reserved Matters Application (whether an original amended resubmitted or additional application); and
 - (f) promptly notify Homes England of any proposal as to the amending resubmission of or making of any additional application for Reserved Matters Approval
- 4.6 Within 10 Working Days of the Developer or its professional advisers receiving a Planning Refusal the Developer will send a copy of the Planning Refusal to Homes England's Solicitors and will appoint at its own expense Planning Counsel to advise on the probability of a successful Appeal and will supply to Homes England and

Homes England's Solicitor a copy of Planning Counsel's opinion on such probability and where Planning Counsel advises that there is a 70 per cent or greater chance of success on Appeal the Developer will lodge an Appeal and prosecute such Appeal with all reasonable speed and diligence.

- 4.7 No Appeal shall be made by the Developer in respect of a Planning Refusal unless Planning Counsel advises that there is a 70 per cent or greater chance of success for that application.
- 4.8 Following the grant of a Reserved Matters Approval:
- (a) the Developer shall within [5] Working Days of receipt by it of such Reserved Matters Approval deliver to Homes England a copy of such Reserved Matters Approval;
 - (b) the Developer shall within 10 Working Days (time being of the essence) of receipt by it of such Reserved Matters Approval notify Homes England in writing whether it considers the Reserved Matters Approval to be a Satisfactory Reserved Matters Approval and if it considers that the Reserved Matters Approval is not a Satisfactory Reserved Matters Approval the reasons therefor. The Developer shall at the same time request Homes England to state whether Homes England considers the Reserved Matters Approval to be a Satisfactory Reserved Matters Approval;
 - (c) if the Developer shall fail to notify Homes England in writing within 10 Working Days of receipt by it of the Reserved Matters Approval as to whether it considers the Reserved Matters Approval to be a Satisfactory Reserved Matters Approval then the Developer shall be deemed to have no objection to such Reserved Matters Approval and to regard the Reserved Matters Approval as a Satisfactory Reserved Matters Approval;
 - (d) within 20 Working Days of the request by the Developer referred to in (b) above (or the expiry of the period in (b) above without a response where the Developer has failed to provide a notification to Homes England within such period) Homes England shall notify the Developer in writing whether it considers the Reserved Matters Approval to be a Satisfactory Reserved Matters Approval and if Homes England shall fail to notify the Developer in writing within 20 working days of the request by the Developer as to whether it considers the Reserved Matters Approval to be a Satisfactory Reserved Matters Approval then Homes England shall be deemed to have no objection to such Reserved Matters Approval and to regard the Reserved Matters Approval as a Satisfactory Reserved Matters Approval;
 - (e) whether or not Homes England receives a notification or request from the Developer under **sub-clause (b)** above Homes England may notify the Developer in writing whether or not it considers the Reserved Matters Approval to be a Satisfactory Reserved Matters Approval.
- 4.9 Any dispute as to whether either Homes England or the Developer have acted reasonably in its decision as to whether a Reserved Matters Approval is a Satisfactory Reserved Matters Approval shall be referred to Planning Counsel who shall act as an expert in accordance with **Clause 14** of this Agreement
- 4.10 If at the Conditions Satisfaction Date there shall have been granted a Reserved Matters Approval but either:

- (a) the Developer shall not have notified (or be deemed to have notified) Homes England as to whether it considers that that Reserved Matters Approval is a Satisfactory Reserved Matters Approval and the period of 10 Working Days referred to in **Clause 4.8(b) or 4.8(c)** (as appropriate) has not expired; or
- (b) Homes England shall not have notified (or been deemed to have notified) the Developer as to whether it considers that that Reserved Matters Approval is a Satisfactory Reserved Matters Approval and the period of 20 Working Days referred to in **Clause 4.8(d)** has not expired
- (c) the Challenge Period is yet to expire; or
- (d) the Reserved Matters Approval has been Challenged

then the Conditions Satisfaction Date shall be extended to the date which is 10 Working Days after the later to occur of:

- (i) the notification or expiration of the period referred to in (a) above; or
- (ii) the notification or expiration of the period referred to in (b) above; or
- (iii) the expiry of the Challenge Period without Challenge of the Reserved Matters Approval; or
- (iv) all Proceedings instituted during the Challenge Period have been exhausted leaving in place a Satisfactory Reserved Matters Approval

4.11 Where an Appeal has been made as permitted pursuant to **Clauses 4.6** and **4.7** the Conditions Satisfaction Date shall be extended to a date at Homes England's discretion.

4.12 In the event of a referral being made under the provisions of **Clause 4.9** and the decision of Planning Counsel is still pending at the date when the Conditions Satisfaction Date (whether as defined in **Clause 1.1** or as extended by **Clauses 4.10** or **4.11**) would otherwise occur then the Conditions Satisfaction Date shall be extended to the date which is 10 Working Days after the decision of Planning Counsel is given in writing.

4.13 The Developer will indemnify and keep Homes England indemnified against all liabilities and expenses whatsoever arising out of or in relation to any Reserved Matters Application, Appeal and/or Proceedings.

5 PLANNING AGREEMENTS AND PLANNING INDEMNITY

5.1 The Developer shall use reasonable endeavours to agree as quickly as possible with Homes England and the Local Planning Authority any matters and arrangements necessary to facilitate the requirements of any Planning Agreement

5.2 At the request and cost of the Developer, Homes England will enter into any Planning Agreements which the Developer may reasonably require to secure a Satisfactory Reserved Matters Approval provided that:

- (a) the Planning Agreement is expressed to be conditional on the grant of a Reserved Matters Approval in the form of the draft Reserved Matters Approval annexed to the Planning Agreement which is a Satisfactory Reserved Matters Approval in accordance with the provisions of this Agreement;

- (b) the Planning Agreement is expressed to be dependent on the implementation of the Satisfactory Reserved Matters Approval;
- (c) the Planning Agreement does not require the carrying out of any works on or restrict or regulate or otherwise impose any obligation (whether of a financial nature or otherwise) on:
 - (i) the Developer and/or use or enjoyment of the Land prior to the grant of the Lease to the Developer;
 - (ii) on land (other than the Land) retained by Homes England; or
 - (iii) on land belonging to a third party;
- (d) the Planning Agreement provides that Homes England will not be liable for any breach non-observance or non-performance of any obligations covenants or conditions in the Planning Agreement occurring either after Homes England no longer has an interest in the Land or has an interest in the Land arising only from the grant or reservation of any easement or similar right or benefit of any restrictive covenant or charge; and
- (e) the Developer agrees to perform the obligations required by the Planning Agreement and to indemnify and keep indemnified Homes England against all liabilities whatsoever arising out of or in relation to a Planning Agreement and the Developer will if so required by Homes England in relation to a Planning Agreement covenant in this respect in a deed of covenant (in such form as Homes England may reasonably require) entered into prior to or contemporaneously with the execution of the Planning Agreement

6 INCREASE IN DEVELOPABLE AREA

- 6.1 If on satisfaction of Condition (a) (*grant of Satisfactory Reserved Matters Approval*) the Developer has obtained a Reserved Matters Approval for a Developable Area greater than [■] square [metres] [feet] of [Dwellings other than Affordable Dwellings][and] [Non-Residential Units] [**or if just a commercial scheme** Units] being the Developable Area of [Dwellings other than Affordable Dwellings] [and] [Non-Residential Units] [**or if just a commercial scheme** Units] contemplated by the parties when the Price was agreed prior to entry into this Agreement then the Price shall be increased by such sum as shall be necessary to produce the said sum of [■] POUNDS (£[■]) per square [metre] [foot] of Developable Area of [Dwellings other than Affordable Dwellings][and] [Non-Residential Units] [**or if just a commercial scheme** Units] (as enlarged)
- 6.2 Such increase in the Price shall be paid by the Developer to Homes England on the same date or dates as the initial Price itself and shall be apportioned as necessary where the Price is payable either by tranche payments or on completion of disposal by the Developer of individual dwellings constructed on the Land and the form of the draft Lease shall be amended accordingly

7 THE COMPLIANCE INSPECTOR

- 7.1 As soon as reasonably practicable after today's date the Parties will commence the procedure for the appointment of the Compliance Inspector and in doing so will comply with the obligations on its part in this **Clause 7**.

- 7.2 Homes England shall submit the Compliance Inspector Brief to no fewer than 3 (three) Approved Compliance Inspectors within 40 Working Days of the date of this Agreement and shall invite the selected Approved Compliance Inspectors to submit tenders for the services described in such brief by the date 20 Working Days following the issue of the invitation to tender.
- 7.3 No later than 20 Working Days following the tender submission date Homes England will evaluate all tender responses received and identify a preferred Approved Compliance Inspector to be the Compliance Inspector and Homes England will notify the Developer of the identity of the Compliance Inspector and the Actual Compliance Inspector Costs.
- 7.4 The Developer shall appoint the Compliance Inspector as soon as reasonably practicable following the notification of their identity pursuant to **Clause 7.3** and such appointment shall be in the form annexed to this Agreement as **Annexure 3** and shall be executed as a Deed
- 7.5 The Price shall be adjusted by the figure calculated by deducting the Actual Compliance Inspector Costs from the Allowed Compliance Inspector Costs

it being acknowledged by the parties that the figure so calculated may result in either a positive or a negative figure and that if the figure is positive, it shall be added to the Price and if it is negative, it shall be deducted from the Price.

8 PROGRESS MEETINGS AND PROVISION OF INFORMATION

The Developer shall during the period commencing on the date of this Agreement and ending on the grant of the Lease provide Homes England with a verbal report on a monthly basis and a written report with full details on a quarterly basis (unless the Parties agree otherwise) providing details of the progress made in satisfying the Conditions

9 GRANT OF THE LEASE AND PRICE

9.1 Homes England shall grant and the Developer shall accept the Lease on the Completion Date and the Developer shall pay to Homes England the sums due to Homes England from the Developer on completion of the Lease pursuant to the Lease

9.2 The parties each acting reasonably shall agree the following to be inserted into the Lease prior to completion of the Lease:

- (a) The Adjusted Price;
- (b) The Target Start on Site Date (as defined in the Lease); and
- (c) The Target House Build Commencement Date (as defined in the Lease)

in the case of (b) and (c) having regard to any pre-commencement conditions contained in the Reserved Matters Planning Approval or on any Planning Agreement and in particular having regard to any requirements to carry out ecological or other surveys and any time constraints for the execution of such surveys and the parties agree that the provisions of **Clause 14** shall apply to any dispute.

9.3 Completion of the grant of the Lease shall take place at the offices of Homes England's Solicitors or elsewhere as they may reasonably direct when the Developer shall deliver to Homes England:-

- (a) a duly executed counterpart of the Lease;
 - (b) a certified copy of the completed appointment of the Compliance Inspector and Homes England shall deliver to the Developer:
 - (i) a duly executed the original of the Lease; and
 - (ii) the Developer's Warranties
- 9.4 The Developer shall on the Completion Date pay Homes England by Chaps transfer (to such account as Homes England or Homes England's Solicitors shall specify) all sums due on completion
- 9.5 If completion shall not have taken place before 4.00pm on any day then completion shall be deemed to have occurred on the next following working day
- 9.6 All items delivered by Homes England or the Developer through the post or document exchange in connection with this transaction and its completion shall be at the risk of the intended recipient
- 9.7 If as a result of any breach by the Developer the Lease is not completed on the Completion Date then:
 - (a) the Developer shall immediately pay to Homes England's Solicitor a deposit equal to 10 per cent of the Price who shall hold such deposit as stakeholders; and
 - (b) the Developer shall on demand pay interest on any sums due under this Agreement at the Contract Rate from the Completion Date until the later of completion and actual payment (after as well as before any judgment)
- 9.8 The Developer shall as soon as reasonably practicable after completion procure the registration of the Lease at the Land Registry

10 DEDUCTION OF TITLE

- 10.1 Title to the Land has been deduced prior to the date hereof
- 10.2 The Developer shall take the Lease with full knowledge of the title to the Land:
 - (a) Title Matters; and
 - (b) as set out or referred to in **Clause 12** below

(including all matters arising in connection with the Planning Acts) and shall raise no requisition nor objection thereto

11 POSSESSION

The Land is let with vacant possession on completion

12 MATTERS AFFECTING THE PROPERTY

Without prejudice to Standard Commercial Condition 3.1.2 (as varied by this Agreement) the Lease shall be granted subject to but where applicable with the benefit of:

- 12.1 all existing rights privileges easements liabilities (and in particular but without prejudice to the generality of the foregoing drainage and other service rights or easements) and quasi or reputed easements affecting the Land;
- 12.2 all Local Land Charges (whether registered or not before the date hereof) and all matters capable of registration as Local Land Charges (whether or not actually registered as such) affecting or relating to the Land or any part thereof or any building or other structure thereon or on part thereof whether general or specific;
- 12.3 all notices orders proposals or requirements whatsoever (whether registered or not before the date hereof) affecting or relating to the Land or any part thereof given or made by any government department or by any statutory undertaker or by any public local authority or other competent authority; and
- 12.4 the documents mentioned contained or referred to in the Property Proprietorship and Charges Registers of title number [■] or any Encumbrances

13 STANDARD COMMERCIAL CONDITIONS AND ANCILLARY MATTERS

- 13.1 In relation to this Agreement the Standard Commercial Conditions shall apply as follows:
- (a) the Standard Commercial Conditions applicable to the grant of a lease and as varied in **Clause 13.2** shall be incorporated in this Agreement insofar as they are not inconsistent with the express terms and conditions of this Agreement and in the event of any conflict between the express terms and conditions of this Agreement and the Standard Commercial Conditions the former shall prevail
 - (b) All references in the Standard Commercial Conditions to the "seller" and the "buyer" shall be deemed to be references to "Homes England" and the "Developer" respectively and shall be construed accordingly
 - (c) All references in the Standard Commercial Conditions to the "property" shall be deemed to be references to the Land and shall be construed accordingly
- 13.2 In relation to this Agreement the Standard Commercial Conditions shall be varied as follows:
- (a) Standard Commercial Conditions 1.4, 3.1.1, 3.1.3, 6.1, 6.2, 6.3, 6.4.2, 6.6.2, 6.6.5, 7.1.2, 7.1.4(b), 8.4, 9.1, 9.3, 10.1.3, 10.2.4 and 10.3 shall be deleted;
 - (b) In Standard Commercial Condition 1.1.1(l) the definition of **public requirement** shall be deleted and replaced by the following:
 - public requirement** means any notice order demand request requirement or proposal having specific reference to the property which is given or made (whether before on or after the date of the contract and whether or not subject to any confirmation) by a body acting on statutory authority or any competent authority and includes:
 - (i) all matters registered or registrable as local land charges (whether or not so registered); and
 - (ii) all actual or proposed charges orders directions conditions proposals demands restrictions agreements notices or other matters whatsoever (whether registered or not before today's date)

affecting or relating to the property or any part thereof or any building or other structure thereon or any part thereof arising under the Planning Acts;

- (c) Standard Commercial Condition 1.3 shall be amended as set out in **Clause 17**;
- (d) In Standard Commercial Condition 3.1.2(c) the words "and could not reasonably" shall be deleted;
- (e) the following shall be added to the end of Standard Commercial Condition 3.1.2:
 - "(f) all outgoings, consents, restrictions, easements and liabilities affecting the property;
 - (g) any interests which override under the Land Registration Act 2002.
- (f) at the end of Standard Commercial Condition 8.8.2 add the words "on completion the party on whom a notice to complete was served shall pay to the other party its reasonable legal costs incurred in connection with the service of the notice and recalculating the completion statement together with disbursements properly incurred and VAT";
- (g) after Standard Commercial Condition 8.8.2 add a new condition 8.8.3 as follows:
 - "On receipt of a notice to complete:
 - (a) if the buyer paid no deposit, it is forthwith to pay a deposit of 10 per cent;
 - (b) if the buyer paid a deposit of less than 10 per cent, it is forthwith to pay a further deposit equal to the balance of that 10 per cent."
- (h) for the purpose of Standard Commercial Condition 9.5.1 the Developer shall have failed to complete in accordance with a notice to complete if the money due on completion is not received by 2.00pm on the day on which the notice expires.

14 DISPUTES

- 14.1 In this Agreement a Dispute occurs where there is any dispute or difference between the parties relating to:
 - (a) any matter that falls to be agreed between the parties; or
 - (b) a test of reasonableness that falls to be applied in respect of any matter; or
 - (c) a dispute that shall arise in respect of any cost or value
- 14.2 Any Dispute which may arise shall first be referred to the Senior Representatives for resolution through negotiation. Either Homes England or the Developer may at any time give 10 Working Days' notice to the other requiring that a Dispute be referred to the Senior Representatives. Any such notice shall contain brief particulars of the Dispute which is to be so referred. The Senior Representatives will meet within 10 Working Days of the expiry of the notice, or within such shorter or longer period as may be agreed between Homes England and the Developer and shall at their meeting negotiate in good faith in an attempt to resolve the Dispute. Homes England

and the Developer shall bear their own costs of referring a Dispute to the Senior Representatives for resolution through negotiation

- 14.3 If a Dispute is not resolved by the Senior Representatives at their meeting, or if a Dispute has not been resolved within 20 Working Days after service of notice requiring that a Dispute be referred to Senior Representatives for resolution, either Homes England or the Developer shall be entitled to refer the Dispute to an expert to be agreed upon by the parties, or failing agreement, to an expert nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's determination of the Dispute shall be conclusive and binding on Homes England and the Developer.
- 14.4 Any costs payable by reason of the referral of the Dispute to an expert under **Clause 14.3** shall be borne initially in equal proportions by Homes England and the Developer and thereafter as may be adjusted by the award or awards pursuant to the provisions thereof

15 ENTIRE AGREEMENT AND INSPECTION

The Developer confirms that:

- (a) this Agreement constitutes the entire agreement relating to the subject matter of this Agreement and supersedes all prior negotiations documents agreements statements and understandings
- (b) it has not entered into this Agreement in reliance (wholly or in part) on any Representation (whether written oral or implied) not expressly set out herein made by Homes England or any of its agents prior hereto (other than the Enquiry Replies); and
- (c) it has been provided with all information necessary to assess the state and condition of the Land and that it has had full opportunity to enter the Land to conduct such surveys as the Developer wished and has entered into this Agreement on the basis of the express provisions of this Agreement

16 REPRESENTATIONS

- 16.1 Save for Homes England's Solicitors in respect of any Enquiry Replies no agent adviser or other person acting for Homes England has at any time had the authority of Homes England to make any Representations whatsoever
- 16.2 If any Representation is made:
- (a) and the fact that it was inaccurate either was known to the Developer before today or might reasonably be expected to have been discoverable as a result of enquiries a prudent buyer would have raised before agreeing to buy the Land then the Developer shall be deemed not to have been in any way influenced induced or persuaded to enter into this Agreement by such Representation
 - (b) Homes England shall have no liability to the Developer in respect of the same unless the Developer notifies Homes England of any inaccuracy breach or claim within six months of the date of completion of the Lease; and
 - (c) Homes England's maximum liability in respect of any such inaccuracy breach or claim shall be limited to the amount of the Price

17 NOTICES

For the avoidance of doubt the provisions of Standard Commercial Condition 1.3 as amended by this Agreement shall apply:

- (a) no notice served on Homes England's Solicitors shall be valid unless it quotes the reference for the recipient solicitor as set out in **Clause 1.1** of this Agreement or such other reference as may have been notified in writing in accordance with the provisions of this **Clause 17**
- (b) "5.30pm" shall be substituted for "4.00pm" in Standard Commercial Conditions 1.3.5 and 1.3.7
- (c) any notice or document to be given or served upon Homes England must either be:
 - (i) sent or delivered to Homes England's Solicitors in accordance with the provisions of this Agreement; or
 - (ii) sent or delivered (in accordance with the provisions of this Agreement) to Homes England at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or such other address (or reference) as Homes England may notify in writing to the Developer for such purpose and at the same time a copy must be sent or delivered to Homes England's Solicitors (in accordance with the provisions of this Agreement)
- (d) any notice or document to be given or served on the Developer must either be sent or delivered to the Developer's Solicitor in accordance with the provisions of this Agreement or sent or delivered in accordance with the provisions of this Agreement to the Developer at [■] and marked for the attention of [■] or such other address or reference as the Developer may notify in writing to Homes England for such purpose and at the same time a copy must be sent or delivered to the Developer's Solicitor (in accordance with the provisions of this Agreement)
- (e) any notice or document given under this Agreement will not have been validly given or delivered if sent either by fax or email

18 NO ASSIGNMENT OR MERGER

- 18.1 The Developer shall not be permitted to assign mortgage charge or otherwise part with the benefit of this Agreement nor make any disposition of the Land and Homes England shall not be required to grant the Lease to any person or body other than the Developer
- 18.2 This Agreement shall remain in full force and effect after completion in respect of any matters agreements or conditions which have not been done observed or performed before completion
- 18.3 All representations or warranties indemnities undertakings and obligations of the parties shall (except for any obligations fully performed on completion) continue in full force and effect notwithstanding completion

19 GENERAL

- 19.1 The rights of each party under this Agreement:

- (a) may be exercised as often as necessary;
 - (b) are cumulative and not exclusive of its rights under the general law; and
 - (c) may be waived only in writing and specifically
- and a delay in exercising or non-exercise of any such right is not a waiver of that right
- 19.2 All payments (including interest) to be made by the Developer under this Agreement shall be made without any withholding deduction set-off or counterclaim
- 19.3 This Agreement may only be varied or modified by a supplemental agreement which is made in writing by the parties or their solicitors and in such a form that complies with the requirements of the Law of Property (Miscellaneous Provisions) Act 1989
- 19.4 This Agreement is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts
- 19.5 If any provision of this Agreement is or becomes illegal invalid or unenforceable in any jurisdiction that shall not affect:
- (a) the legality validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - (b) the legality validity or enforceability in any other jurisdiction of that or any other provision of this Agreement
- 19.6 The consideration for any supply made by Homes England hereunder is exclusive of any Value Added Tax or similar tax duty or imposition which is or becomes chargeable thereon and if any such sum is or becomes so payable the Developer on production of a valid and proper Value Added Tax invoice in respect thereof shall on demand pay the same to Homes England
- 19.7 On any termination of this Agreement the Developer will at its own expense remove any Land Registry or Land Charges Registry entry made against the Land in respect of this Agreement and shall return all title documentation or other documentation sent to it or its advisers.
- 19.8 [The Developer shall not be entitled to seek to vary amend or restate or replace the Section 106 Agreement ("**Amendment**") unless first agreed to by Homes England and here it is in Homes England's absolute discretion whether or not to agree such Amendment and where agreed, the Developer will procure such Amendment is validly and correctly documented by deed]

20 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement

21 TERMINATING EVENTS

- 21.1 In this Clause Terminating Event means any of the following:
- (a) in relation to an individual:

- (i) the making of an application for the appointment of an interim receiver in respect of the individual's property under section 286 of the Insolvency Act 1986;
 - (ii) the making of a bankruptcy order in respect of the individual;
 - (iii) the making of an application for an interim order under section 253 of the Insolvency Act 1986 in respect of the individual;
 - (iv) the appointment of any person by the court to prepare a report under section 273 of the Insolvency Act 1986 in respect of the individual;
- (b) in relation to a company:
- (i) the appointment of an administrator in respect of the company;
 - (ii) the appointment of an administrative receiver in respect of the company;
 - (iii) the making of an order or the passing of a resolution to wind up the company;
 - (iv) the appointment of a provisional liquidator in respect of the company;
 - (v) the making of a proposal under section 1 of the Insolvency Act 1986 for a voluntary arrangement in respect of the company; and
- (c) in relation to any person (whether an individual or a company):
- (i) the appointment of a receiver (including an administrative receiver) in respect of any of the person's assets;
 - (ii) the person entering into an arrangement for the benefit of creditors;
 - (iii) any distress or execution being levied on any of the person's assets;
 - (iv) the person ceasing for any reason to be or remain liable to perform its obligations contained in this Agreement

21.2 If there occurs in relation to the Developer [or the Surety] (or where the Developer [or the Surety] comprises two or more persons there occurs in relation to any of such persons) a Terminating Event and/or there is otherwise a material breach of this Agreement by the Developer [or the Surety] then Homes England may at any time thereafter serve notice on the Developer determining this Agreement but without prejudice to any rights or remedies of any party in respect of any antecedent breach of any of the obligations contained in this Agreement

21.3 Where the Terminating Event occurs in respect of the Surety or if any Surety (being an individual) dies or becomes incapable of managing his affairs the Developer shall, if Homes England requests, procure that a person of standing acceptable to Homes England, within 28 days of that request, enters into a replacement or additional guarantee and indemnity of the Developer's covenants of this agreement in the same form as that entered into by the former Surety.

21.4 Without limitation) failure by the Developer to adhere to the deadlines contained in **Clause 4** of this Agreement shall amount to a material breach of this Agreement.

21.5 The provisions of **Clause 14** (Disputes) shall not apply to this **Clause 21**

22 HOMES ENGLAND POWERS

It is agreed between the parties hereto that nothing contained or implied in this Agreement shall prejudice or affect Homes England's rights powers and duties and the obligations of Homes England under all public and private statutes orders and regulations or otherwise so that the same may be as fully and effectually exercised by Homes England in relation to the Development and the Land as if this Agreement had not been entered into by Homes England

23 FREEDOM OF INFORMATION ETC

- 23.1 The Developer [and the Surety] acknowledges that Homes England is subject to legal duties which may require the release of Information under FOIA and/or EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information. [The parties acknowledge that such information may include matters relating to, arising out of or under this Agreement and any information provided by the Developer [and/or the Surety] prior thereto]
- 23.2 Homes England shall be responsible for determining in its absolute discretion whether:
- (a) any Information is Exempted Information or remains Exempted Information; or
 - (b) any Information is to be disclosed in response to a Request for Information
- and in no event shall the Developer [and/or the Surety] respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England, unless otherwise expressly authorised to do so by Homes England
- 23.3 Subject to **Clause 23.4** below, the Developer [and/or the Surety] acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:
- (a) without consulting [either] the Developer [and/or the Surety]; or
 - (b) following consultation with the Developer [and/or the Surety] [as the case may be] and having taken (or not taken, as the case may be) its views into account
- 23.4 Without in any way limiting **Clauses 23.1** and **23.3**, in the event that Homes England receives a Request for Information Homes England will, where appropriate, as soon as reasonably practicable notify the Developer [and/or the Surety] [as appropriate]
- 23.5 The Developer [and/or the Surety] will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its employees agents and sub-contractors will) at their own cost:
- (a) transfer any Request for Information received by the Developer [and/or the Surety] to Homes England as soon as practicable after receipt and in any event within two working days of receiving a Request for Information;
 - (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and

- (c) provide Homes England with any data or information in its possession or power in the form that Homes England requires within five Working Days (or such other period as Homes England may specify) of Homes England requesting that Information; and
 - (d) ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure; and
 - (e) permit Homes England to inspect all records retained in accordance with **Clause 23.5(d)** as requested from time to time
- 23.6 Nothing in this Agreement will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information

24 [SURETY⁹

- 24.1 In consideration of this Agreement having been entered into by Homes England with the Developer at the request of the Surety (as the Surety hereby acknowledges) the Surety hereby agrees with Homes England (as a primary obligation) in the terms set out in **Schedule 1**
- 24.2 The Surety confirms that it will duly execute the Lease at the same time or before the Lease is executed by the Developer]

25 AGREEMENT TO EXCLUDE SECURITY OF TENURE

- 25.1 Homes England and the Developer have agreed to exclude the provisions of sections 24 to 28 of the Landlord and tenant Act 1954 from the tenancy to be created by the Lease and before the date of this Agreement:-
- 25.1.1 Homes England served on the Developer a notice dated [] complying with the requirements of section 38A(3) of the Landlord and Tenant Act 1954;
- 25.1.2 the Developer or a person duly authorised by the Developer made a statutory declaration dated [] (the "**Statutory Declaration**") complying with the requirements of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.
- 25.2 Where the Statutory Declaration was made by a person other than the Developer, the Developer confirms that the declarant was duly authorised to make the Statutory Declaration on the Developer's behalf.
- 25.3 Homes England and the Developer agree that sections 24 to 28 (inclusive) of Homes England and Tenant Act 1954 shall be excluded in relation to the tenancy to be created by the Lease.
- 25.4 [The Surety confirms that in relation to the tenancy to be entered into by the Surety pursuant to [paragraph [] of schedule [] to the Lease] and before entering into this Agreement:-
- 25.4.1 Homes England served on the Surety a notice dated [] complying with the requirement of section 38A(3) of the Landlord and Tenant Act 1954;

⁹ Clause not required where the surety is providing a stand-alone deed of guarantee

- 25.4.2 the Surety or a person duly authorised by the Surety made a statutory declaration dated [■] (the "**Surety's Statutory Declaration**") complying with the requirements of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.]
- 25.5 Where Surety's Statutory Declaration was made by a person other than the Surety the Surety confirms that the declarant was duly authorised to make the Surety's Statutory Declaration on the Surety's behalf.
- 25.6 Homes England and the Surety agree that sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 shall be excluded in relation to any tenancy entered into by the Surety pursuant to [paragraph [■] of schedule [■] to the Lease].]

AS WITNESS the hands of the parties or their duly authorised representatives the day and year first above written

SCHEDULE 1 – COVENANTS AND AGREEMENTS BY THE SURETY¹⁰

- 1 The Surety hereby agrees with Homes England that
 - (a) the Developer or the Surety shall duly perform and observe all of the terms of this Agreement and the Surety hereby indemnifies Homes England from and against all claims demands losses damages liability costs fees and expenses sustained by Homes England by reason of or arising in any way directly or indirectly out of any default by the Developer in the performance and observance of any of the agreements and obligations of the Developer under the terms of this Agreement
 - (b) the Surety is jointly and severally liable with the Developer for the fulfilment of all the obligations of the Developer under the terms of this Agreement and agrees that Homes England in the enforcement of its rights under this Agreement may proceed against the Surety as if the Surety was named as the Developer in this Agreement
 - (c) the Surety hereby waives any right to require Homes England to proceed against the Developer or to pursue any other remedy whatsoever which may be available to Homes England before proceeding against the Surety
 - (d) (without prejudice to paragraphs 1(a) and 1(b) if the Developer (being a company) enters into liquidation receivership administrative receivership or (being an individual) becomes bankrupt and the liquidator or trustee in bankruptcy disclaims this Agreement the Surety will if so requested by Homes England itself complete the taking of the Lease upon the terms mutatis mutandis of this Agreement (save for this Schedule) as if it were the Developer named herein and the provision of this Schedule shall apply in relation to this obligation mutatis mutandis
- 2 Where the Surety comprises more than one person the obligations and liabilities of the Surety are obligations and liabilities of such persons jointly and severally
- 3 The Surety shall at the request of Homes England join in any document which the Developer is required to enter into pursuant to this Agreement

¹⁰ Schedule not required where the Surety is entering into a stand-alone deed of guarantee

SCHEDULE 2 – ENCUMBRANCES

SCHEDULE 3 – DEVELOPER’S WARRANTIES

Date of contract/ report	Parties to contract/ Description of report	Consultant/contractor

Signed for and on behalf of the
Homes and Communities Agency)
)
)
)

Authorised signatory

Signed by)
duly authorised for and)
on behalf of the **Developer**)
)

[Signed by)
duly authorised for and)
on behalf of the **Surety]**)
)

Annexures:

Annexure 1: List of Approved Compliance Inspectors

Annexure 2: Compliance Inspector Brief

Annexure 3: Compliance Inspector appointment

Annexure 4: the Plan

[Annexure 5: the Lease

[Annexure 6: Outline Design Plans]

[Annexure 7: Infrastructure Works]

Draft: 6 December 2018

Lease for the construction and sale of dwellings [and other buildings] upon land at []**

Dated

The Homes and Communities Agency (trading as Homes England)
(Homes England)

[**]
(Developer)

[**]
(Surety)

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Notes

Remove all note boxes when drafting – including this one.

(Save where expressly mentioned below) you must NOT delete any of the prescribed clauses.

Lease

LR1. Date of lease

LR2. Title number(s)

LR2.1 Landlord's title number(s)

.

LR2.2 Other title numbers

[None.]

LR3. Parties to this lease

Landlord

The Homes and Communities Agency (trading as Homes England) (**Homes England**) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH

Tenant

[**] (**Developer**) [of/Company Registration Number ** whose registered office is at **]

Other parties

Do not amend the above headings of **Landlord** and **Tenant**, even if this is not how they are subsequently described in the remainder of the lease.

Delete **Other parties** if there are none or if the Surety is entering into a stand-alone deed of guarantee but leave the surety drafting in place as it will be needed if the building lease is assigned to a person for whom a surety is required.

[**] (**Surety**) [of/Company Registration Number ** whose registered office is at **]

LR4. Property

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

The land demised by this lease is known as [**], defined as the [Land] in Clause [1] and more fully described in [that definition].

LR5. Prescribed statements etc.

[None.]

LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.

[None.]

.

LR5.2 This lease is made under, or by reference to, provisions of:

LR6. Term for which the Property is leased

The term as specified in this lease at Clause [3.1] .

LR7. Premium

[None.] [£** plus VAT of £**]

If VAT is payable on the premium, it must be stated, including how much. State for example, " <i>£100,000 plus VAT of £20,000</i> " or " <i>£120,000 inclusive of VAT</i> ". Do NOT simply refer to VAT generally for example, " <i>£100,000 plus VAT</i> ".
--

LR8. Prohibitions or restrictions on disposing of this lease

[This lease does not contain a provision that prohibits or restricts dispositions.]

OR

[This lease contains a provision that prohibits or restricts dispositions.]

You must include whichever of these two statements is appropriate. Do NOT refer to the relevant clauses in the lease.

LR9. Rights of acquisition etc.

LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land

Refer to the clause numbers which contain any relevant provisions. NB any relevant title number should be into clause LR2.2 above.
--

[None.] [See Clause [**].]

LR9.2 Tenant's covenant to (or offer to) surrender this lease

[None.] [See Clause [**].]

LR9.3 Landlord's contractual rights to acquire this lease

[None.] [See Clause ** .]

LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property

Refer to the clause numbers which contain the provisions. NB any relevant title number should be inserted into clause LR2.2 above.

[None.] [See Clause ** .]

LR11. Easements

LR11.1 Easements granted by this lease for the benefit of the Property

[None.] [See [Schedule 1 Part1].]

Refer to the schedule number which sets out easements granted. NB all relevant burdened title numbers should be inserted into clause LR2.2 above.

LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property

[None.] [See [Schedule 1 Part 2].]

Refer to the schedule number which sets out easements reserved. NB all relevant benefiting title numbers should be inserted into clause LR2.2 above.

LR12. Estate rent charge burdening the Property

[None.] [See Clause ** .]

Refer here only to the clause number which sets out the rentcharge.

LR13. Application for standard form of restriction

The full text of the standard form of restriction and the title against which it is to be entered must be set out (not forgetting to put any additional title number into clause LR2.2 above).

If more than one standard form of restriction is required, then use this clause to apply for each of them, repeating the introductory words below for each restriction.

If a non-standard form of restriction is required, this should NOT be referred to in this clause. A separate application must be made on Form RX1.

Clause LR13 may be deleted in its entirety if it is not relevant. But LR14 must not be renumbered.

[The Parties to this lease apply to enter the following standard form restriction against the title of the Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by The Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or their conveyancer that the provisions of a lease dated ■ and made between (1) Homes and Communities Agency [and] (2) [*developer*] [and (3) [*surety*]] have been complied with or that they do not apply to the disposition (Form L)".

LR14. Declaration of trust where there is more than one person comprising the Tenant

Clause LR14 may be deleted in its entirety if it is not relevant.

[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.]

OR

[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.]

OR

[The Tenant is more than one person. They are to hold the Property on trust (*insert here details of the trust*).]

OR

[Not applicable.]

PARTICULARS

ESTATE NAME:	[**]
---------------------	-------

AREA:	[**] [hectares][acres] approximately
--------------	---------------------------------------

NUMBER OF DWELLINGS:	[**] Dwellings comprising: [**] Market Dwellings [**] Sale Flats [**] PRS Dwellings [**] Affordable Dwellings comprising: [**] Shared Ownership Units [**] Rental Units
-----------------------------	--

n.b the number of Dwellings will reflect the Planning Permission

[NUMBER OF NON-RESIDENTIAL UNITS [**]][Comprising up to [] square metres of gross internal floor area]
---	--

n.b the number or development area of Non-Residential Units will reflect the Planning Permission

PRICE:	£[**]
---------------	--------

[SITE ACCESS:	The access road shown edged [**] on the plan marked ["Plan B"] forming part of Annexure 1 and such additional or alternative access roads as may from time to time be specified by Homes England.
----------------------	---

LEASE

Dated

Between

- (1) **The Homes and Communities Agency** (trading as **Homes England**) ("**Homes England**") (referred to in Clause LR3 as the Landlord) of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH; [and]
- (2) [******] (the **Developer**) (referred to in Clause LR3 as the Tenant) (Company Registration Number [******]) whose registered office is at [******] [;and]
- (3) [******] (the **Surety**) (referred to in Clause LR3 as the Surety) (Company Registration Number [******]) whose registered office is at [******] .

It is agreed:

1. DEFINITIONS

In this Lease the following definitions apply:

Acceleration Date means the twenty eighth day after service of written notice by Homes England on the Developer invoking the Acceleration Date which notice may be served following:

- (a) the service of an Insolvency Termination Notice under **Clause 16.1(a)** of this Lease; or
- (b) the service of a Breach Termination Notice under **Clause 16.1(b)**, **Clause 16.1(c)** or **Clause 16.1(d)** of this Lease.

Act means the Town and Country Planning Act 1990.

Actual House Build Commencement Date means the date on which the laying of the foundation (which includes the laying of the first foundation slab where appropriate) of the first Dwelling commences]

[Adjoining Land means the land belonging to Homes England shown coloured [******] on the annexed plan marked ["**Plan []**" forming part of **Annexure 1.**]

Adjusted Target House Build Commencement Date means the Target House Build Commencement Date adjusted by the provisions in **paragraph 8.2** of **Schedule 2**

Adjusted Target House Build Completion Date means the Target House Build Completion Date adjusted by the provisions in **paragraphs 8.1** and/or **8.2** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6** of **Schedule 2** and which is confirmed by a memorandum of agreement pursuant to **paragraph 8.8**

Adjusted House Build Targets means the House Build Targets adjusted by the provisions in **paragraphs 8.1** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6** of **Schedule 2** and which is confirmed by a memorandum of agreement pursuant to **paragraph 8.8**

Adoptable Common Services means all Common Services which are intended to become adopted or maintainable at the public expense or by any public or statutory authority.

[Affordable Dwelling means a Dwelling the freehold interest in which is to be disposed of by the Developer to the Registered Provider for further disposal by the Registered Provider under a Shared Ownership Lease or Tenancy Agreement [or on such other affordable terms as otherwise approved by Homes England (such approval not to be unreasonably withheld or delayed.)]

Adoptable Highways means Highways intended to be adopted as maintainable by the highway authority [being those Highways shown coloured [**] on the plan marked ["Plan []"] forming part of Annexure 1.

[Affordable Flat means any Flat comprised in an Affordable Leasehold Building [or Leasehold Building] and which is to be disposed of by the Registered Provider under a Shared Ownership Lease or Tenancy Agreement (or on such other affordable terms as otherwise approved by Homes England (such approval not to be unreasonably withheld or delayed).]

[Affordable Leasehold Building¹ means, [a building comprising entirely Affordable Flats (including any land forming the curtilage of the building)] [any of the buildings to be constructed on the land shown [**] on [**] annexed] the freehold of which is to be disposed of by the Developer to the Registered Provider.]

[Agreement for Lease means the agreement dated [**] made between Homes England (1) [and] the Developer (2) [and the Surety (3)] pursuant to which this Lease has been granted.]

Approved Funder means []².

Approved Plans) has the same meaning as in the Agreement for Lease and which plans as have been approved pursuant to and in accordance with the Agreement for Lease are set out in the Approved Plans Schedule

Approved Plans Schedule means the approved plans schedule at Annexure ■

[Base Figure means the mean monthly Total Sales Volume for the three month period in the [East Midlands][East of England][North East][North West][South East][South West][West Midlands][Yorkshire and the Humber] region most recently published before the date of completion of this Lease; this is [■sales]³]⁴

Base Value means the base value attributed to each Dwelling (or type of Dwelling) as

¹ This is intended to relate to buildings comprising entirely affordable housing.

² Insert the details of any funder who has been approved by Homes England at the date the Lease is entered into. Note the provisions of clause 12.8 which need to be satisfied for the funder to be approved.

³ Figure to be inserted is to be calculated and inserted on the date of completion of the lease

⁴ Definition only required if Market Downturn definition is included

Breach Termination Notice means a written notice served by Homes England on the Developer (and copied to each Permitted Chargee) as described in **Clause 16.1(b), 16.1(c) and 16.1 (d)** referring to the relevant clause and stating that failure to respond within 20 Working Days in the manner required by **Clause 18** of this Lease could lead to the termination of this Lease

[Building Contract means the construction contract or contracts (as the case may be) to be entered into by the Developer with the Building Contractor to carry out the Development.]

[Building Contractor means [[NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] or] such [other] reputable building contractor or building contractors who shall first be approved by Homes England (such approval not to be unreasonably withheld) appointed by the Developer for the purposes of the Development or any part of it]

CDM means the Construction (Design and Management) Regulations 2015 (as amended from time to time)

CML Disclosure of Incentives Form means the Disclosure of Incentives Form prepared by the Developer in respect of a sale of a Dwelling in the form available from the CML website <http://www.cml.org.uk/handbook>.

[Common Areas means:

- (a) those parts of the Land not included in any [Dwelling][Unit];
- (b) those Highways and Common Services not intended to be adopted as maintainable at public expense;
- (c) Open Space Land not intended to be transferred to the [Council]

and which it is intended shall be transferred to the Management Company [as shown on the Approved Plans.]]

Common Services means sewers, drains, channels, pipes, watercourses, gutters, wires, cables, pillars, turrets, amplifiers, poles, soakaways and any other apparatus for the supply, transmission or distribution of water, gas, electricity or telephone, radio or television signals or for the disposal of soil, foul water, rainwater or surface water[which are not to be adopted as maintainable at public expense].

[Compliance Certificate⁵ means in relation to a Non-Residential Unit (or batch of Non-Residential Units as the case may be) a certificate given by the Compliance Inspector certifying that:

- (a) the Non-Residential Unit has been erected in accordance with the plans and specifications for the construction of the Non-Residential Unit contained in the Approved Plans; and
- (b) that practical completion has been achieved as evidenced by the issue of a certificate of practical completion; and
- (c) that the Highways sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Non-Residential

⁵ Definition not required of there are no non-residential units

Unit have been completed commissioned and are ready for use by the Non-Residential Unit or occupiers thereof; and

- (d) In relation to the Non-Residential Unit there is no extant breach by the Developer of the terms of this Lease and/or the Agreement for Lease; and
- (e) That the Non-Residential Unit reaches the Performance Criteria[; and]
- (f) [other matters to be certified.]]

Compliance Inspector means a suitably qualified professional who is qualified to certify matters required to be certified in the Compliance Certificate and who is appointed by the Developer from time to time with the approval of Homes England.

Compliance Inspector Appointment means the appointment by the Developer of the Compliance Inspector dated [] to provide the services detailed in **Clause [7.3]** of the Agreement for Lease.

Considerate Constructors Scheme means the Code of Considerate Practice promoted by the construction industry [a copy of which is annexed] [a copy of which is to be found on the Considerate Constructors Scheme website.]

[Constraints Plan means the constraints plan annexed hereto at Annex [].]

Construction Related Deadline⁶ means any one or more of the following:

- (a) Start on Site has occurred on or before the Target Start on Site Date
- (b) The Actual House Build Commencement Date has occurred on or before the Adjusted Target House Build Commencement Date
- (c) [The issue of the NHBC Buildmark Confirmation in respect of a minimum of:
 - (i) [] completed Dwellings [*the house build target figure from the bid less 10%*] by month [] following the Actual House Build Commencement Date
 - (ii) [] completed Dwellings [*the house build target figure from the bid less 10%*] by month [] following the Actual House Build Commencement Date
 - (iii) [] completed Dwellings [*the house build target figure from the bid less 10%*] by month [] following the Actual House Build Commencement Date]⁷
- (d) The issue of a NHBC Buildmark Confirmation in respect of a minimum of 90% of Dwellings by the Adjusted Target House Build Completion Date

All such dates being subject to any extensions permitted and granted pursuant to **paragraph 8 of Schedule 2**

⁶ Note: these deadlines are across all phases of the Development and are not to be broken down on a phase by phase basis

⁷ Construction Related Deadlines linked to House Build Targets are only appropriate if the total build period exceeds 18 months

[Core and Shell Stage means in the case of a Non-Residential Unit:

- (a) completion of the construction of the superstructure, roof, external and internal walls, floors and staircases;
- (b) the fitting of windows;
- (c) the completion of pre-skim, internal plaster boarding and external plastering rendering; and
- (d) the removal of scaffolding from around the Non-Residential Unit.]

Council means [].

[Deed of Guarantee means a deed made on the same date as this Lease between (1) Homes England (2) the Developer and (3) the Surety]

Deleterious Materials means any materials or substances which are not in accordance with the report entitled "Good Practice in the Selection of Construction Materials" (published under the auspices of the steering group representing the British Council for Offices and the British Property Federation and prepared by Ove Arup) at the date of this Lease and/or the relevant British and/or European Standards and/or codes of practice or which are generally known within the construction industry at the time of specification or use to be deleterious to the durability and/or to the health and safety of buildings and/or structures and/or finishes and/or plant and machinery in the particular circumstance in which they are specified to be used; or

Developer's Group means a group company of the Developer as defined in Section 42 of the Landlord and Tenant Act 1954

[Developer's Infrastructure Works means]

Development means the erection and completion on the Land of all buildings, erections, structures, Highways, drainage, infrastructure and other works in accordance with the Planning Permission[, and] the Approved Plans [and the Constraints Plan], including site preparation and the demolition of any existing buildings to provide for the erection of the Number of [Dwellings] [Units] specified in the Particulars.

Digital Plan means a digital plan in pdf format with a colour coded legend showing the following classes of disposal: (i) [Dwelling][Unit] transfers (ii) Leasehold Building Transfers (iii) Affordable Leasehold Building Transfers (iv) PRS Leasehold Building Transfers (v) transfers to the Council (vi) transfers to utility companies (vii) transfers to the Management Company (viii) other transfers and (ix) the Remainder Land r

Disposal means a disposition for value to a person who is not a member of the Developer's Group by sale, exchange, grant of an underlease for a premium, declaration of trust or otherwise and whether effected by one or more transactions and 'Dispose' and 'Disposed' shall be construed accordingly

Dwelling means any house, bungalow, Flat, maisonette or other single unit of residential accommodation constructed on the Land together with any land forming its curtilage and any other appurtenant structures.

EIR means the Environmental Information Regulations 2004 and any subordinate legislation made under this Act from time to time together with any guidance and/or

codes of practice issued by the Information Commissioner in relation to such legislation.

EIR Exception means any applicable exemption to EIR.

Employment and Skills Plan⁸ means the employment and skills plan for the Development produced by the Developer and approved by Homes England incorporating the Method Statement and the Developer's Employment Commitments annexed to this Lease at Annexure [].

Employment Commitments means the employment and skills opportunities to be offered by the Developer during the course of the Development in satisfaction of the commitments made in the Employment and Skills Plan.

Enactment means statute, statutory instrument, statutory guidance, treaty, regulation, directive, byelaw, code of practice, guidance note, circular, common law and any notice, order, direction or requirement given or made pursuant to any of them for the time being in force.

Energy Performance Certificate means a certificate issued under the 2012 Regulations.

Environment means all or any of the following media, alone or in combination: the air (including the air within buildings and the air within any other natural or man-made structures above or below ground), water (including water under or within land or in pipes or sewerage systems), soil, land and any ecological systems and living organisms supported by those media and buildings.

Environmental Law means all European Community, national and local statutes, and the common law, from time to time in force concerning:

- (a) pollution of, damage to or protection of the Environment or health and safety and/or the provision of remedies in respect of or compensation for damage or harm to the Environment or to health and safety and/or
- (b) emissions, discharges, releases or escapes into the Environment or the presence in the Environment of Hazardous Substances or the production, processing, management, treatment, storage, transport, handling or disposal of Hazardous Substances

and any bylaws, regulations or subordinate legislation, judgments, decisions, notices, orders, circulars, codes of practice and permits from time to time issued or made thereunder having force of law.

Estate Layout Plan means a plan showing the layout and boundaries of the buildings to be comprised in the Development such plan being suitable for lodging as an estate plan at the Land Registry.

Estate Management Scheme means the scheme to secure the long-term stewardship and maintenance [by the Management Company] of the Common Areas

⁸ The Employment and Skills Plan should take account of Procurement Policy Note – Supporting Apprenticeships and Skills [Through Public Procurement Action Note](#) 14/15 27 August 2015 (as updated or replaced from time to time). This currently states that the Government's expectation is for contractors and consultants to aim for 3-5% of the workforce to be apprentices, sponsored students and/or on graduate programmes, with a focus on apprentices.

and the Open Space Land [both within the Development or outside of the Development for the wider management scheme for ■ generally (“Wider Development”)] to address wider community responsibility and environmental objectives for the Development [and the Wider Development].

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

Final Completion Certificate means a certificate issued by the Compliance Inspector under **Clause 6.1** certifying completion of the Development.

[Flat means a single unit of residential accommodation (whether or not on the same floor) constructed on the Land which:

- (a) forms a part only of a building; and
- (b) is divided horizontally from some other part of that building.]

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

FOIA Exemption means any applicable exemption to FOIA.

[Golden Brick means the point in the construction of an [Affordable Dwelling][Affordable Leasehold Building][PRS Dwelling][PRS Leasehold Building] where such construction has clearly progressed beyond the foundation stage and which upon its transfer from Homes England to the Registered Provider or to the PRS Operator or the grant of a sublease by the Developer to the Registered Provider or to the PRS Operator would result in a zero-rated supply.]

[Golden Brick Notice means a notice given by the Compliance Inspector certifying that a particular Dwelling has achieved Golden Brick].

Hazardous Substances means any wastes, pollutants, contaminants and any other natural or artificial substance, including, for the avoidance of doubt, radioactive material (in each case whether in the form of a solid, liquid, gas or vapour, and whether alone or in combination) which is capable of causing harm or damage to the Environment or to the health and safety of persons.

Highways means roads, cycleways, footpaths, pavements, accessways, squares, courtyards, driveways, forecourts, entranceways and ancillary verges, landscaped areas, lighting, street furniture, drains, other utilities and associated works.

Highways Technical Approval means written approval by the competent highway authority of the Developer's detailed proposals for Adoptable Highways within the Development.

Homes England includes the person who is from time to time entitled to the reversion immediately expectant on the determination of this Lease.

[Homes England's Infrastructure Works means the infrastructure work to be carried out by Homes England outside the boundaries of the Land, more particularly described in Homes England's Infrastructure Works Specification.]

[Homes England's Infrastructure Works Specification means the annexed drawings and specifications annexed to this Leases as **Annexure [] .]**

Homes England's Plot Sales Solicitors means such firm of solicitors appointed by Homes England to act on its behalf on the disposal of the Dwellings as Homes England shall notify to the Developer from time to time

Homes England's Representative means the General Manager for the [*insert area*] region or such other individual as Homes England may notify to the Developer from time to time.] [any person nominated by Homes England from time to time and notified to the Developer in writing]

Homes England's Solicitor means [] or such other firm of solicitors as Homes England shall notify to the Developer from time to time

[House Build Targets⁹¹⁰ the rate of construction set out in the Developer's build programme contained in the Approved Plans Schedule and in accordance with the milestones set out below:

- (e) By month [] following the Actual House Build Commencement Date [] completed Units [; and]
- (f) By month [] following the Actual House Build Commencement Date [] completed Units[; and]
- (g) By month [] following the Actual House Build Commencement Date[] completed Units[; and]
- (h) By month [] following the Actual House Build Commencement Date [] completed Units]

Information

- (a) in relation to FOIA has the meaning given under section 84 of the FOIA; and
- (b) in relation to EIR has the meaning given under the definition of "environmental information" in section 2 of EIR.

Insolvency Event means:

- (a) where the Developer or the Surety is a corporation:
 - (i) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer or the Surety; or
 - (ii) an application is made for an administration order in relation to the Developer or the Surety; or
 - (iii) in relation to the Developer or the Surety, the appointment of an administrator, the filing of documents with the court for the appointment of an administrator or the giving of notice of intention to appoint an

⁹ The provisions regarding House Build Targets are only appropriate if the total build period exceeds 18 months

¹⁰ Note: these targets are across all phases of the Development and are not to be broken down on a phase by phase basis

administrator by the Developer (or the Surety, as the case may be) or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or

- (iv) a receiver or manager is appointed in relation to any property or income of the Developer or the Surety; or
 - (v) a liquidator is appointed in respect of the Developer or the Surety; or
 - (vi) a voluntary winding-up order for the Developer or the Surety is commenced, except in the winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
 - (vii) a petition is made for a winding-up order for the Developer or the Surety; or
 - (viii) the Developer or the Surety is struck-off from the Registrar of Companies; or
 - (ix) the Developer or the Surety otherwise ceases to exist;
- (b) where the Developer or the Surety is an individual:
- (i) the taking of any step in connection with any voluntary arrangement of any other compromise or arrangement for the benefit of any creditors of the Developer or the Surety; or
 - (ii) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer or the Surety

and **Insolvent** and **Insolvency** shall be construed accordingly.

Insolvency Termination Notice means a written notice served by Homes England on the IP (copied to the Developer and the Permitted Chargee) as described in **Clause 16.1(a)** referring to that clause and stating that failure to respond within 20 Working Days in the manner required by **Clause 17** of this Lease could lead to the termination of this Lease

Interest means interest at the rate of four per cent per annum above the base lending rate from time to time of Barclays Bank PLC (or of such other UK clearing bank as Homes England may designate from time to time by giving notice to the Developer) both before and after any judgment, calculated on a daily basis from the date on which the payment is due under this Lease to the date on which such payment is made.

IP means any of a liquidator or administrator appointed to the Developer, or a fixed charge receiver appointed to the Lease of whom Homes England has written notice

Land means all that land situate at [**] which is [for the purpose of identification only] edged red on the annexed plan marked ["Plan A"] and comprised within [part of] title number(s) [] and known by the Estate Name (and references to "Land" shall include any part or parts of it).

[Landscape Phasing Plan means the phasing plan forming part of the Landscape Works Specification setting out the elements of landscaping [in relation to public open space] and adoption thereof to be achieved in relation to the number of [Dwellings] [Units] sold [let] (or agreed to be sold [let]).]

[Landscape Works Specification means the specification relating to landscaping annexed to this Lease as **Annexure []**.]

Lease means this Lease and any document supplemental to it or entered into pursuant to its terms.

[Leasehold Building means [a building comprising entirely of Sale Flats [(including any land forming the curtilage of the building)] [a building comprising Sale Flats and Affordable Flats] [(including any Non-Residential Units)] and any land forming the curtilage of the building).

[Legal Charge¹¹ means a charge by way of first legal mortgage (or second legal mortgage where this Lease has been charged to a Permitted Chargee by way of a first legal mortgage) entered into by the Developer in favour of Homes England substantially in the form set out in **Part 7 of Schedule 9** and naming the Homes and Communities Agency as the chargee]

Local Planning Authority means the Council or such other authority, as shall from time to time have authority to deal with town and country planning matters.

Low Cost Rental Accommodation means as defined in Section 69 of the Housing and Regeneration Act 2008.

LTA 1954 means the Landlord and Tenant Act 1954

[Management Company means the management company established by the Developer [(or Homes England as the case may be] pursuant to **Clause 27** (or such other person from time to time nominated by Homes England to deal with the [Estate Management Scheme].)]

[Market Downturn means that at any time the published Total Sales Volume has been at least 20% lower than the Base Figure for a period of three consecutive months¹²]

Market Dwelling¹³ means a Dwelling the freehold interest in which is to be disposed of by the Developer to a Purchaser at full market value assessed in accordance with the RICS Valuation Global Standards 2017 plus UK 2014 (revised 2015) supplement (The Red Book))

Material Breach means a material breach of this Lease and/or the Agreement for Lease by the Developer

¹¹ Definition is only required if Homes England is taking a charge

¹² Only to be included in schemes with a build period in excess of 18 months

¹³ Homes England's expectation is that all dwellings that are not flats will be sold freehold. If this is not the case additional wording will need to be included prohibiting the reservation of a ground rent (except a peppercorn) in the leases granted of the houses.

Method Statement means the method statement produced by the Developer for the Development which sets out in detail how the Developer will implement the Employment and Skills Plan.

Modern Slavery Policy means Homes England's modern slavery policy displayed on Homes England's web site as updated and amended from time to time

Monitoring Report means each monthly monitoring report issued by the Compliance Inspector pursuant to the Compliance Inspector Appointment

NHBC Buildmark Confirmation means the certificate of buildmark protection issued by the National House-Building Council¹⁴

[Non-Residential Unit means any buildings and structures erected on or refurbished on the Land that are not Dwellings including but not limited to shops, offices and community facilities and their immediate curtilage and any garages, parking spaces, private spaces, private drives or forecourts relating to such buildings/structures.]

[Open Space Land means that part of the Land [being the open spaces, play areas, amenity areas and landscaping areas][identified as such in the Approved Plans Schedule] [for general public use].]

Overage means the overage payment (being Homes England's Adjusted Payment as defined in **Schedule 12**) calculated and payable by the Developer to Homes England in accordance with the provisions of **Schedule 12**.

Overage Reduction means a reduction of 10% of the Developer's Payment (as defined in **Schedule 12**) for each Reduction Event that is either unchallenged or that is agreed or determined pursuant to **Clause 19.6**

Particulars means the details appearing in the page of this Lease so headed.

Party means a party to this Lease and **Parties** means more than one Party.

Performance Criteria means:

- (a) Compliance with the Planning Permission and Reserved Matters Approval (as defined in the Agreement for Lease)
- (b) Compliance with building regulations
- (c) Compliance with the CDM regulations and all other relevant legislation
- (d) Compliance with the Approved Plans as bid by the Developer and attached as schedules to the Agreement for Lease and this Lease
- (e) Compliance with the Landscape Works Specification
- (f) Adopting a construction methodology and using only materials of a kind generally acceptable to CML mortgage lenders.
- (g) NHBC 10 year buildmark warranty being available to every Purchaser with the Purchaser obliged to acquire it and the Developer never waiving this obligation

¹⁴ An alternative product providing the same protection may be substituted with Homes England approval

Permitted Chargee means any mortgagee of this Lease and/or holder of a floating charge over all or substantially all of the Developer's business and assets approved by Homes England pursuant to **Clause 12.7(b)** such approval being subject to the provisions of **Clause 12.8** and of whom Homes England has written notice

Planning Acts means all Enactments relating to town and country planning.

Planning Agreement means any agreement and/or undertaking required by the Local Planning Authority to be entered into as a condition of the grant or implementation of any planning consent, including [the Specific Section 106 Agreement,]any agreement pursuant to any one or more of Section 38 or Section 278 of the Highways Act 1980, Section 33 of the Local Government (Miscellaneous Provisions) Act 1982, Section 111 of the Local Government Act 1972, Section 106 of the Act (as amended by the Planning and Compensation Act 1991) or Section 104 of the Water Industry Act 1991 or any agreement with a water or sewerage undertaker or other appropriate authority as to water supply or to drainage or surface water and/or effluent from the Land or any provision of similar intent and any variation, amendment or modification thereof.

Planning Permission means the planning permission dated [] issued by [] under reference [].

Plot Documentation Provisions means the rights covenants declarations and obligations (particularly in respect of service charge management and occupiers covenants) as may be reasonably appropriate having regard to the Developer's standard plot documentation from time to time

Principal Designer means [[NAME] of [ADDRESS] or] such [other] person as may be appointed [as a replacement for the time being] by the Developer with the approval of Homes England to be the principal designer for the Development for the purposes of the Development and CDM.

[PRS Dwellings means ■]

[PRS Leasehold Building means [a building comprising entirely Flats (including any land forming the curtilage of the building)] [any of the buildings to be constructed on the land shown [**] on [**] annexed] the freehold of which is to be disposed by the Developer to the PRS Operator]

[PRS Operator means [■] or such other organisation approved by Homes England (such approval not to be unreasonably withheld or delayed)]

Purchaser means any person (including the Registered Provider or the PRS Operator) who shall take (or enter into a contract with the Developer to take) a transfer or lease (or any other disposal) of any Dwelling or any Affordable Leasehold Building or any PRS Leasehold Building.

Reduction Event has the meaning given to that term in **Clause 19.2**

Reduction Notice means a notification contained in a Monitoring Report that Homes England considers that a Reduction Event has occurred (as referred to in **Clause 19.3**)

Registered Provider means [] or such other independent housing organisation listed as a provider of social housing on the register maintained by the

Regulator of Social Housing under Section 111 of the Housing and Regeneration Act 2008 and approved by Homes England (such approval not to be unreasonably withheld or delayed).

Remainder Land means those parts of the Land the freehold of which is still vested in Homes England and which is not at the relevant time the subject of another transfer under this Lease

Remediation Notice means a notice served by Homes England on the Developer [and copied to any Permitted Chargee] specifying:

- (a) that there has been a breach of this Lease and giving details of the breach; and
- (b) whether Homes England considers that the breach is remediable, and if it is, requiring the Developer to produce a Remediation Plan

Remediation Plan means a plan demonstrating (as appropriate) how the Developer will:

- (a) accelerate the pace of house build in order to catch up with the Constructed Related Deadline(s); or
- (b) remedy the breach described in a Remediation Notice

[Rental Unit means a Dwelling which is to be used as Low Cost Rental Accommodation).]

Request for Information shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Land, this Lease or any activities or business of Homes England.

[Sale Flat means a Flat in respect of which a long lease for a term of [99][125] years at a premium and a peppercorn ground rent¹⁵ is to be disposed of by the Developer to a Purchaser.]

[Sale Report means a report by the Developer's solicitors in the form set out in **Schedule 8** together (where the Purchaser acquired the Dwelling using mortgage funding) with a copy of the completed CML Disclosure of Incentives Form.]

Sewers Technical Approval means written approval by the competent water authority of the Developer's detailed proposals for adoptable foul and surface water sewers within the Development.

[Shared Ownership Lease means a lease of a Shared Ownership Unit granted on shared ownership terms substantially in the model form of lease produced by Homes England from time to time in accordance with "shared ownership arrangements" (as defined by Section 70(4) of the Housing and Regeneration Act 2008.)

[Shared Ownership Unit means a Dwelling for which a Shared Ownership Lease is to be disposed of by the Registered Provider to a Purchaser.]

¹⁵ Homes England will not agree to the Developer imposing a ground rent on the sale of flats. This does not prevent the imposition of a service charge as part of an Estate Management Scheme.

[Site Specific Obligations means those matters set out in **Schedule 2 Part 2.**]

Specific Section 106 Agreement means the agreement dated [] made between (1) [] and (2) [].

Start on Site means when the first of the following events occurs in relation to the Development:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibroflotation, piling, boring for piles or pile driving;
- (d) drainage work specific to the scheme/phase; or
- (e) infrastructure works and demolition.

Suitable Substitute means a person, firm or company, approved by Homes England (such approval not to be unreasonably withheld or delayed) with the technical ability, commercial expertise and adequate financial facilities to complete the Development on the terms contemplated by this Lease

[Surety means ■ (company registered number ■) whose registered office is at ■ .]¹⁶

Target House Build Commencement Date means [■ [specify date]]¹⁷

Target House Build Completion Date means the ■ anniversary of the Adjusted Target House Build Commencement Date

Target Start on Site Date means [■ [specify date]]¹⁸

Term Commencement Date means ■

Terminate this Lease means the exercise by Homes England of any of the rights listed in **Clause 16.2**; and **Termination of this Lease** shall be construed accordingly

[Tenancy Agreement means an agreement to let a Rental Unit under an assured tenancy [at an affordable rent] [at rent set at sub-market levels] [which should be no more than 80% of market rent] [in a form utilised by the Registered Provider for its Low Cost Rental Accommodation from time to time]

Title Matters means the matters contained or referred to [(1)] in (or in the documents contained or referred to in) the entries on the register of the title(s) under which Homes England holds the Land [and (2) the following documents which the Land is sold subject to but are not contained or referred to on the entries on the register of the title(s) under which Homes England holds the Land being:

[■].

¹⁶ Include only if the Surety is entering into a stand-alone deed of guarantee

¹⁷ To be determined by the application of the mechanism in the Agreement for Lease

¹⁸ To be determined by the application of the mechanism in the Agreement for Lease

[Total Sales Volume means the record of total sales volumes in a calendar month for the [East Midlands][East of England][North East][North West][South East][South West][West Midlands][Yorkshire and the Humber] region published by the Ministry of Housing Communities and Local Government using Land Registry data and used to compile the UK House Price Index of average house prices]¹⁹

[Transfer (Affordable/PRS Leasehold Building) means a transfer of an Affordable Leasehold Building or a PRS Leasehold Building (as appropriate) substantially in the form set out in **Part 4** of **Schedule 9** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions.]

[Transfer (Affordable/PRS Dwelling) means a transfer of an Affordable Dwelling or a PRS Dwelling (as appropriate) substantially in the form set out in **Part 3** of **Schedule 10** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions.]

[Transfer (Leasehold Building) means a transfer of a Leasehold Building substantially in the form set out in **Part 2** of **Schedule 9** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions.]

[Transfer (Market Dwelling) means a transfer of a Market Dwelling substantially in the form set out in **Part 1** of **Schedule 9** and subject to amendments as may be reasonably required so as to accommodate the Plot Documentation Provisions]

[Transfer (Non-Residential Unit) means a transfer of a Non-Residential Unit [substantially in the form set out in **Part 5** of **Schedule 9**] [in a form based on the Transfer (Leasehold Building) with such amendments as are agreed between the parties to such transfer (acting reasonably).]]

[Unit means any Dwelling or Non-Residential Unit.]²⁰

VAT means value added tax charged under the Value Added Tax Act 1994 and shall include any interest, fine, penalty or surcharge in respect of value added tax charged.

Working Day means any day except Saturday, Sunday or any public holiday in England.

2012 Regulations means the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

2. INTERPRETATION

- 2.1. Terms specified in the Particulars shall have the meanings there given to them.
- 2.2. Where a Party includes two or more persons, the covenants made by that Party are made by those persons jointly and severally.
- 2.3. Words implying one gender include all other genders; words implying the singular include the plural and vice versa and words implying persons include any person or entity capable of being a legal person.

¹⁹ Definition only required if Market Downturn definition is included

²⁰ Only include where the Development is mixed use. If it is purely residential, delete and use “Dwellings” instead.

- 2.4. A covenant by the Developer not to do any act or thing includes a covenant not to permit or suffer such act or thing to be done.
- 2.5. The term "Developer" includes every person who is a successor in title to the Developer named in this Lease
- 2.6. A reference to any Enactment includes all modifications, extensions, amendments and re-enactments of such statute in force for the time being and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under them or deriving validity from them.
- 2.7. Provisions are to be construed independently and, if any provision is void or wholly or partly unenforceable, then that provision, to the extent that it is unenforceable, shall be deemed not to form part of this Lease, but the validity and enforceability of the remainder of that provision or of the Lease shall not be affected.
- 2.8. A reference to a numbered clause, schedule or paragraph is a reference to the relevant clause, schedule or paragraph in this Lease.
- 2.9. Headings to clauses, schedules and paragraphs are for convenience only and do not affect the meaning of this Lease.
- 2.10. The words including and in particular shall be construed as being by way of illustration or emphasis only and shall not limit the generality of the preceding words.
- 2.11. References to the completion of a transfer or other disposal mean the execution and delivery of the necessary documents, not their subsequent registration.
- 2.12. Any right or exception granted or excepted in favour of a Party shall be deemed to be granted or excepted in addition in favour of any other person authorised by that Party.
- 2.13. Where the consent or approval of Homes England is required such consent or approval must be in writing and be signed by the General Manager ■ (or such other officer as shall have been notified in writing by Homes England to the Developer as being the appropriate officer for such purposes).
- 2.14. [By virtue of
- (i) the Housing and Regeneration Act 2008;
 - (ii) the Housing and Regeneration Act 2008 (Commencement No.1 and Transition Provision) Order 2008 (SI 2008 No. 2358 (c.103)) dated 2nd September 2008;
 - (iii) the Housing and Regeneration Act 2008 (Commencement No.2 and Transitional, Saving and Transitory Provisions) Order 2008 (SI 2008 No. c3068 (c.132)) dated 26th November 2008; and
 - (iv) the Homes and Communities Agency, Tenant Services Authority and the Welsh Ministers Transfer Scheme
- all assets, liabilities and interests were transferred from Commission for the New Towns and The Urban Regeneration Agency to Homes England with effect from 1st December 2008.]²¹
- 2.15. Terms defined in the Agreement for Lease which are used in this Lease shall have the same meaning in this Lease as they do in the Agreement for Lease where they are not separately defined in **Clause 1** of this Lease.

²¹ only required where title is registered to a predecessor organisation

3. DEMISE AND PRICE

- 3.1. For the Price [and Overage] payable by the Developer to Homes England (the payment details of which are set out in **Clause 3.2** [and **Clause 3.3**]) and any other sums payable under this Lease and the covenants on the part of the Developer contained in this Lease Homes England HEREBY DEMISES to the Developer with limited title guarantee ALL the Land [TOGETHER with the benefit of the rights set out in **Part 1** of **Schedule 1** (so far as Homes England can grant the same) and in common with Homes England and all others now or hereafter enjoying or entitled to the like rights but EXCEPT AND RESERVING to Homes England (and those authorised by Homes England) and its successors in title for the benefit of the Adjoining Land and the owners and occupiers thereof the rights, easements and privileges set out in **Part 2** of **Schedule 1**]²²TO HOLD the same unto the Developer from the Term Commencement Date for the term of ONE HUNDRED AND TWENTY FIVE YEARS (determinable nevertheless as hereinafter mentioned) SUBJECT to all Title Matters and to all rights, easements, quasi-easements and privileges affecting the Land or any part thereof PAYING THEREFOR the yearly rent of ONE POUND (if demanded) on the anniversary of the date of this Lease.]
- 3.2. The Developer shall pay to Homes England the Price as follows:
- (a) the sum of £[]²³ (which includes the deposit payable under the Agreement for Lease) on the date hereof (receipt of which Homes England acknowledges);
 - (b) the sum of [] (£ []) on the [] ;
 - (c) the sum of [] (£[]) on the [] ; and
 - (d) on the Acceleration Date the Price less any payments made by the Developer to Homes England under this **Clause 3.2** in respect of the Price.
- 3.3. The Developer shall pay to Homes England the Overage (if any) calculated and payable in accordance with **Schedule 12**.

4. [UNIT][DWELLING] COMPLETION

- 4.1. The Developer covenants that when the construction of any Dwelling has been practically completed it will provide a copy of the NHBC Buildmark Confirmation for that Dwelling to Homes England and to the Compliance Inspector.
- 4.2. [When the construction of any Non-Residential Unit has been practically completed:
- (a) The Developer covenants that it will notify Homes England and the Compliance Inspector of practical completion of such Unit
 - (b) The Developer covenants to procure that the Compliance Inspector:
 - (i) inspects the Non-Residential Unit within Working Days of the Developer's notification pursuant to **Clause 4.2(a)** to ascertain whether a Compliance Certificate can be provided for that Non-Residential Unit.

²² Include only where Homes England has Adjoining Land over which rights are to be granted or reserved

²³ Sum should be the aggregate of any deposit paid and any sums due on completion of the Lease

- (ii) within Working Days of the inspection either issues the Compliance Certificate in respect of the Non-Residential Unit or otherwise informs the Developer what actions are required by the Developer to secure the issue of the Compliance Certificate.
- (c) If the Compliance Inspector does not issue the Compliance Certificate the procedure set out at **Clause 4.2(a)** and **4.2(b)(i)** and **(ii)** shall be repeated until the Compliance Certificate is issued by the Compliance Inspector

4.3. Provided that:

- (a) Homes England has received a copy of the NHBC Buildmark Confirmation for the Dwelling [or has received the Compliance Certificate for the Non-Residential Unit]; and
- (b) the Developer has obtained the Highways Technical Approval; and
- (c) the Developer has obtained the Sewers Technical Approval; and
- (d) the Developer has entered into any requisite agreement with the Council for the adoption by the Council of the Open Space Land required as a result of the practical completion of such Dwelling; and
- (e) Homes England has approved the Estate Layout Plan and the Developer has lodged this at the Land Registry

then (subject to **paragraph 3 of Schedule 3 [Paragraph 4 of Schedule 4²⁴]**) Homes England shall release (or confirm in writing the release of) the transfer to the relevant Purchaser or issue the consent to lease (as appropriate) of the [Dwelling][Unit].

4.4. The Developer hereby covenants with Homes England:

- (a) not to dispose of houses other than through a freehold transfer and not to dispose of Flats other than through the grant of a long lease at a premium and a peppercorn rent;
- (b) not to send out any notice to a Purchaser requiring completion of the sale of a Dwelling unless and until Homes England has released (or confirmed in writing the release of) the transfer to the relevant Purchaser or has issued the consent to lease (as appropriate) of the Dwelling;
- (c) not to permit any person to occupy any Dwelling nor to purport to complete the sale of any Dwelling until and unless Homes England has released (or confirmed in writing the release of) the transfer to the relevant Purchaser or has issued the consent to lease (as appropriate) of the Dwelling

4.5. The Developer shall procure that in any contract for the sale of a Dwelling there shall be inserted into such contract (in a type size and character no less prominent than the remainder of the contract) the following wording (as appropriate):

"The [Purchaser]/[Buyer] hereby acknowledges that the transfer of [*the Property*] (which is to be made by Homes England (the trading name of Homes and Communities Agency) ("Homes England")) will not be released by Homes England

²⁴ Reference to Sch 4 para 4 only where scheme is 100% affordable

until satisfaction of the requirements set out in the building lease relating to the [Development] granted by Homes England to the Developer and that the [Purchaser] [Buyer] has been advised to obtain (before it completes the purchase of the [Property] from the Developer) written confirmation from the solicitors acting for the Developer that Homes England has released the said transfer";

5. DEVELOPER'S COVENANTS RELATING TO THE DEVELOPMENT

The Developer covenants with Homes England to comply with the Developer's obligations contained in **Schedule 2**.

6. FINAL COMPLETION CERTIFICATE

6.1. On achievement of the following by the Developer:

- (a) The issue of a NHBC Buildmark Confirmation for every Dwelling and the provision of a copy to Homes England
- (b) [The issue of a Compliance Certificate for every Non-Residential Unit and the provision of a copy to Homes England]
- (c) substantial completion of the whole of the Development to the reasonable satisfaction of the Compliance Inspector in accordance with the Approved Plans and the Performance Criteria (having due regard to planting seasons and other matters beyond the Developer's reasonable control)
- (d) the adoption (or entering into of all necessary s.38 Agreements and/or s.104 Agreements to procure adoption) of all Adoptable Highways and Adoptable Common Services;
- (e) [the transfer of any Common Areas in accordance with the provisions of **Clause 8** of this Lease;]
- (f) the completion of the transfer to the Developer of the Remainder Land (or such parts thereof) as required by a notice served pursuant to **Clause 10.4**; and
- (g) compliance by the Developer with the other terms of this Lease

the Developer shall procure that the Compliance Inspector issues to Homes England and to the Developer its certificate confirming such achievement and final completion of the Development ("**Final Completion Certificate**").

6.2. Without prejudice to the generality of **Clause 22.2** of this Lease it is agreed that the issue of a Final Completion Certificate shall not release the Developer from any obligations on its part in this Lease relating to the Development or the manner, nature or quality of construction or design, fitness for purpose or absence of defect of anything upon the Development nor for the failure by the Developer to achieve any particular standard.

7. TRANSFERS OF [DWELLINGS] [UNITS]

The Developer and Homes England covenant with each other to comply with their respective obligations contained in **Schedules 3, 4, 5 and 6**.

8. [TRANSFER OF COMMON AREAS

- 8.1. Homes England may at any time require the Developer to receive a transfer of the whole or any part of the Common Areas the freehold of which is still vested in Homes England and which is not the subject of any other provision for transfer under this Lease Provided that (whether or not a Final Completion Certificate has been issued) Homes England may by notice to the Developer require the whole or any part of the Common Areas to be transferred to the Management Company.
- 8.2. The Developer shall co-operate in such transfer (which shall take place on the date stipulated in writing by Homes England (following not less than 20 Working Days' notice)) and shall execute the transfer either as transferee (where the transfer is to the Developer) or (where the transfer is to a third party) as tenant under this Lease (in order to consent to the transfer and agree to the surrender of that part of this Lease as comprises the land being transferred).
- 8.3. The transfer shall be in such form as Homes England shall reasonably require.]

9. TRANSFER ETC OF COMMON SERVICES AND HIGHWAYS

The Developer covenants to enter into, at any time at Homes England's request, any leases, transfers, easements, licences, agreements or other document with any public or statutory authority in connection with any Common Services or Highways or matters ancillary thereto in such form as Homes England shall reasonably require (including any surrender of the Developer's interest in any land the subject of those documents).

10. TRANSFER OF REMAINDER OF LAND

- 10.1. Following completion of all of the Dwellings (evidenced by the issue of a NHBC Buildmark Confirmation for each Dwelling) [and the completion of all Non-Residential Units (evidenced by the issue of a Compliance Certificate for each Non-Residential Unit)]the Developer shall serve written notice on Homes England in the form annexed at **Annexure** ■ enclosing a Digital Plan and shall procure that the Compliance Inspector undertakes all necessary checks and inspections with a view to issuing the Final Completion Certificate.
- 10.2. The Developer shall procure that the Compliance Inspector acts promptly and diligently to inspect the Development and to obtain all necessary information to enable the Compliance Inspector to issue the Final Completion Certificate.
- 10.3. The Developer shall promptly provide the Compliance Inspector with all information requested by the Compliance Inspector to enable the Compliance Inspector to issue the Final Completion Certificate.
- 10.4. Within 10 Working Days of receipt of a notice served by the Developer pursuant to **Clause 10.1** Homes England shall serve written notice on the Developer confirming:
 - (a) which part or parts of the Remainder Land Homes England requires the Developer to take a transfer of prior to the issue of the Final Completion Certificate; and
 - (b) the date by which Homes England requires such transfer to complete.

- 10.5. If Homes England does not respond to the Developer within the 10 Working Days referred to in **Clause 10.4** then it shall be deemed that Homes England does not require the Developer to take a transfer of the Remainder Land or any part or parts of it prior to the issue of the Final Completion Certificate.
- 10.6. If Homes England does not require the Developer to take a transfer of the Remainder Land or any part or parts of it prior to the issue of the Final Completion Certificate or if Homes England does not respond to the Developer within the 10 Working Days referred to in **Clause 10.4** that shall not prejudice the right of Homes England to require the Developer to take a transfer of the Remainder Land or any part or parts of it pursuant to this **Clause 10** at a subsequent date.
- 10.7. If Homes England serves notice on the Developer requiring the Developer to Accept a transfer of the whole or any part or parts of the Remainder Land whether pursuant to **Clause 10.4** or otherwise the Developer and Homes England shall co-operate in such transfer which shall comply with the remaining provisions of this Clause and such transfer shall take place on the date stipulated by Homes England in the notice served by Homes England (whether pursuant to **Clause 10.4** or otherwise) (not being more than 20 Working Days following the date of such notice).
- 10.8. Homes England shall execute the transfer as transferor and the Developer shall execute the transfer as transferee.
- 10.9. The transfer shall be in such form as Homes England shall reasonably require.
- 10.10. Following completion of the transfer of the Remainder Land (or any part or parts of it) the Developer shall procure that such transfer is submitted to the land registry for registration promptly and will deal promptly with any requisitions raised by the land registry and procure that it is registered as proprietor of the Remainder Land (or the relevant part or parts of it) as soon as reasonably practicable.

11. GENERAL PROVISIONS RELATING TO TRANSFERS

Notwithstanding the completion of any transfer under this Lease, the provisions of this Lease shall remain in force in respect of anything remaining to be done by the Developer or Homes England. In particular, such completion is not to be treated as an acknowledgment by Homes England that all money due from the Developer to Homes England in respect of the transfer has been paid or that the Developer has complied with any other obligations on its part in this Lease.

12. DEVELOPER'S FURTHER COVENANTS

The Developer further covenants with Homes England as follows:

- 12.1. To pay (if demanded) the reserved rent on the days and in the manner aforesaid.
- 12.2. To pay Interest on any sum of money payable to Homes England by the Developer under this Lease which is not paid when payment is due.
- 12.3. To pay all rates, taxes, claims, assessments and outgoings whatsoever in respect of the Land (except in relation to any Dwelling or Non-Residential Unit which has been disposed of to a Purchaser or buyer/tenant) now or hereafter imposed or charged upon the owner or occupier.
- 12.4. To indemnify and keep indemnified Homes England from and against:
 - (a) all claims, demands and liabilities howsoever arising from the use or occupation of the Land or its condition (Homes England agreeing (i) to notify

the Developer of any such claim received from a third party in reasonable detail (ii) not to make any admission of liability agreement or compromise in relation to such a claim without first having regard to any written representations made by the Developer within 5 Working Days of notification by Homes England, unless Homes England reasonably believes that failure or delay on its part to settle the claim would be prejudicial to Homes England in any material respect); and/or

- (b) any breach by the Developer of the provisions of this Lease; and/or
 - (c) in respect of the design of the Development or any part thereof and the materials and workmanship used by the Developer in the Development or any part thereof; and/or
 - (d) any inaccuracies in the plan or other description of any Dwelling used in any transfer.
- 12.5. Not to use the Land other than for the Development.
- 12.6. Save as provided by **Clauses 12.7, 12.9, 17 and 18**, not to assign, underlet, transfer, charge, share or part with possession of or grant any licence or interest in respect of the Land or any part thereof.
- 12.7. The Developer shall be permitted with the prior written consent of Homes England (such consent not to be unreasonably withheld or delayed) to:
- (a) grant leases or otherwise Dispose of parts of the Land to utility companies solely in connection with the provision of utilities to the Development
 - (b) charge this Lease to a Permitted Chargee providing the finance for the construction of the Development and in this context Homes England agrees that the Approved Funder is a Permitted Chargee
- 12.8. In relation to a Permitted Chargee it shall be a condition (without limitation to any other reasonable conditions) of Homes England's consent to the Permitted Chargee taking security over the Lease that the Permitted Chargee first covenants with Homes England that it shall not exercise any power of sale without first informing Homes England of its intention to do so (to enable Homes England to serve an Insolvency Termination Notice should Homes England choose to do so) and without the Permitted Chargee first covenanting for the benefit of Homes England that the Permitted Chargee (and its successors from time to time) shall only be entitled to exercise a power of sale by procuring the assignment of this Lease to a Suitable Substitute which has been approved by Homes England in accordance with the terms of this Lease.
- 12.9. [The Developer shall be permitted with the prior written approval of Homes England and subject to the provisions of **Clauses 12.10 and 12.11** to grant subleases to [the Registered Provider][the PRS Operator] of [so much of the land as the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Buildings][PRS Leasehold Buildings] are to be constructed on] at the point when such Dwellings have been constructed to Golden Brick and following the service of a Golden Brick Notice on Homes England.]
- 12.10. [Every sublease permitted pursuant to **Clause 12.9** must:
- (a) Be granted for a term not exceeding the term of this Lease less 5 days;

- (b) Contain a covenant on the part of the Developer to build out the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] concerned fully in accordance with the provisions of this Lease;
- (c) Contain a right for Homes England to enter the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] concerned to inspect and to remedy any breach of covenant of this Lease or the relevant sublease;
- (d) Prohibit assignments and underlettings other than by way of assignment to another [Registered Provider][PRS Operator] approved by Homes England;
- (e) Contain a covenant restricting the use of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] other than for the purposes of the Development;
- (f) Prohibit occupation of any of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] prior to the transfer of the freehold interest to the [Registered Provider][PRS Operator];
- (g) Contain a restriction on title in Homes England's favour in the following terms:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a certificate signed by Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH by their conveyancer that the provisions of [*details of underlease*] have been complied with or that they do not apply to the disposition (Form L)".]

12.11. [Prior to completion of any sublease permitted pursuant to **Clause 12.9** the [Registered Provider][PRS Operator] shall enter into a direct covenant with Homes England:

- (a) Not to use the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] for occupation nor for any purpose other than to permit entry by the Developer or Homes England to build and construct the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] in accordance with the Lease;
- (b) Not to dispose of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building];
- (c) To observe and perform the terms of the sublease; and
- (d) Not to charge the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] other than as consented by Homes England.]

12.12. [Notwithstanding the Developer granting a sublease to the [Registered Provider][PRS Operator] the Developer shall remain primarily responsible for the performance of its obligations in respect of the construction of the [Affordable Dwellings][PRS Dwellings][Affordable Leasehold Building][PRS Leasehold Building] under this Lease.]

12.13. Within fourteen days after the date of every dealing charge or other devolution of this Lease to give notice thereof in writing to Homes England and produce to it a certified

copy of the instrument effecting the devolution and pay Homes England's reasonable registration fee (being not less than £45 plus VAT) (and in the case of a Permitted Chargee, such notice shall contain an address for service within England and Wales for the chargee).

- 12.14. To pay all proper expenses (including solicitors' costs and surveyor's fees) incurred by Homes England of and incidental to and in connection with:
- (a) the preparation and service of any notice under Section 146 of the Law of Property Act 1925 and any proceedings under Sections 146 or 147 of that Act even if forfeiture is avoided otherwise than by relief granted by the Court; and
 - (b) any notices or consents required or given under this Lease.
- 12.15. On the receipt of any notice, order, direction or thing from any competent authority affecting or likely to affect the Land whether the same shall be served directly on the Developer or the original or a copy thereof be received from any other person whatsoever the Developer will:
- (a) so far as such notice, order, direction or other thing or the Act regulations or other instrument under or by virtue of which it is issued or the provisions hereof require it so to do comply therewith at its own expense; and
 - (b) forthwith deliver to Homes England a copy of such notice, order, direction or other thing.
- 12.16. At the end or sooner determination of the said term quietly to yield up the Land to Homes England in accordance with the covenants on the part of the Developer contained in this Lease.
- 12.17. Not to do anything on the Land which may be or become a nuisance or annoyance or cause damage or inconvenience to Homes England or to the owners or occupiers of any adjoining or neighbouring land or cause or give rise to the significant possibility of significant harm to the health of living organisms and other interference with the ecological systems of which they form part or cause pollution of ground or surface water.
- 12.18. To comply with all Title Matters.
- 12.19. In the event of a default by the Developer to execute any documents required under this Lease, the Developer irrevocably and by way of security appoints Homes England as its attorney and in its name and on its behalf and as its act and deed and in such manner as the attorney may think fit to sign execute seal deliver and do all deeds instruments acts and things which it is required to do under this Lease. The Developer covenants immediately on the request of Homes England to ratify and confirm all deeds, instruments, acts and things signed, executed, sealed, delivered and done under that appointment.
- 12.20. To obtain at the Developer's cost and to make available to prospective Purchasers at the appropriate time and free of charge an Energy Performance Certificate.
- 12.21. To comply with the obligations of the Developer with regard to output data contained in **Schedule 13** and to use all reasonable endeavours to comply with any further requests from Homes England to provide such data and supporting evidence
- 12.22. If an Insolvency Event occurs in relation to a Surety, or if any Surety (being an individual) dies or becomes incapable of managing his affairs the Developer shall, if Homes England requests, procure that a person of standing acceptable to Homes England, within 28 days of that request, enters into a replacement or additional guarantee and indemnity of the Developer's covenants of this Lease in the same form

as that entered into by the former Surety in [the Deed of Guarantee][**Schedule 11** of this Lease].

13. HOMES ENGLAND'S INFRASTRUCTURE COVENANTS

Homes England shall carry out and complete Homes England's Infrastructure Works in a good and workmanlike in accordance with [Homes England's Infrastructure Works Specification] and all Enactments with all practicable speed.]

14. HOMES ENGLAND'S [FURTHER] COVENANTS²⁵

Homes England covenants with the Developer as follows:

- 14.1. That the Developer observing and performing the several covenants and stipulations on the part of the Developer herein contained shall peacefully hold and enjoy the Land during the said term without any interruption by Homes England or any person rightfully claiming under or in trust for it.
- 14.2. If requested by the Developer and at the Developer's expense (and provided that the Developer has provided any bond indemnity or guarantee required by the relevant authority), Homes England will enter into any of the agreements (excluding any bond indemnity or guarantee) referred to in **paragraph 1.2 of Schedule 2** as landowner in so far as it is necessary to dedicate the land, sewer or other matter the subject of the agreement on terms approved by Homes England (acting reasonably) and subject to the Developer entering into an indemnity (in a form required by Homes England) indemnifying Homes England against all liability for all costs, obligations and liabilities in connection or arising therefrom.
- 14.3. If requested by the Developer and at the Developer's expense Homes England as landowner will enter into any transfers, leases, easements, licences or other agreements with any public authority in connection with the Adoptable Common Services or any service media and any ancillary apparatus on terms approved by Homes England subject to the Developer entering into an indemnity (in a form required by Homes England) indemnifying Homes England against all liability for all costs, obligations and liabilities in connection or arising therefrom. [PROVIDED ALWAYS that this clause shall be subject to the overriding rights of Homes England to require transfers to be made to the [Management Company] [the relevant authority or the Developer] [pursuant to **Clauses 8, 9 and 10**].

15. FORFEITURE

If any monies payable by the Developer under this Lease shall be due but unpaid for fourteen Working Days after the same shall have become due or if there shall be a Material Breach or non-performance or non-observance of the covenants, obligations and conditions on its part contained in this Lease or if an Insolvency Event occurs then in any such case (subject always to the provisions of **Clause 16**) it shall be lawful for Homes England or any person or persons duly authorised by Homes England to re-enter upon and take possession of the Land and all works and erections whatsoever thereon or any part thereof in the name of the whole with power to hold and dispose thereof whereupon this Lease shall absolutely cease and determine but without prejudice to any right of

²⁵ These clauses may need to be amended/adapted to refer to Site or Development specific matters

action or remedy which may have accrued to Homes England in respect of any antecedent breach of any of the covenants and provisions herein contained.

16. STEP- IN PROVISIONS

16.1. Homes England's remedies on breach

(a) **Insolvency event**

Where there is an Insolvency Event Homes England may serve an Insolvency Termination Notice and following service of any Insolvency Termination Notice under this sub-clause, the provisions of **Clause 17** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee.

(b) **Failure to pay monies due**

Where any monies payable by the Developer under the terms of this Lease shall be due and unpaid fourteen days after the same shall become due Homes England may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of **Clause 18** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee

(c) **Material Breach**

Where there shall be a Material Breach, non-performance or non-observance of any of the terms herein contained and on the part of the Developer to be performed or observed then the Developer shall within 20 Working Days (time being of the essence) of receipt of a Remediation Notice produce a Remediation Plan demonstrating how the Developer will remedy the breach. If the breach is not capable of remedy (in the reasonable opinion of Homes England) or if the Remediation Plan is not so produced or if the Remediation Plan is not satisfactory to Homes England then and in any such case Homes England may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of **Clause 18** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee.

(d) **Failure to meet Construction Related Deadline**

- (i) The Parties agree that each and every failure by the Developer to meet a Construction Related Deadline shall be a Material Breach
- (ii) If there shall be a Material Breach which is a failure to meet a Construction Related Deadline then the Developer shall within 20 Working Days (time being of the essence) of receipt of a Remediation Notice produce a Remediation Plan demonstrating how activity will be accelerated in order to catch up with the Construction Related Deadlines. If the Remediation Plan is not so produced or if the Remediation Plan is not satisfactory to Homes England (acting reasonably) then and in any such case Homes England may serve a Breach Termination Notice. Following the service of any Breach Termination Notice under this sub-clause, the provisions of **Clause 18** shall govern the respective rights of Homes England, the Developer and the Permitted Chargee.

16.2. Termination of the Lease

Homes England may not:

- (a) re-enter and take possession of the Land; or
- (b) commence legal proceedings to forfeit the Lease;

unless it has first either served notice on the Developer (copied to the Permitted Chargee) an Insolvency Termination Notice in accordance with the terms of **Clause 16.1(a)** or, as appropriate, a Breach Termination Notice in accordance with **Clause 16.1(b)**, **Clause 16.1(c)** or **Clause 16.1(d)** and provided further that the provisions of **Clause 17** or **Clause 18** (as appropriate) have been complied with.

16.3. Following Termination of this Lease (and for the avoidance of doubt the provisions of this **Clause 16.3** are intended to survive post Termination of this Lease):

- (a) to the extent that the beneficial ownership of copyright, design right and any other intellectual property right in any documents, reports, investigations and designs submitted and approved as part of the Planning Permission is vested in it, the Developer grants to Homes England, any IP and the Permitted Chargee a royalty free, non-exclusive and irrevocable licence to use and reproduce any and all of such documents and the designs contained in them in connection only with its ownership of the Development, any works carried out by the Developer and the Land and this licence shall be freely assignable to third parties and carry the right to grant sub-licences;
- (b) to the extent that the beneficial ownership of copyright, design right or any other intellectual property right in any documents referred to in **Clause 16.3(a)** above is vested in any person other than the Developer including (without limitation) any consultants or the Contractor or other contractor or supplier the Developer shall use its reasonable endeavours to procure that the beneficial owner of such rights grants to Homes England non-exclusive and irrevocable licence to use and reproduce all and any of the documents and the designs contained in them, for any of the purposes and on the same terms as set out in **Clause 16.3(a)** above;

16.4. Neither the Developer nor Homes England may vary or supplement (or attempt to vary or supplement) the Lease without the prior written consent of the Permitted Chargee, whose consent shall not be unreasonably withheld or delayed.

16.5. The provisions of Clause **20** (Disputes) shall not apply to this **Clause 16**

17. HOMES ENGLAND'S RIGHTS ON DEVELOPER'S INSOLVENCY

17.1. Within 20 Working Days after the service of an Insolvency Termination Notice either:

- (a) the IP; or
- (b) the Permitted Chargee (if the Permitted Chargee has taken possession as mortgagee or is seeking to exercise its power of sale under the terms of its charge over the Lease)

shall confirm in writing to Homes England whether it:

- (i) proposes to complete the Development in accordance with the terms of this Lease; or

- (ii) proposes to seek a Suitable Substitute to complete the Development; or
 - (iii) proposes not to complete the Development.
- 17.2. The IP or Permitted Chargee may (if either so wishes) indicate in a notice served under **Clause 17.1** that it proposes to take the action specified in **Clause 17.1(b)(i)** pending **Clause 17.1(b)(ii)** above. If the IP or Permitted Chargee has given such an indication and taken the action in **Clause 17.1(b)(i)** within the requisite time scale it will be entitled within a period of 3 months from the date of service of the Insolvency Termination Notice to seek a Suitable Substitute to complete the Development and the provisions set out in **Clause 17.4** (other than as to timescale where the provisions of this **Clause 17.2** will apply instead) will apply in relation to any Suitable Substitute proposed during that 3 month period.
- 17.3. Where the IP or Permitted Chargee informs Homes England in writing pursuant to **Clause 17.1(i)** that it will complete the Development then the IP (acting in its capacity for and on behalf of the Developer and without any personal liability) and/or the Permitted Chargee (as the case may be) shall be bound by the terms of this Lease from the date of that notification (and the Permitted Chargee shall take an assignment of both the benefit and burden of this Lease within a further 20 Working Days after serving that notification) and (subject to any arrangements for curing any antecedent breaches by the Developer with such extension of the programme (as contained in the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable to permit completion of the Development as the IP or Permitted Chargee and Homes England shall agree, acting reasonably) (or in the absence of agreement as determined by an expert in accordance with **Clause 20**)) on any breach of the terms of this Lease by the IP or Permitted Chargee following that assignment Homes England's rights to Terminate this Lease as set out in this Lease will apply but not the obligations set out in **Clauses 17 and 18**.
- 17.4. Where the IP or Permitted Chargee indicates to Homes England in writing pursuant to **Clause 17.1** that it will seek a Suitable Substitute then within 3 months after serving that notification it must:
- (a) identify that Suitable Substitute;
 - (b) obtain Homes England's approval to that Suitable Substitute (such approval not to be unreasonably withheld or delayed); and
 - (c) procure that the Suitable Substitute enters into an assignment of this Lease with new arrangements for curing any antecedent breaches by the Developer and such extension of the programme (from the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable in order to permit the completion of the Development as the Suitable Substitute and Homes England shall agree, acting reasonably (or in the absence of agreement as determined by an expert in accordance with **Clause 20**).
- 17.5. If:
- (a) the IP or Permitted Chargee fails to respond to an Insolvency Termination Notice within 20 Working Days of service; or
 - (b) their response indicates that they do not wish to complete the Development; or

- (c) the Lease is not assigned within the timescale required by **Clauses 17.3** or **17.4** as the case may be;

then Homes England may following the earlier of:

- (d) (in the case of **Clause 17.5(a)**) the expiry of the 20 Working Day period; and
- (e) (in the case of **Clause 17.5 (b)**) receipt of the response; and
- (f) (in the case of **Clause 17.5(c)**) on expiry of the period for assignment;

respectively Terminate this Lease.

- 17.6. Where Homes England has received from the IP or the Permitted Chargee all the information that Homes England reasonably requires in order to decide whether or not to approve a person identified by the IP or the Permitted Chargee as a potential Suitable Substitute, and has not notified the IP or the Permitted Chargee within 30 days of receipt of a written request from the IP or the Permitted Chargee whether or not it approves the Suitable Substitute, then the period of three months referred to in **Clause 17.4** shall be extended by the number of days equal to the number of days by which Homes England's response time exceeds 30 days.
- 17.7. The provisions of **Clause 20** (Disputes) shall not apply to this **Clause 17** except where specific reference is made in this **Clause 17** to the provisions of **Clause 20**.

18. HOMES ENGLAND'S RIGHTS FOLLOWING MATERIAL BREACH OF THIS LEASE

- 18.1. Within 20 Working Days after the service of a Breach Termination Notice the Permitted Chargee shall confirm in writing to Homes England whether it:
 - (a) proposes to complete the Development in accordance with the terms of this Lease; or
 - (b) proposes to seek a Suitable Substitute to complete the Development; or
 - (c) proposes not to complete the Development.
- 18.2. Where the Permitted Chargee informs Homes England pursuant to **Clause 18.1** they propose to either seek a Suitable Substitute or to complete the Development, then (subject to the provisions of **Clause 18.9**), within 3 calendar months of service of the Breach Termination Notice the Permitted Chargee or its IP must either:
 - (a) where they have indicated an intention to seek a Suitable Substitute:
 - (i) identify that Suitable Substitute;
 - (ii) obtain Homes England's approval to that Suitable Substitute; and
 - (iii) procure that the Suitable Substitute enters into an assignment of this Lease with such extension of the programme (as contained in the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the Suitable Substitute and Homes England shall agree acting

reasonably (or in the absence of agreement as determined by an expert in accordance with **Clause 20**); or

- (b) where they have indicated an intention to complete the Development enter into an assignment of this Lease with such extension of the programme (as contained in the Approved Plans) and of the Construction Related Deadlines and of the Target House Build Completion Date as is reasonable in order to permit the completion of the Development and subject to any arrangements for curing any antecedent breaches by the Developer as the IP or Permitted Chargee and Homes England shall agree acting reasonably (or in the absence of agreement as determined by an expert in accordance with **Clause 20**).
- 18.3. Where the Permitted Chargee has responded within the period referred to in **Clause 18.1** confirming it will seek either a Suitable Substitute or will complete the Development, Homes England will not take any steps to Terminate the Lease for the reasons set out in **Clause 18.1** until after the expiry of the time periods permitted to allow for the assignment of this Lease set out in **Clause 18.2**.
- 18.4. Where the Permitted Chargee does not respond within the requisite period referred to in **Clause 18.1** or has replied indicating it will not be taking any action Homes England shall be entitled forthwith to Terminate the Lease.
- 18.5. If the Permitted Chargee fails to complete the assignment of the Lease directly to a Suitable Substitute in accordance with **Clause 18.2(b)** then subject to **Clauses 18.7 and 20** (which shall survive in the circumstances contemplated by **Clause 18.8**) Homes England may, without prejudice to any right of action or remedy which may have accrued in respect of any antecedent breach by either party of this Lease, Terminate this Lease without further notice.
- 18.6. Where there is no Permitted Chargee Homes England shall be entitled to Terminate this Lease on the expiry of 30 Working Days from the date of the Breach Termination Notice
- 18.7. If Homes England Terminates this Lease then it will have regard to its common law obligations to mitigate against its loss.
- 18.8. Pending completion of any assignment and or actual Termination of this Lease pursuant to this **Clause 18** the Developer shall remain liable for and shall continue to perform the provisions of this Lease unless Homes England otherwise directs.
- 18.9. Where Homes England has received from the IP or the Permitted Chargee all the information that Homes England reasonably requires in order to decide whether or not to approve a person identified by the IP or the Permitted Chargee as a potential Suitable Substitute, and has not notified the IP or the Permitted Chargee within 30 days of receipt of a written request from the IP or the Permitted Chargee whether or not it approves the Suitable Substitute, then the period of three months referred to in **Clause 18.2** shall be extended by the number of days equal to the number of days by which Homes England's response time exceeds 30 days.
- 18.10. The provisions of **Clause 20** (Disputes) shall not apply to this **Clause 18** except where specific reference is made in this **Clause 18** to the provisions of **Clause 20**

19. REDUCTION NOTICES AND REDUCTION EVENT

- 19.1. The provisions of this **Clause 19** shall apply to Material Breaches or other non-observance or non-compliance with the terms of this Lease in respect of which Homes England has elected not to serve a Breach Termination Notice **pursuant to Clause 16.1 (c) or (d)**
- 19.2. The Parties agree that the following events may constitute a Reduction Event:
- (a) a Remediation Notice has been served which states that the breach is not remediable
 - (b) a Remediation Notice has been served by Homes England and the Developer has failed to produce a Remediation Plan within 20 Working Days
 - (c) the Developer has produced a Remediation Plan following receipt of a Remediation Notice but Homes England rejects the Remediation Plan
 - (d) the Developer has served a Remediation Plan following receipt of a Remediation Notice which has been approved by Homes England and Homes England considers that the Developer has failed to remedy the breach in accordance with the approved Remediation Plan
- 19.3. When Homes England considers that a Reduction Event has occurred Homes England will inform the Compliance Inspector and instruct the Compliance Inspector to include in their next Monitoring Report (and the Developer will procure that the Compliance Inspector does so include) notification that Homes England considers that a Reduction Event has occurred specifying the relevant Reduction Event in **sub-clause (a) to (d) of Clause 19**.
- 19.4. The Developer has 20 Working Days from receipt of the Monitoring Report that includes the notification referred to in **Clause 19.3** to serve written notice on Homes England challenging the Reduction Notice
- 19.5. Any dispute with regard to:
- (a) Whether a breach specified in a Remediation Notice is or is not remediable; and/or
 - (b) Whether Homes England has acted reasonably in rejecting a Remediation Plan produced by the Developer; and/or
 - (c) Whether the Developer has remedied a breach in accordance with a Reduction Plan approved by Homes England
- and so whether a Reduction Event has occurred shall be resolved in accordance with **Clause 20** (Disputes)
- 19.6. If:
- (a) the Developer does not challenge a Reduction Notice within 20 Working Days; or
 - (b) It is agreed or determined pursuant to **Clause 20** that a Reduction Event has occurred

then an Overage Reduction shall be imposed in respect of the breach specified in the original Remediation Notice.

20. DISPUTES

20.1. In this Lease:

20.2. **Dispute** shall mean and include any difference or dispute between Homes England and the Developer arising out of or in connection with this Lease which Homes England and the Developer have been unable to resolve between them prior to referring the matter for resolution in accordance with the provisions of this **Clause 20** and shall include any question as to the validity or interpretation of this Lease and any dispute arising before or after Termination of this Lease

Senior Representative shall mean any director or senior executive officer of Homes England or the Developer

20.3. Any Dispute between Homes England or the Developer arising out of or connected with any matter referred to in this Lease for which a dispute resolution procedure is expressly provided in other clauses of this Lease shall be resolved in accordance with the dispute resolution procedure so provided. Any other Disputes which may arise between Homes England or the Developer shall be resolved in accordance with the procedures of this **Clause 20**.

20.4. Any Dispute which may arise shall first be referred to the Senior Representative of Homes England and the Developer for resolution through negotiation. Either Homes England or the Developer may at any time give 10 Working Days' notice to the other requiring that a Dispute be referred to the Senior Representatives of Homes England and the Developer. Any such notice shall contain brief particulars of the Dispute which is to be so referred. The Senior Representatives will meet within 10 Working Days of the expiry of the notice, or within such shorter or longer period as may be agreed between Homes England and the Developer and shall at their meeting negotiate in good faith in an attempt to resolve the Dispute. Homes England and the Developer shall bear their own costs of referring a Dispute to Senior Representatives for resolution through negotiation.

20.5. If a Dispute is not resolved by Senior Representatives, or if a Dispute has not been resolved within 20 Working Days after service of notice requiring that a Dispute be referred to Senior Representatives for resolution, either Homes England or the Developer shall be entitled to implement the dispute resolution procedure as set out in the following sub-clauses:

(a) Any dispute arising between Homes England and the Developer over any calculation or valuation to be made under this Lease shall be referred to an expert to be agreed upon by the Parties, or failing agreement, to an expert nominated by the President for the time being of the Royal Institution of Chartered Surveyors and the expert's determination of the calculation or valuation shall be conclusive and binding.

(b) Any dispute arising between Homes England and the Developer over the construction or interpretation of the drafting of this Lease or where the provisions of this Lease require the form and contents of any document to be entered into between any of the Parties to be settled and the settling or conditions of such form shall not be agreed then the same shall be settled by counsel of at least 7 years call and experienced in property matters willing to act and in default of agreement as to his appointment to be appointed by the President for the time being of the Law Society.

(c) Any costs payable by reason of the provisions of this **Clause 20** shall be borne initially in equal proportions by Homes England and the Developer and

thereafter as may be adjusted by the award or awards pursuant to the provisions thereof.

21. NOTICES ETC

- 21.1. Any notice, decision, direction, approval, authority, permission or consent to be given by Homes England under this Lease must be in writing and shall be valid and effectual (unless express provisions are made to the contrary) if signed by the director or such other officer or agent as Homes England may from time to time by resolution designate for the purpose.
- 21.2. Any notice, decision, direction, approval, authority, permission or consent to be given by a Party shall be sufficiently served, in the case of anything to be served on the Developer, by being left or sent by post to the Developer at its registered office for the time being and, in the case of anything to be served on Homes England, by being left or sent by prepaid registered post or by recorded delivery to Homes England at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH and marked for the attention of the General Manager [■ insert region](or such other address or reference as may be notified in writing by Homes England to the Developer for such purpose) [and in the case of anything to be served on the Surety, by being left or sent by post to the Surety at the address specified at the beginning of this Lease as being the address for service of the Surety (or such other address in England or Wales as the Surety may notify to the serving Party as its address for service for the purposes of this Lease)]²⁶.

22. HOMES ENGLAND'S POWERS AND LIABILITY

- 22.1. Nothing herein contained or implied shall prejudice or affect Homes England's rights, powers, duties and obligations in pursuance of its objects as a statutory body and the rights, powers, duties and obligations of Homes England under all public or private statutes, byelaws, orders and regulations may be as fully and effectually exercised in relation to the Land and the Development as if Homes England were not the owner of the Land and this Lease had not been executed by it.
- 22.2. Homes England shall not be under any liability whatsoever in respect of any defect in the design of the Development by reason of Homes England having approved the Approved Plans or otherwise and shall not be deemed to have made any representation or warranty as to the fitness or suitability of the Land for the purposes of the Development or any other representation or warranty and the Developer declares that:
- (a) no oral representation has been made to the Developer prior to the date hereof by Homes England or its agents concerning the subject matter of this Lease which has influenced, induced or persuaded the Developer to enter into this Lease; and
 - (b) it has been provided with all information necessary to assess the state and condition of the Land and has been afforded full opportunity to enter the Land to conduct such surveys as it wished.

23. VALUE ADDED TAX

²⁶ Surety provisions only to be included where the Surety is a party to the Lease

- 23.1. All monies payable under the terms of this Lease are paid exclusive of VAT.
- 23.2. In the event of VAT being chargeable on such monies the Developer will on demand pay the same to Homes England at the appropriate rate in exchange for a VAT invoice addressed to the Developer.

24. ACKNOWLEDGMENT

The Parties to this Lease agree and acknowledge as follows:

- 24.1. [Homes England shall not be in breach of the covenant for quiet enjoyment at **Clause 14.1** nor in respect of any implied obligation not to derogate from the grant created by this Lease by reason of any demolition, construction, infrastructure or other works being carried out on the Adjoining Land or any other adjoining or neighbouring land of Homes England]
- 24.2. The Parties do not intend that any term of this Lease shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a Party.
- 24.3. No variation of this Lease shall be made other than by deed.

25. SURETY COVENANTS

[The Surety covenants with Homes England as a direct and primary obligation in the terms set out in **Schedule 11**.]

[Not Used]²⁷

26. COMPLIANCE INSPECTOR

In relation to the Compliance Inspector Appointment the Developer agrees:

- 26.1. not without the prior written consent of Homes England (not to be unreasonably withheld) discharge or release any rights and remedies which it may have against the Compliance Inspector (pursuant to the Compliance Inspector Appointment) nor restrict or diminish any of their obligations or liabilities relating to the Development provided that nothing in this clause shall prejudice or affect Homes England's own remedies against the Compliance Inspector;
- 26.2. to observe and perform the obligations on its part in the manner and at the times set out in the Compliance Inspector Appointment and, so as to ensure the due performance by the Compliance Inspector of their respective services, to operate the provisions of the Compliance Inspector Appointment;
- 26.3. not to replace or substitute (or agree or approve any replacement or substitution of) the Compliance Inspector without:
- (a) the prior written approval of Homes England;
 - (b) Homes England having approved the form of the appointment of the replacement or substitute Compliance Inspector which shall be in the same form as that attached to the Agreement for Lease (subject to any change which Homes England may require as a result of variation in the form of the new appointment or the status of the replacement or substitute Compliance Inspector).

²⁷ If the surety is providing a separate deed of guarantee this clause will not be used

27. MANAGEMENT COMPANY

- 27.1. The Developer shall incorporate the Management Company following prior agreement as to its constitution with Homes England (the Developer providing details for agreement by Homes England within 6 months following the Term Commencement Date of this Lease) with such constitution to provide that each Purchaser of a [Dwelling][Unit] shall have a voting share in such Management Company and following practical completion and the sale of the last [Dwelling][Unit] only the owners of [Dwellings][Units] shall be entitled to be members and shareholders of the Management Company and the Developer shall not at any time be entitled to transfer any share in it to a party that is not a Purchaser of a [Dwelling][Unit]
- 27.2. The Developer shall as soon as possible and in any event by the Adjusted Target House Build Completion Date devise an Estate Management Scheme which is acceptable to Homes England and this shall form part of the long term management strategy led by the Developer and first approved by Homes England (whose approval shall not be unreasonably withheld) such Estate Management Scheme conforming to the stipulations contained in any Planning Agreements

28. FREEDOM OF INFORMATION ETC

- 28.1. The Developer [and the Surety] acknowledges that Homes England is subject to legal duties which may require the release of Information under FOIA and/or EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information. [The parties acknowledge that such Information may include matters relating to, arising out of or under this Lease and any information provided by the Developer [and/or the Surety] prior thereto]
- 28.2. Homes England shall be responsible for determining in its absolute discretion whether:
- (a) any Information is Exempted Information or remains Exempted Information; or
 - (b) any Information is to be disclosed in response to a Request for Information
- and in no event shall the Developer [and/or the Surety] respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England unless otherwise expressly authorised to do so by Homes England.
- 28.3. Subject to **Clause 28.4** below the Developer [and/or the Surety] acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:
- (a) without consulting the Developer [and/or the Surety]; or
 - (b) following consultation with the Developer [and/or the Surety] and having taken (or not taken, as the case may be) its views into account
- 28.4. Without in any way limiting **Clauses 28.2** and **28.3**, in the event that Homes England receives a Request for Information Homes England will, where relevant, as soon as reasonably practicable notify the Developer [and/or Surety]
- 28.5. The Developer [and/or the Surety] will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in

particular without limitation will (and shall procure that its employees agents and sub-contractors will) at their own cost:

- (a) transfer any Request for Information received by the Developer [and/or the Surety] to Homes England as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England; and
- (c) provide Homes England with any data or information in its possession or power in the form that Homes England requires within five Working Days (or such other period as Homes England may specify) of Homes England requesting that Information;
- (d) ensure that all Information produced in the course of this Lease or relating to this Lease is retained for disclosure; and
- (e) permit Homes England to inspect all records retained in accordance with **Clause 28.5 (d)** as requested from time to time

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

29. EXCLUSION OF SECTIONS 24-28 OF THE LANDLORD AND TENANT ACT 1954

29.1. The Parties confirm that:

- (a) Homes England served a notice on the Developer, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this Lease, [not less than 14 days] before [this Lease][the Agreement for Lease] was entered into;
- (b) [NAME OF DECLARANT] who was duly authorised by the Developer to do so made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954; and
- (c) [there is no agreement for lease to which this Lease gives effect.]

29.2. The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this Lease.

29.3. [The parties confirm that:

- (a) Homes England served a notice on the Surety, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy to be entered into by the Surety pursuant to **paragraph 6.1 of Schedule 11**, [not less than 14 days] before [this Lease][the Agreement for Lease] was entered into; and
- (b) [the Surety OR [NAME OF DECLARANT], who was duly authorised by the Surety to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.]

30. CONSIDERATE CONSTRUCTORS SCHEME

The Developer shall in carrying out the works comprising the Development comply with the provisions of the Considerate Constructors Scheme save that where there shall be any conflict between the provisions of this Lease and the provisions of the said Scheme the former shall prevail.

31. LAW

This Lease is governed by and shall be construed in accordance with English law and subject to the exclusive jurisdiction of the English courts.

32. COVENANTS RELATING TO EMPLOYMENT AND SKILLS

The Developer covenants with Homes England to comply with the Developer's obligations relating to Employment and Skills contained in **Schedule [14]**.

33. COMMENCEMENT

IN WITNESS whereof this document has been executed as a Deed by the parties hereto but is not intended to have legal affect until it has been unconditionally delivered and dated.

SCHEDULE 1 – GRANTS AND RESERVATIONS

Part 1 - Rights easements and privileges

1. A right of way (until the same are adopted (if ever) by the highway authority as highways maintainable at the public expense) for the Developer at all times for all reasonable purposes over and along the carriageways and (on foot only) the footpaths on the Adjoining Land [shown coloured [**] on the annexed plan marked ["**Plan B**"] [which give access to the Land from the nearest public highway].
2. A right (until adoption (if ever)) to the free passage of water and soil, gas and electricity, telephone radio or television signals through the Common Services now or in the future running through, in, under or over, or attached to, the Adjoining Land together with the right to enter the Adjoining Land to inspect, make, lay, clean, reconstruct, divert, alter, maintain or connect into such Common Services until they have been adopted, such entry to be on the following terms (save in the case of emergency when no prior agreement of or notice to Homes England shall be required):
 - (a) entry may take place only at times to be agreed with Homes England;
 - (b) entry shall otherwise be subject to such conditions as Homes England may require;
 - (c) entry may only be over such parts of the Adjoining Land as may be necessary in order to carry out the Developer's Infrastructure Works and, in any event, may not be over any part of the Adjoining Land that has been built upon or is no longer in Homes England's possession or control; and
 - (d) the person so entering shall cause as little damage as reasonably possible and as soon as reasonably possible make good any damage caused.
3. A right to enter the Adjoining Land to carry out the Developer's Infrastructure Works, and entry to be on the following terms (save in the case of emergency when no prior agreement of or notice to Homes England shall be required):
 - (a) entry may take place only at times to be agreed with Homes England;
 - (b) entry shall otherwise be subject to such conditions as Homes England may require;
 - (c) entry may only be over such parts of the Adjoining Land as may be necessary in order to carry out the Developer's Infrastructure Works and, in any event, may not be over any part of the Adjoining Land that has been built upon or is no longer in Homes England's possession or control; and

the person so entering shall cause as little damage as reasonably possible and as soon as reasonably possible make good any damage caused.

4. The right of support and protection from any part of the Adjoining Land.

Part 2 – Exceptions and reservations

- 1 A right of way (until adoption) at all times and for all purposes over and along all roads and footpaths constructed upon the Land now or at any time in the future.

- 2 The right to free passage of water, soil, gas and electricity, telephone, radio or television signals through the Common Services now or at any time in the future running through, in, under or over or attached, to the Land.
- 3 The right to use, install, lay, clean, enlarge, extend, connect into, repair, reconstruct, divert, remove, alter and replace Common Services now or at any time in the future in, under, over or attached to the Land and to enter upon such part of the Land as may be necessary (but excluding any parts which have permanent structures upon them or are within building lines) for any of the foregoing such entry to be on the following terms(save in the case of emergency when no prior agreement of or notice to the Developer shall be required) :
 - (a) Entry may take place only at times to be reasonably agreed by the Developer;
 - (b) Entry shall otherwise be subject to such conditions as the Developer may reasonably require;
 - (c) Entry may only be over such parts of the Land as is reasonably required in order to carry out such works and, in any event, may not be over any part of the Land that has been built upon or is no longer in the Developer's possession and control; and
 - (d) The person so entering shall do as little damage as reasonably possible and as soon as reasonably possible make good any damage caused.
- 4 A right of entry on to the Land in order to carry out any works [including the Homes England Infrastructure Works] to the Land and/or any Adjoining Land.
- 5 The right to develop the Adjoining Land or any other adjoining or neighbouring land of Homes England as Homes England sees fit at any time during the term of this Lease.
- 6 All other rights of entry given to Homes England referred to elsewhere in this Lease.
- 7 The right to enter upon all such parts of the Land as may be appropriate for any other reasonable purpose connected with the Development such entry to be on the following terms (save in case of emergency when no prior agreement of or notice to Developer shall be required):
 - (a) entry may take place only at times to be reasonably agreed with the Developer;
 - (b) entry shall otherwise be subject to such conditions as the Developer may reasonably require;
 - (c) entry may only be over such parts of the Land as is reasonably required in order to carry out such works and, in any event, may not be over any part of the Land that has been built upon or is no longer in the Developer's possession or control .
- 8 All rights, easements, quasi-easements and privileges granted to, or enjoyed by, any third party in respect of the construction of any infrastructure or related matters.
- 9 The right of support and protection from any part of the Land
- 10 All rights to be reserved in the following:
 - (a) Transfer (Affordable/PRS Dwelling)

- (b) Transfer (Affordable/PRS Leasehold Building)
- (c) Transfer (Non-Residential Unit)
- (d) Transfer (Market Dwelling)
- (e) Transfer (Leasehold Building)

SCHEDULE 2 – DEVELOPER’S COVENANTS AND OTHER PROVISIONS RELATING TO THE DEVELOPMENT

[Part 1 – General]

1 PRE-DEVELOPMENT MATTERS CONSENTS AND AGREEMENTS

1.1 No work of any nature forming part of the Development shall commence until:

- (a) The Developer has complied with any requirement to be complied with before Start on Site under the provisions of this Lease; and
- (b) all matters to be complied with under any Planning Agreement and/or Planning Permission prior to commencement of such work have been complied with and it is lawful for Development to be commenced
- (c) the Developer has produced to Homes England’s Representative:-
 - (i) the Highways Technical Approval
 - (ii) the Sewers Technical Approvaltogether in each case with copies of all specifications drawings and other documents forming part of such approvals

1.2 Consents and agreements

Subject to **paragraphs 1.3 and 1.4**, the Developer must in accordance with the programme contained in the Approved Plans (or such extended period as the Developer and Homes England may agree):

- (a) obtain all permissions and consents required by all Planning Acts in relation to the Development;
- (b) obtain consent under the building regulations for the Development in accordance with the requirements of the Building Act 1984;
- (c) obtain all other permissions and consents required to carry out the Development;
- (d) enter into an agreement with the highway authority pursuant to Section 38 and/or Section 278 of the Highways Act 1980 (as appropriate) in respect of the construction and adoption of the Adoptable Highways and procure any bond or guarantee required by the highway authority in connection with any such agreement;
- (e) enter into an agreement with the water authority pursuant to Section 104 of the Water Industry Act 1991 in respect of the construction and adoption of the sewers serving the Development and procure any bond or guarantee required by the water authority in connection with such agreement;
- (f) [(save to the extent that such parts of the Land are intended to be transferred to the Management Company)] enter into an agreement with the Council for the adoption by the Council of the [Open Space Land] [and any other play areas, amenity areas and landscaping areas comprising a part of the Development];

- (g) enter into an agreement with the Council for the adoption by the Council of the [Open Space Land] [and any other play areas, amenity areas and landscaping areas comprising a part of the Development]; [and]
 - (h) enter into an agreement with a landscaping contractor upon such terms so as to ensure the completion of the landscaping works referred to in the Approved Plans.
- 1.3 (save to the extent that such matters are provided for under the Agreement for Lease) the Developer must not submit an application for any permission or consent without Homes England's approval to the form of application; nor may the Developer implement any permission or consent without Homes England's approval to the form of the permission or consent.
- 1.4 Each of the matters referred in **paragraph 1.2** shall be in accordance with the Approved Plans.
- 1.5 The Developer covenants with Homes England to observe perform and comply with all the obligations on its part contained in any document referred to in **paragraph 1.2**.

2 BOUNDARY FENCES

- 2.1 Before Start on Site, the Developer must erect along all boundaries of the Land fences and hoardings in accordance with Homes England's specification contained in the Approved Plans (but in any event being not less than 2 metres in height and being in accordance with the Health and Safety Executive's, or other competent body's, recommendations) and to maintain the same in position and good repair throughout the Development.
- 2.2 If the Developer shall commence work on the Development without first having erected all fences required under **paragraph 2.1** then Homes England shall have the right without notice to enter upon the Land in order to erect any such fences along the boundaries of the Land (including the right to take down and erect any fences erected by the Developer in an incorrect position, whether on the Land or on adjoining land) and the cost of all such works undertaken by Homes England (including any works of reinstatement to adjoining land) shall be paid by the Developer to Homes England on demand.

3 SIGNAGE DURING CONSTRUCTION

- 3.1 Within three months of the date of this Lease Homes England and the Developer shall consider and agree a signage strategy in relation to the Development to be displayed on the Land.
- 3.2 It is agreed that all signage to be erected on the Land will include the name of Homes England in a prominent position and to a size not less than that of the Developer [or a contractor.]
- 3.3 [The Developer shall ensure that all promotional events for the Development are notified in writing in advance to Homes England and that marketing material in respect of the Development acknowledges Homes England's role in providing assistance and the Developer will not issue any material until the manner in which and the wording by which such acknowledgement to be given shall have been given the prior approval by Homes England, such approval not to be unreasonably withheld or delayed.]

- 3.4 The Developer shall not represent with finality either the layout of the Development and/or the mix and location of tenures across the Development in any marketing particulars so as to cause the Developer or Homes England to be subject to any civil or criminal liability for misdescription, misrepresentation or any other cause of action in respect of the same, the Developer acknowledging that this covenant is intended to ensure that there are no obligations or representations to Purchasers that could negate a reconfiguration of the Development or a change in the proposed tenure of any [Dwelling][Unit] or the location of market, affordable or social housing within the Development in the event that Homes England takes back any Units on the Termination of this Lease

4 SITE ACCESS

- 4.1 Access to the Land for construction traffic and any other vehicles must be via the Site Access and no other roadway and the Developer must ensure that anyone driving to the Land is aware of this.
- 4.2 The Developer must lay a sufficient length of access road of adequate construction to the satisfaction of Homes England before commencing construction work on other aspects of the Development so as to facilitate compliance with the provisions of this Lease relating to protection and cleaning of roads.
- 4.3 Before Start on Site the Developer must erect across the Site Access at every point of permitted vehicular access to the Land a substantial height gauge the top bar of which shall not be more than sixteen feet above ground level at points within the boundaries of the Land not less than five metres from such points of access each such height gauge to incorporate a warning notice which shall read "No loads over 16 feet to proceed" and thereafter to maintain the same until completion of the Development.
- 4.4 During the construction of the Development the Developer must ensure that no loads over 16 feet in height shall leave the Land.

5 TEMPORARY VEHICLE PARKING

- 5.1 The Developer must provide at Start on Site and maintain during the Development to the satisfaction of Homes England a temporary vehicle park for all vehicular traffic used in the course of construction including sub-contractor's and operatives' private vehicles and shall remove the same and make good the Land at practical completion.
- 5.2 The proposed layout of the vehicle park together with construction details shall be provided by the Developer not later than Start on Site.
- 5.3 The Developer must not park or permit or suffer to be parked construction plant vehicles and private vehicles on highways and highway verges except with the express written consent of Homes England.

6 COMPLETION OF DEVELOPMENT [AND THE DEVELOPER'S INFRASTRUCTURE WORKS]

- 6.1 The Developer must:-
- (a) ensure that Start on Site occurs on or before the Target Start on Site Date (but without prejudice to any provision of this Lease containing any conditions to be met prior to Start on Site);

- (b) ensure that the Actual House Build Commencement Date occurs on or before the Adjusted Target House Build Commencement Date (as extended where appropriate pursuant to **paragraph 8.2** of this Schedule) (but without prejudice to any provision of this Lease containing any conditions to be met prior to the Actual House Build Commencement Date);

and thereafter:

- (c) carry out and complete the Development [in accordance with the Adjusted House Build Targets²⁸ and in any event]by the Adjusted Target House Build Completion Date in a good and workmanlike manner to the satisfaction of Homes England in accordance with the Planning Permission the Approved Plans and the Performance Criteria
- (d) [carry out and complete the Developer's Infrastructure Works in a good and workmanlike manner to the satisfaction of Homes England in accordance with the Planning Permission the Approved Plans and the Performance Criteria and with all practicable speed, in compliance with the programme forming part of the Approved Plans and, in any event, not later than the Adjusted Target House Build Completion Date];
- (e) [comply with the provisions of any Remediation Plan accepted by Homes England]

6.2 The Developer shall ensure that no Deleterious Materials are used in any works or materials used comprised in or relating to the Development and that the construction methodology that it adopts and the materials it uses are of a kind that would generally be acceptable to a CML mortgage lender.

6.3 [The Developer shall comply with all obligations and other matters set out on the Constraints Plan as being obligations on the part of the Developer or matters which are its responsibility]²⁹.

6.4 All Highways and Common Services to be constructed by the Developer shall connect to any existing highway network [on the Adjoining Land] and shall be constructed in accordance with all applicable Enactments and the Approved Plans.

6.5 The Developer will provide information to Homes England and to the Compliance Inspector forthwith when requested to do so by Homes England or by the Compliance Inspector relating to progress of Development against the [Adjusted House Build Targets and the]³⁰ Approved Plans and the Performance Criteria.

7 PLANNING AGREEMENTS

7.1 In carrying out the Development [and the Developer's Infrastructure Works] the Developer must:

- (a) comply with all Planning Agreements affecting the Land (and where relevant the Adjoining Land in so far as they relate to the Development [and/or the Developer's Infrastructure Works]) including the payment of all sums payable

²⁸ The provisions regarding House Build Targets are only appropriate if the total build period exceeds 18 months

²⁹ Delete if no Constraints Plan

³⁰ The provisions regarding House Build Targets are only appropriate if the total build period exceeds 18 months

thereunder and the discharge of all obligations thereunder at the times stated therein;

- (b) indemnify and keep indemnified Homes England against all actions proceedings claims demands losses costs expenses damages and liabilities arising directly or indirectly from any breach of the Planning Agreements;
- (c) [to provide on demand to Homes England suitable written evidence of all payments made and obligations satisfied under the Planning Agreements.]

8 EXTENSIONS OF TIME

8.1 If the Developer is materially delayed in commencing, proceeding with or completing the Development solely by reason of any of the following:

- (a) outbreak of war or civil insurrection involving the United Kingdom;
- (b) extreme adverse weather;
- (c) any strikes or lockout in the building trade or any kindred trades;
- (d) non availability of labour and materials;
- (e) Non-availability of or unreasonable delay in the supply of off-site manufactured components of the Development
- (f) any town planning or building licensing or building regulations refusal or restrictions;
- (g) exercise by the Council or Homes England of their rights under **paragraph 22** of this Schedule (archaeology);
- (h) an extension, variation or alteration made to the Development which shall have been approved by Homes England pursuant to this Lease;
- (i) unreasonable delay by a statutory undertaker or statutory undertakers responsible for connecting the Units on the Development with that statutory undertaker's network and/or those statutory undertakers' networks and/or upgrading connections or increasing capacity of existing connections to statutory undertakers' networks, where this is required in connection with the Development;
- (j) any unreasonable delay by Homes England in granting or otherwise withholding approval where provided for in this Lease; and
- (k) any delay arising as a result of any breach non-performance or non-observance of Homes England's obligations in this Lease
- (l) other unavoidable cause or accident beyond the control of the Developer;

then the Developer shall provide such evidence of the cause and length of the delay to the Compliance Inspector as the Compliance Inspector requests and (except where the delay has been caused by the default or negligence of the Developer) Homes England shall allow such further time for the completion of the Development as the Compliance Inspector shall certify and Homes England shall approve and the programme (as contained in the Approved Plans), [the House Build Targets,] the Target House Build Completion Date and the relevant Construction Related Deadline(s) shall be amended accordingly.

8.2 If the Actual House Build Commencement Date is materially delayed solely by reason of either of the following:

- (a) Any of the grounds set out in sub-paragraphs (a) – (l) of **paragraph 8.1** of this Schedule; or
- (b) Unforeseen ground or site conditions that are discovered following and as a result of Start on Site

then the Developer shall provide such evidence of the cause and length of the delay to the Compliance Inspector as the Compliance Inspector requests and (except where the delay has been caused by the default or negligence of the Developer) Homes England shall allow such further time for the Actual House Build Commencement Date as the Compliance Inspector shall certify and Homes England shall approve and the Target House Build Commencement Date shall be amended accordingly.

8.3 [In the event of a Market Downturn Homes England and the Developer shall agree such further time for the completion of the Development as may be reasonable and the programme (as contained in the Approved Plans) and the Target House Build Completion Date the House Build Targets and the relevant Construction Related Deadline(s) shall be amended accordingly

8.4 If an amendment to the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines has been agreed pursuant to **paragraph 8.3** of this Schedule then on the date 6 months following the date of the publication of the Total Sales Volume that established the Market Downturn Homes England and the Developer shall review the Total Sales Volume and if at that date the Total Sales Volume most recently published shows that there is no longer a Market Downturn then Homes England and the Developer shall agree such amended time for the completion of the Development as shall provide for the Development to proceed at a rate equivalent to the rate established by the original House Build Targets and the programme (as contained in the Approved Plans) and the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines shall be amended accordingly

8.5 If an amendment to the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines has been agreed pursuant to **paragraph 8.3** of this Schedule and on the date 6 months following the date of the publication of the Total Sales Volume that established the Market Downturn Homes England and the Developer have reviewed the Total Sales Volume and if at that date the Total Sales Volume most recently published showed that there was still a Market Downturn the procedure in **paragraph 8.4** of this Schedule shall be repeated at six monthly intervals until the earlier of:

- (a) the date on which such review shows that there is no longer a Market Downturn (and Homes England and the Developer have agreed amendments to the time for the completion of the Development, the Target House Build Completion Date the House Build Targets and the Construction Related Deadlines pursuant to **paragraph 8.4**); and
- (b) the date which the Development is completed.]³¹

8.6 Subject to **paragraph 8.7** if at any time $\geq 32\%$ of Dwellings all of which Dwellings:

³¹ Paragraphs 8.3 - 8.5 only included in schemes with a build period in excess of 18 months

- (a) have been practically completed which shall be evidenced by the production of a NHBC Buildmark Confirmation to Homes England and to the Compliance Inspector; and
- (b) have been marketed for a period of one month following practical completion at the Base Value for the relevant Dwelling as certified by the Compliance Inspector

Homes England and the Developer shall agree such further time for the completion of the Development as may be reasonable and the programme (as contained in the Approved Plans) and the Target House Build Completion Date [the House Build Targets] and the relevant Construction Related Deadline(s) shall be amended accordingly.

- 8.7 The procedure agreed in **paragraph 8.6** of this Schedule may be repeated at intervals of not less than 6 months.
- 8.8 Any adjustment of the Target House Build Commencement Date and/or [the House Build Targets,] the Target House Build Completion Date and the relevant Construction Related Deadline(s) agreed in accordance with **paragraphs 8.1** and/or **8.2** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6**³³ shall not have effect unless confirmed by the entry by the Parties into memorandum of agreement in the form annexed at Annexure **■**.
- 8.9 The parties acknowledge and agree that extensions of time agreed pursuant to **paragraphs 8.1** and/or **8.2** and/or **8.3** and/or **8.4** and/or **8.5** and/or **8.6**³⁴ may run concurrently.

9 APPROVED PLANS AND ESTATE LAYOUT PLAN

- 9.1 Subject to **paragraph 9.2**, the Developer must not erect or build or permit or suffer to be erected or built on the Land any building, structure or erection otherwise than in conformity with the Planning Permission and the Approved Plans.
- 9.2 The Developer may:
 - (a) in accordance with the Compliance Inspector's recommendation and with Homes England's prior approval make amendments to the Approved Plans
 - (b) without Homes England's approval, make internal amendments to a [Dwelling] [Unit] which do not affect its external appearance.
- 9.3 As soon as reasonably practicable (and in any event prior to practical completion of the first Dwelling to be practically completed):
 - (a) to provide an Estate Layout Plan to Homes England for its approval (such Estate Layout Plan to be in conformity with the Approved Plans previously approved by Homes England and to be in a form which will enable Homes England to verify the Estate boundaries and individual boundaries against relevant Approved Plans); and
 - (b) apply for and pursue with due diligence the registration of such Estate Layout Plan at the Land Registry and notify Homes England when this has been done.

³² Percentage to be bid by the Developer and confirmed in instructions to solicitor

³³ Check cross-references, paragraphs 8.3- 8.5 will be removed where the build period is 18 months or less

³⁴ Check cross-references, paragraphs 8.3- 8.5 will be removed where the build period is 18 months or less

9.4 All revisions of the Estate Layout Plan must be approved by Homes England (such approval not to be unreasonably withheld or delayed).

10 SUBSTITUTE MATERIALS

If the Developer proves to the reasonable satisfaction of the Compliance Inspector that it is necessary to use materials in substitution for materials previously approved by Homes England in the Development then the Developer may use such substitute materials as are recommended by the Compliance Inspector and approved by Homes England in writing [(such approval not to be unreasonably withheld or delayed) provided that such substitutions are of no less specification quality design suitability and fitness for purpose than the original materials and are consistent with the Approved Plans and do not comprise any Deleterious Materials].

11 HOMES ENGLAND'S RIGHTS TO VIEW ETC AND REMEDY BREACHES

11.1 The Developer must permit Homes England and the Compliance Inspector to enter upon the Land at all reasonable times (subject to complying with such safety and security precautions as may be in force from time to time at the Development):

- (a) to view the state of progress of the Development and the materials used and intended for use in connection therewith;
- (b) to ascertain whether the obligations of the Developer under this Lease or any other document have been observed and performed; and
- (c) to ascertain whether the Developer has complied with an approved Remediation Plan.

11.2 If the Developer shall default in complying with an approved Remediation Plan it shall be lawful for Homes England to enter the Land to remedy any such breach and all proper and reasonable costs and expenses thereby incurred shall be paid by the Developer to Homes England on demand as a debt due to Homes England.

12 COMPLIANCE WITH ENACTMENTS

12.1 The Developer must do all acts and things required by, and conform in all respects with, the provisions of any Enactments applicable to the Development (which for the avoidance of doubt shall include the provisions of Section 57 of and Schedule 22 to the Environment Act 1995) and in particular to comply with:

- (a) the lawful requirements of any statutory undertakers in respect of electricity, gas, water, telephone or other public services; and
- (b) the conditions imposed by any agreements, licences, permissions and approvals for development or use granted in relation to the Land and the Development.

12.2 Without prejudice to the generality of **Paragraph 12.1**, the Developer shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) comply with the Modern Slavery Policy; and

- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
 - (d) include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this **Paragraph 12.2** and require that each of its direct subcontractors and suppliers comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015
- 12.3 The Developer represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Modern Slavery Policy.
- 12.4 The Developer must not do anything which may result in Homes England incurring or becoming liable to pay any penalty, damage, compensation, costs, charges or expenses.
- 12.5 Competent Authorities
- (a) In this paragraph "**Competent Authority**" means any government body, court, tribunal or other body deriving power under Environmental Law.
 - (b) The parties agree that the apportionment by a Competent Authority of any liabilities that may arise under Part IIA of the Environmental Protection Act 1990 (as amended) (**Part IIA**) in respect of pollution or contamination present in on or under or originating from the Land shall be undertaken on the basis that the Developer shall have full responsibility for any and all such liabilities.
 - (c) It is hereby acknowledged and intended by the parties that **paragraph 12.5(b)** is an agreement on liabilities for the purposes of Part IIA.
 - (d) The parties agree that in the event of a notification being served on any of them which indicates that the Land is or is likely to be determined 'contaminated land' under Part IIA to notify the other as soon as is reasonably practicable.
 - (e) The parties undertake to furnish the Competent Authority with a copy of this Lease as soon as is reasonably practicable after receiving a note from the Competent Authority or a notification under **paragraph 12.5(b)**, and individually to agree to the application of **paragraph 12.5(b)** and to confirm such individual agreement in writing to the Competent Authority following receipt of such notice or notification.
 - (f) The parties hereby undertake to use all reasonable endeavours to ensure that the Competent Authority applies the agreement on liabilities set out in sub-**paragraph 12.5(b)**.
 - (g) For the avoidance of doubt Homes England shall retain the right to appeal against a decision of a Competent Authority in accordance with Part IIA's appeal procedure.
- 12.6 The Developer hereby undertakes to indemnify Homes England and keep Homes England indemnified in respect of all and any fines, penalties, charges, actions, losses, costs, claims, expenses, demands, duties, obligations, damages and other

liabilities that Homes England may suffer (i) as a result of any failure of the Developer to adhere to the provisions of **paragraph 12.5**; or (ii) arising from any pollution or contamination present in or under or originating from the Land.

12.7 Anti-Bribery

(a) The Developer shall:

- (i) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Requirements);
- (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (iii) EITHER

[comply with Homes England's [Anti-bribery and Corruption Policy](#), in each case as Homes England or the relevant industry body may update from time to time (Relevant Policies).]

OR

[have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and paragraph (ii) above, and will enforce them where appropriate];

- (iv) immediately report to Homes England's General Manager – Financial Crime Compliance and MLRO any request or demand for any undue financial or other advantage of any kind received by the Developer in connection with the performance of this agreement;
 - (v) if required by Homes England, produce a written certificate to it signed by an officer of the Developer, confirming compliance with this **paragraph 12.7** by the Developer and all persons associated with it under **paragraph 12.7(b)** and the Developer shall provide such supporting evidence of compliance as Homes England may reasonably request.
- (b) The Developer shall ensure that any person associated with the Developer who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this **paragraph 12.7** (Relevant Terms). The Developer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms.
- (c) Breach of this **paragraph 12.7** shall be deemed a Material Breach.

13 CDM REGULATIONS

13.1 The Developer accepts that it is a client as defined by the CDM and warrants that it is and will at all times remain competent to carry out the role of a client under CDM.

- 13.2 The Developer agrees that it will act as the only client in respect of the Development for the purposes of CDM.
- 13.3 Homes England agrees that the Developer is the only client for the Development for the purposes of CDM.
- 13.4 The Developer shall comply fully with all the obligations of the client under CDM and ensure that the Development is carried out in accordance with CDM.
- 13.5 The Developer shall not seek to withdraw, terminate or in any manner derogate from the agreement contained in **paragraphs 13.2 and 13.3** above without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.
- 13.6 The Developer shall ensure that any and all parties engaged in respect of the procurement and/or undertaking of the works comprised in the Development are aware of the terms of the Developer's election as only the client for the purposes of CDM.
- 13.7 Before commencement of the Development, the Developer shall notify the Development to the Health and Safety Executive in accordance with CDM and shall give Homes England a copy of the notification and any acknowledgement from the Health and Safety Executive.
- 13.8 The Developer[as principal contractor shall comply and] shall ensure that the Principal Designer [and Building Contractor (as principal contractor and contractor) each comply with their respective] [complies with its] obligations under CDM.
- 13.9 The Developer shall ensure that the Principal Designer [is] [and Building Contractor are both] promptly:
- (a) supplied with all relevant information required under CDM; and
 - (b) notified of any changes relating to the Development which may have any effect on their responsibilities or duties under CDM.
- 13.10 The Developer shall:
- (a) [ensure that the Building Contractor] prepare[s] the construction phase plan;
 - (b) not allow the construction phase of the Development to commence until the construction phase plan is prepared;
 - (c) not allow the construction phase of the Development to commence until the site welfare facilities required by schedule 2 to CDM are in place; and
 - (d) ensure that the Health and Safety File is prepared by the Principal Designer and is maintained correctly and is available for inspection in accordance with CDM.
- 13.11 The Developer shall indemnify and keep Homes England indemnified against liability for any breach of the Developer's obligations under or in connection with this **paragraph 13**

14 HEALTH & SAFETY

- 14.1 The Developer shall at all times comply with all obligations, requirements and duties arising under Health and Safety legislation in connection with the works comprising the Development.
- 14.2 The Developer shall appoint a Competent Person pursuant to Regulation 7 of The Management of Health at Work Regulations 1999 to assist the Developer in carrying out the necessary measures that needs to be taken in order to ensure the safety and health of any person affected by the carrying out of the works comprising the Development. The Developer will be responsible for health, safety, environmental and security issues and will ensure that a sufficient number of competent staff are available and responsible for health, safety and welfare matters relating to the works comprising the Development.
- 14.3 The Developer shall at all times procure the compliance with all obligations, requirements and duties arising under Health and Safety legislation by any and all parties appointed in connection with the works comprising the Development or allowed on the Land.
- 14.4 The Developer shall maintain an accurate record of all health, safety and environmental incidents which occur on or in connection with the Development, and shall provide a report to Homes England's Health & Safety Manager quarterly in the form set out in **Schedule 10**.
- 14.5 The Developer shall notify Homes England's Health & Safety Manager immediately on the occurrence of any of the following events which arise out of or in connection with the Development:
- (a) a fatal accident to any worker or a member of the public;
 - (b) any injury to a member of the public requiring reporting under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (as amended from time to time) ("**RIDDOR**");
 - (c) any dangerous occurrence, as defined by RIDDOR;
 - (d) the service of any improvement or prohibition notice under the Health & Safety at Work etc Act 1974;
 - (e) any incident having health & safety implications which attracts the attention of the police and/or the media;
 - (f) the commencement of any criminal prosecution under the Health & Safety at Work etc Act 1974;
 - (g) any occurrence or incident of pollution

15 [LANDSCAPING WORKS

In the event that the Developer shall fail to carry out the landscaping works in accordance with the Approved Plans or in the time specified in the programme (as contained in the Approved Plans) and fails to carry out such works within 20 Working Days of being asked to do so by Homes England (acting reasonably and taking into account the season in question) contained therein Homes England shall be entitled to enter upon the Land (including any land then disposed of) to carry out the

landscaping works in accordance with the Approved Plans and the Developer shall indemnify Homes England against the cost of such works.]

16 INSURANCE

16.1 The Developer must:

- (a) insure, or cause to be insured, at all times during the carrying out of the Development any buildings erected on the Land (save any [Dwellings] [Units] disposed of to Purchasers or land disposed of to the Management Company) (**Insurable Premises**) in a sum sufficient to cover the cost of completely reinstating the same in the event of total destruction together with architects' and surveyors' fees and other expenses incidental thereto against loss or damage by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion in an insurance office to be approved by Homes England (such approval not to be unreasonably withheld or delayed) and to ensure that Homes England's interest is noted on the policy or policies of insurance;
- (b) pay or cause to be paid, all premiums and other monies necessary for effecting such insurance;
- (c) whenever required, produce to Homes England the policy or policies of such insurance and the last receipt for every premium or other monies;
- (d) (in the event of the Insurable Premises or any part thereof being destroyed or damaged as aforesaid) secure that all monies payable by virtue of such insurance shall with all convenient speed be laid out and applied in rebuilding or otherwise reinstating the same in a good and substantial manner in accordance with the terms of this Lease and (in case the same shall be insufficient for that purpose) make up the deficiency out of its own monies;
- (e) not do, or permit to be done, upon the Land anything which may render the policy or policies of insurance void or voidable;
- (f) indemnify Homes England (notwithstanding any supervision or approval of Homes England or any person acting on behalf of Homes England) and insure in an insurance office approved by Homes England (such approval not to be unreasonably withheld or delayed) in the sum of [£10,000,000] against any liability, loss, claim or proceedings in respect of any injury or damage whatsoever caused to any person or to any property real or personal in so far as such injury or damage arises out of, or in the course of, or by reason of, the negligent execution of the Development.

17 PROTECTION OF HIGHWAYS

17.1 The Developer must:

- (a) not deposit any building or other materials within two metres of any Highway;
- (b) comply with all reasonable instructions of the local highway authority and the police given to prevent any congestion of, or hazard to, traffic and in any event arrange for the delivery and removal of all materials to and from the Land with as little inconvenience to pedestrians and traffic as possible;
- (c) at all times protect all Highways against damage arising (and take all necessary or proper precautions for the protection of any person on any Highway against injury arising) by vehicles employed in connection with the

Development and forthwith make good any such damage at the expense of the Developer in the event that the perpetrator of such damage does not maintain or repair the same;

- (d) at all times keep all Highways free from mud, dirt, debris and other deleterious matter to the satisfaction of Homes England and ensure that all vehicles leaving the Land are clean and properly loaded; and
- (e) to provide in any contract for the carrying out of the Development or any part or parts thereof a provision requiring the contractor under such contract to comply with the terms of **paragraphs 17.1(a) (b) (c) and (d)**.

17.2 If the Developer fails to carry out any work necessary for compliance with the provisions of this **paragraph 17** within 10 Working Days of having received written notification of such default Homes England may undertake the same and the Developer must forthwith on demand repay to Homes England the proper cost of so doing which cost shall be recoverable by Homes England from Homes England as a liquidated debt.

18 MAINTENANCE OF HIGHWAYS

The Developer must maintain all Highways constructed by the Developer until adoption by the highway authority or transfer to the Management Company.

19 DEFECTS INSURANCE

19.1 The Developer must build every Dwelling so as to comply with the requirements of the National House Building Council (or any successor organisation) (**NHBC**) and so as to qualify for the insurance cover provided by it which the Developer must obtain.

19.2 That the Developer will ensure that every Purchaser obtains the benefit of the insurance cover provided by NHBC.

20 SEWERS, DRAINS AND OTHER CONDUITS

20.1 During the construction of the Development the Developer must:

- (a) lay out and construct to the satisfaction of Homes England proper and sufficient branch and connecting sewers, drains, shafts, traps, gullies and gratings and to drain such branch and connecting sewers and drains into public sewers;
- (b) liaise with Homes England in connection with the overall programming for the provision of services and comply with all reasonable instructions issued by it to ensure the smooth progress of the Development and appropriate interface with any works being carried out on any Adjoining Land;
- (c) protect all pipes, ducts, cables and statutory undertakers' apparatus against damage as a result of carrying out the works;
- (d) take all necessary precautions to ensure the protection of all streams, waterways, surface water, sewers and drains against pollution as a result of carrying out the works and any temporary diversions of existing streams, waterways, sewers or other works must be carried out so as not to reduce the capacity of that stream, waterway, sewer or other works and to the satisfaction of Homes England;

- (e) ensure that the Common Services are not blocked and that any connection to a Common Service is effected with the approval of Homes England or, where appropriate, the relevant statutory undertaker; and
- (f) maintain all sewers, drains, pipes, ducts, cables and other conduits constructed by the Developer until adoption by the relevant statutory undertaker or transfer to the Management Company.

21 MAINTENANCE UNTIL COMPLETION

- 21.1 Until completion of the Development, the Developer must keep and maintain the Land and all parts of the Development in a neat and tidy condition so far as may be reasonable and prevent so far as may be reasonably practicable any matters or things which may be unnecessarily unsightly or offensive visually or otherwise.
- 21.2 Until the completion of the disposal of any [Dwelling] [Unit], the Developer must keep and maintain that [Dwelling] [Unit] in good and marketable condition.

22 ARCHAEOLOGY

- 22.1 All fossils, coins, articles of value or antiquity and structures or other remains or things of prehistoric, geological or archaeological interest ("**Archaeological Finds**") discovered on the Land during the Development shall be the property of Homes England and the Developer must:
- (a) not conceal, remove or damage or permit to be concealed, removed or damaged any Archaeological Finds;
 - (b) promptly on discovery of any Archaeological Finds notify Homes England and the archaeology officer of the Council (or other local archaeology authority);
 - (c) allow (upon such reasonable terms as may be agreed with the Developer) officers and agents of Homes England and of the Council (or other local archaeology authority) with or without workmen and plant to enter the Land for the purpose of appraising, recording and removing the Archaeological Finds; and
 - (d) reimburse to Homes England or to the Council (or other local archaeology authority) or to any third party authorised by either of them costs incurred in the emergency recording of any significant Archaeological Find made during the Development.

23 TREES

Save in accordance with the Approved Plans and subject to the Developer obtaining all necessary consents, not to cut down or top any trees on the Land without the consent in writing of Homes England (which is not to be unreasonably withheld or delayed) which if granted may be subject to such conditions as Homes England may reasonably require.

24 GRAVEL ETC

The Developer may use for the purpose of the Development any substances which may be excavated in the proper execution of such works without making any payment for such substances to Homes England or to any person) Provided Always that where such earth, clay, gravel or sand is not required by the Developer for the purposes of the Development the Developer must not sell or dispose of such earth, clay, gravel or sand or permit or suffer any of the same to be removed from the Land without the prior

approval of Homes England (which is not to be unreasonably withheld or delayed) and such payments received by the Developer on its disposal shall be paid to Homes England.

25 HOUSING OUTPUTS

As between the Developer and Homes England, the Developer shall permit Homes England to claim any Outputs (as defined in **Schedule 13** of the Lease) in respect of the development of the Land and will not claim any itself

26 [Part 2 – Site Specific Obligations]

SCHEDULE 3 – MARKET DWELLINGS

Transfer of Market Dwellings

1. The Developer shall procure the transfer of the freehold interest in each Market Dwelling to a Purchaser at arm's length, in the open market on bona fide terms in good faith and with vacant possession, as soon as reasonably practicable.
2. Subject to other paragraphs of this Schedule Homes England need not take any step in relation to the transfer of any Market Dwelling until the NHBC Buildmark Confirmation has been issued in respect of that Market Dwelling and a copy has been provided to Homes England and Homes England is satisfied of the matters referred to in **Clause 4.1**.
3. Homes England need not take any step in relation to the transfer of the last [two]³⁵ Market Dwellings remaining to be transferred until the transfer of the Remainder Land has been completed pursuant to **Clause 10** and any Overage has been paid in accordance with **Schedule 12**
4. Subject to other paragraphs of this Schedule, Homes England will transfer the freehold interest in each Market Dwelling to the relevant Purchaser on the following terms:
 - (a) the form of transfer shall be substantially in the form of the Transfer (Market Dwelling) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging³⁶);
 - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
 - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
 - (d) the Developer shall send the following documents to Homes England's Plot Sales Solicitors not less than 5 Working Days before the anticipated date for completion of the transfer:
 - (i) the form of transfer (in duplicate if appropriate);
 - (ii) a completed (but undated) draft of the Sale Report in respect of the Market Dwelling;
 - (iii) a NHBC Buildmark Confirmation for the relevant Dwelling
 - (iv) *[Add any other documents]*
 - (e) Homes England need not deliver the form of transfer, executed by Homes England, to the Developer or any other person until any dispute over any

³⁵ The number of Units to be held back will vary on a scheme by scheme basis in relation to potential residual liabilities – a minimum of 2 is mandatory

amount payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount, including any VAT and interest.

5. Within 5 Working Days after the completion of any transfer of a Market Dwelling, the Developer must deliver to Homes England's Solicitors a certified copy of the completed form of transfer executed by the Developer and the Purchaser and any other parties together with the Sale Report.

SCHEDULE 4 – AFFORDABLE/PRS DWELLINGS³⁷

Transfer of Affordable/PRS Dwellings

1. The Developer shall procure the transfer of the freehold interest in each Affordable Dwelling to the Registered Provider and the transfer of each PRS Dwelling to the PRS Operator with vacant possession, as soon as reasonably practicable.
2. The Developer shall procure that the [Registered Provider][PRS Operator] enters into:
 - (a) the Transfer Affordable/PRS Dwellings[; and]
 - (b) a NHBC Buildmark Confirmation for the relevant Dwelling
 - (c) [insert details of any relevant documents]on completion of the transfer.
3. Subject to other paragraphs of this Schedule Homes England need not take any step in relation to the transfer of any Affordable Dwelling or any PRS Dwelling until the NHBC Buildmark Confirmation has been issued in respect of that Affordable Dwelling or that PRS Dwelling (as appropriate) and a copy has been provided to Homes England.
4. Homes England need not take any step in relation to the transfer of the last [two] Affordable Dwellings and PRS Dwellings until the transfer of the Remainder Land has been completed pursuant to **Clause 10** and any Overage has been paid in accordance with **Schedule 12**³⁸
5. Subject to **paragraphs 1 to 4** inclusive of this Schedule, Homes England shall transfer the freehold interest in each Affordable Dwelling to the Registered Provider and shall transfer the freehold interest in any PRS Dwelling to the PRS Operator on the following terms:
 - (a) the form of transfer shall be substantially in the form of the Transfer (Affordable/PRS Dwelling) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging);
 - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
 - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
 - (d) the Developer shall send the following documents to Homes England not less than 5 working days before the anticipated date for completion of the transfer:
 - (i) the form of transfer (in duplicate if appropriate);

³⁷ Delete schedule if not applicable

³⁸ Only where scheme is 100% affordable /PRS otherwise delete paragraph

- (ii) a completed (but undated) draft of the Sale Report in respect of the Affordable Dwelling or the PRS Dwelling (as appropriate);
 - (iii) *[insert any other relevant documents]*
 - (e) Homes England need not deliver the form of transfer, executed by Homes England, to the Developer or any other person until any dispute over any amount payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount, including any VAT and interest.
6. Within 5 working days after the completion of any transfer of an Affordable Dwelling, or of a PRS Dwelling the Developer must deliver to Homes England's Solicitors a certified copy of the completed form of transfer executed by the Developer and the Purchaser and any other parties together with the Sale Report.

SCHEDULE 5 – TRANSFER ETC. OF LEASEHOLD BUILDINGS³⁹

1. Homes England shall transfer, and the Developer shall receive, the freehold interest in a Leasehold Building to the Developer on the following terms:

- (a) Homes England is not obliged to take any step in relation to the transfer of any Leasehold Building until the first NHBC Buildmark Confirmation has been issued in respect of a Flat in that Leasehold Building and a copy has been provided to Homes England;
- (b) the form of transfer shall be substantially in the form of the Transfer (Leasehold Building) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging);
- (c) the form of transfer will contain a covenant on the part of the Developer to the effect that the Developer will not reserve a ground rent (other than a peppercorn) on the disposal of any Flat in a Leasehold Building;
- (d) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
- (e) Homes England shall not be required to deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
- (f) Homes England need not deliver the form of transfer executed by Homes England to the Developer or any other person until any dispute over any amount payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount including any VAT and interest
- (g) the Developer shall send the following documents to Homes England not less than 5 Working Days before the anticipated date for completion of the transfer:
 - [(i) the form of transfer⁴⁰ (in duplicate if appropriate);*
 - (ii) set out any other documents e.g. Legal Charge / Overage Covenant to secure any deferred payment of overage or long-term clawback]*

and shall enter into them on completion.

2. Immediately before completion of the transfer the Developer must provide a solicitor's undertaking (in a form acceptable to Homes England) to:

- (a) register a restriction on title onto the freehold title to the Leasehold Building in the following form:

³⁹ Delete if not applicable

⁴⁰ This will need to incorporate a restriction against disposal to protect payments due/issue of NHBC Buildmark Confirmation for individual units

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge not being a charge registered before the entry of this restriction is to be registered without a certificate signed by The Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH or their conveyancer that the provisions of Clause 4.4(a) of a lease dated ■ and made between (1) Homes and Communities Agency [and] (2) [developer] [and (3) [surety]] have been complied with or that they do not apply to the disposition (Form L)".

- (b) [register the [⁴¹] Charge at the Companies Registry within the period prescribed by Section 860 of the Companies Act 2006 (or at such other competent registry as may be necessary or appropriate) or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate monies, completed form and documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing;

- (b) register the transfer and the [⁴²] Charge at the Land Registry or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate money, completed forms and all other appropriate documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing.]

⁴¹ here refer to any relevant charge

⁴² here refer to any relevant charge

SCHEDULE 6 – TRANSFER ETC. OF AFFORDABLE/PRS LEASEHOLD BUILDINGS⁴³

1. The Developer shall procure the transfer of:
 - (i) the freehold interest in each Affordable Leasehold Building to the Registered Provider; and
 - (ii) the freehold interest in each PRS Leasehold Building to the PRS Operatorwith vacant possession, as soon as reasonably practicable.
2. The Developer shall procure that the Registered Provider or the PRS Operator (as appropriate) enters into:
 - (i) the form of Transfer (Affordable/PRS Leasehold Building);
 - (ii) [*any others*]

[*e.g. charge to secure overage or any payments due to Homes England*]

on completion of the transfer.
3. Homes England need not take any step in relation to the transfer of any Affordable Leasehold Building or of any PRS Leasehold Building until the first NHBC Buildmark Confirmation has been issued in respect of a Flat in that Affordable Leasehold Building or that PRS Leasehold Building (as appropriate) and a copy has been provided to Homes England.
4. Subject to **paragraphs 1 to 3** inclusive of this Schedule, Homes England shall transfer the freehold interest in an Affordable Leasehold Building to the Registered Provider and shall transfer the freehold interest in a PRS Leasehold Building to the PRS Operator on the following terms:
 - (a) the form of transfer shall be substantially in the form of the Transfer (Affordable/PRS Leasehold Building) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bearing no other red edging);
 - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
 - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person);
 - (d) the Developer shall send the following documents to Homes England, executed by the Developer and the Registered Provider (as the case may be), not less than 5 Working Days before the anticipated date for completion of the transfer:
 - (i) the form of transfer (in duplicate if appropriate);

⁴³ Delete if not applicable

(ii) [*refer to any other documents required.*]

SCHEDULE 7 – TRANSFER OF NON-RESIDENTIAL UNITS

1. The Developer shall procure the transfer of the freehold interest in each Non-Residential Unit to a Purchaser at arm's length, in the open market on bona fide terms in good faith and with vacant possession, as soon as reasonably practicable.
2. Homes England need not take any step in relation to the transfer of any Non-Residential Unit until the Compliance Certificate has been issued in respect of that Non-Residential Unit and a copy has been provided to Homes England.
3. Subject to other paragraphs of this Part of this Schedule, Homes England will transfer the freehold interest in each Non-Residential Unit to the relevant Purchaser on the following terms:
 - (a) the form of transfer shall be substantially in the form of the Transfer (Non-Residential Unit) attaching a plan delineating the land to be transferred by red edging (such plan to conform with the Estate Layout Plan previously approved by Homes England and bear no other red edging);
 - (b) the form of transfer must be executed by all relevant parties either in duplicate or in counterparts;
 - (c) Homes England need not deduce title (having already deduced title to the Developer before completion of this Lease), nor answer any requisitions or enquiries (whether raised by the Developer or any other person) except in relation to matters arising or registered against Homes England's title following the date of this Lease;
 - (d) Homes England need not deliver the form of transfer executed by Homes England to the Developer or any other person until any dispute over any amount payable to Homes England pursuant to this Lease has been determined and Homes England has received that amount including any VAT and interest
 - (e) the Developer shall send the following documents to Homes England not less than 5 working days before the anticipated date for completion of the transfer:
 - (i) the form of transfer (in duplicate if appropriate);
 - (ii) *[refer to any other documents required]*
4. Immediately before completion of the transfer the Developer must provide a solicitor's undertaking (in a form acceptable to Homes England) to:
 - (a) register the [⁴⁴] Charge at the Companies Registry within the period prescribed by Section 860 of the Companies Act 2006 (or at such other competent registry as may be necessary or appropriate) or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate monies, completed form and documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing;

⁴⁴ here refer to any relevant charge

- (b) register the transfer and the [⁴⁵] Charge at the Land Registry or, if so requested by Homes England, deliver to Homes England's solicitors the appropriate money, completed forms and all other appropriate documentation to enable Homes England's solicitors to apply for the registration and shall pay Homes England's solicitor's costs of so doing.
5. Within 5 Working Days after the completion of any transfer of a Non-Residential Unit, the Developer must deliver to Homes England's Solicitors a certified copy of the completed form of transfer.

⁴⁵ here refer to any relevant charge

SCHEDULE 8 – SALE REPORT⁴⁶

Estate:

Plot:

Postal Address:

Full Name(s) of Purchaser:

Developer:

Building Lease: the Building Lease dated [] relating to the Estate and made between (1) Homes England (the trading name of Homes and Communities Agency) [and] (2) the Developer [and (3) the Surety]

As solicitors for and on behalf of the Developer we certify as follows:

- (a) that a transfer of the above plot to the Purchaser in the agreed form without amendment was completed on [] 20[] which is the Disposal Date of the Plot for the purposes of the Building Lease;
- (b) that the consideration paid by the Purchaser for the transfer (which for the avoidance of doubt does not include rent charge and/or service charge) was £[] which is the Disposal Value of the Plot for the purposes of the Building Lease
- (c) the transfer of the Plot is the ■^{[stj][nd][rd][th]} of ■ plots on the Estate to be completed
- (d) The Deductible Amounts⁴⁷ are: *(please list)*
- (e) The Extras⁴⁸ are: *(please list)*

[We attach a completed copy of the CML Disclosure of Incentives Form prepared by the Developer in respect of the above plot] [We confirm that there was no borrowing by the Purchaser and therefore a CML Disclosure of Incentives Form was not required.]

Capitalised terms in this Report have the same meaning as in the Building Lease.

SIGNED

Developer's Solicitors

DATE

⁴⁶ The Sale Report is to assist with the calculation of any overage. Therefore, the Sale Report should be amended to reflect the overage formula that has been agreed.

⁴⁷ For definition see the overage schedule

⁴⁸ For definition see the overage schedule

SCHEDULE 9 – FORMS OF DOCUMENTS ETC.

- Part 1 - Transfer (Market Dwelling)
- Part 2 - Transfer (Leasehold Building)
- Part 3 - Transfer (Affordable/PRS Dwelling)
- Part 4 - Transfer (Affordable/PRS Leasehold Building)
- Part 5 - Transfer (Non-Residential Unit)

SCHEDULE 10 – HEALTH AND SAFETY REPORTS

1. The Developer shall provide to Homes England on a quarterly basis a Health and Safety Report containing the information relating to health and safety performance. As a minimum the Health and Safety Report will contain the following information:

(A) Accident incidence rates per 100,000 workers ("**AIR**") involved in the [works associated with the Development], listing by month and rolling annual frequency rate for the lifetime of the works comprising the Development:

- (I) accidents resulting in greater than three days lost time
- (II) major injuries
- (III) fatalities
- (IV) reportable diseases

all as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time), in accordance with the formula:

$$\text{AIR} = (A/N) \times 100,000$$

where: A = the number of accidents or incidents of the defined type during the period

N = the average number of workers on the site during the period

- (V) reportable injuries to members of the public

(B) A listing in respect of the works comprising the Development by month, and the rolling annual rate, showing the number of:

- (I) days lost due to accidents occurring on the Land or ill-health incurred by workers directly from the said works on the Land
- (II) dangerous occurrences as defined by the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time)
- (III) enforcement notices served by the regulatory authorities served by the Health & Safety Executive

(C) A summary in respect of the works comprising the Development of:

- (I) all accident investigations carried out in the relevant quarterly period
- (II) all actions taken to rectify any identified health and safety deficiencies
- (III) all initiatives to improve health and safety undertaken in the period (e.g. site inspections, tool box talks etc)
- (IV) all visits by the Health & Safety Executive, the Police or the Environment Agency to the Land undertaken in the relevant quarterly period

SCHEDULE 11 – COVENANTS BY SURETY

1 DEVELOPER'S COVENANTS

In this Schedule **Developer's Covenants** means the covenants, terms, conditions, agreements, restrictions, stipulations and obligations falling to be complied with by the Developer under this Lease.

2 INDEMNITY BY SURETY

The Developer or the Surety shall while the Developer remains bound by the Developer's Covenants comply with the Developer's Covenants and the Surety shall indemnify Homes England against all claims, demands, losses, damages, liabilities, costs, fees and expenses sustained by Homes England by reason of or arising out of any default by the Developer in complying with the Developer's Covenants.

3 SURETY JOINTLY AND SEVERALLY LIABLE WITH DEVELOPER

The Surety shall be jointly and severally liable with the Developer (whether before or after any disclaimer by a liquidator or trustee in bankruptcy or any Termination of this Lease) for the fulfilment of all the obligations of the Developer under this Lease and agrees that Homes England in the enforcement of its rights under this Lease may proceed against the Surety as if the Surety were named as the Developer in this Lease.

4 WAIVER BY SURETY

The Surety waives any right to require Homes England to proceed against the Developer or to pursue any other remedy whatsoever which may be available to Homes England before proceeding against the Surety.

5 NO RELEASE OF SURETY

None of the following or any combination of them shall release, discharge or lessen or affect the liability of the Surety under this Lease:

- (a) any neglect, delay or forbearance of Homes England in endeavouring to obtain payment of any sums due under this Lease or in enforcing compliance with the Developer's Covenants;
- (b) any refusal by Homes England to accept any payment tendered by or on behalf of the Developer at a time when Homes England is entitled (or would after the service of a notice under section 146 of the Law of Property Act 1925 be entitled) to re-enter the Land;
- (c) any extension of time given by Homes England to the Developer;
- (d) save as provided for in the Landlord and Tenant (Covenants) Act 1995 any variation of the terms of this Lease or the transfer of Homes England's reversion or the assignment of this Lease;
- (e) any surrender by the Developer of any part of the Land (in which event the liability of the Surety shall continue in respect of the part of the Land not so surrendered after making any necessary apportionments);

- (f) any other act, omission, matter or thing whereby but for this provision the Surety would be exonerated wholly or in part (other than a release under seal given by Homes England).

6 DISCLAIMER OR FORFEITURE OF LEASE

6.1 If the Developer (being an individual) becomes bankrupt or (being a company) enters into liquidation and the trustee in bankruptcy or liquidator disclaims or surrenders this Lease or this Lease is forfeited then the Surety shall (if Homes England gives written notice to the Surety within 65 Working Days after such disclaimer or other event) accept from and execute and deliver to Homes England a counterpart of a new lease of the Land (the proper and reasonable costs of which shall be borne by the Surety) and Homes England shall grant such new lease to the Surety:

- (a) to take effect from the date of the disclaimer or other event;
- (b) for a term beginning on the date of the disclaimer and equal in length to the residue of the term granted by this Lease which would have remained had there been no disclaimer;
- (c) reserving by way of yearly rent an amount equal to the yearly rent payable immediately before the date of the disclaimer or other event such yearly rent to be payable from that date;
- (d) imposing on the Surety the same obligations as the Developer was subject to immediately before the disclaimer or other event; and
- (e) otherwise containing the same terms and provisions as this Lease, including the provisions relating to payment of money, except that the Surety shall not be required to procure that any other person is made a party to the new lease as surety.

6.2 If Homes England does not require the Surety to take a new lease, the Surety shall nevertheless on demand pay to Homes England a sum equal to the rents and other sums that would have been payable under this Lease but for the disclaimer or other event, from and including the date of such disclaimer or other event for a period of two years or (if sooner) until the date on which a lease or underlease of the Land to a third party is completed.

7 SUPPLEMENTAL DOCUMENTS

The Surety shall at the request of Homes England join in any document made supplemental or collateral to this Lease.

8 ADDRESS FOR SERVICE

The Surety shall promptly notify in writing Homes England in writing of any change in the Surety's address for service and until such notice has been given the Surety's address for service shall be the Surety's address for service most recently notified in writing to Homes England.

SCHEDULE 12 – OVERAGE SCHEDULE

1. DEFINITIONS

In this Schedule, the following definitions apply:

- (a) **Acceleration Date** means the twenty eighth day after service of written notice invoking the Acceleration Date by Homes England on the Developer following:
- (i) a Material Breach by the Developer of the terms of this Schedule; or
 - (ii) an Insolvency Event.
- (b) **Act of Circumvention** means any act or omission the principal purpose or purposes of which is or are to avoid or reduce the amount of any payment to be made or envisaged by this Schedule including (but not limited to) the following:
- (i) any transaction or transactions entered into by the Developer;
 - (ii) any omission by the Developer to enter into a transaction;
 - (iii) any delay by the Developer in entering into a transaction;
 - (iv) any way in which the Development is carried out;
 - (v) any omission by the Developer to carry out the Development; and/or
 - (vi) any delay by the Developer in beginning the Development.
- (c) **Adjusted Gross Development Costs** means the sum calculated in accordance with the following formula:
- GDC + [GDC x ((A – B) / B)] where:
- GDC = the Gross Development Costs
- A = the BCIS Mean Index
- B = the BCIS Initial Index
- (d) **Approved Additional Compliance Inspector Fee** means the fee calculated pursuant to **paragraph 4** of this Schedule
- (e) **BCIS Final Index** means the BCIS Index at the Payment Date
- (f) **BCIS Index** means the Building Cost Information Service General Building Cost Price Index as published from time to time by the BCIS or such other replacement index as the parties may agree incorporating the similar assumptions as this Index incorporates as at the date of this Lease
- (g) **BCIS Initial Index** means ■⁴⁹

⁴⁹ The BCIS Initial Index will be the BCIS Index at the date of the tender

- (h) **BCIS Mean Index** means the figure calculated by adding together the BCIS Initial Index and the BCIS Final Index and dividing the resultant sum by 2
- (i) **Compliance Inspector Monthly Fee** means the sum of £⁵⁰
- (j) **Cost Inflation Allowance** means the figure calculated by deducting the Gross Development Costs from the Adjusted Gross Development Costs
- (k) **Deductible Amount** means in respect of a Market Dwelling the aggregate of:
- (i) the figure identified as 'Incentives' in the Sale Report relating to the relevant Dwelling being amounts which may include (but are not limited to) discounts, cash back, deposit paid, payment of a purchaser's legal fees, survey fees, estate agent's commission on the sale of a purchaser's property and payment of Stamp Duty Land Tax and costs of the Developer in relation to the government's Help to Buy scheme together with the value of any carpets, curtains, soft furnishings, white goods or other items that the Developer provides to a purchaser on the Disposal of the relevant Dwelling; and
 - (ii) any negative PX Value of a PX Property acquired by the Developer in part consideration for the disposal of that Market Dwelling
- provided always that the Deductible Amount shall not in any circumstances exceed 5% of the Disposal Value of the relevant Dwelling
- (l) **Developer's Payment** means the Developer's Percentage share of the Overage Fund
- (m) **Developer's Percentage** means the percentage share of the Overage Fund due to the Developer calculated in accordance with **paragraph 5** of this schedule and shown in the Relevant Row of the third column of the table that appears at **paragraph 5.3** of this schedule
- (n) **Disposal** means either the completion of the sale of the freehold interest or the grant of a lease term of at least [99] years in respect of a [Dwelling][Unit] and "**Disposed of**" shall be interpreted accordingly
- (o) **Disposal Date** means the date on which the Disposal of a [Dwelling][Unit] to a Purchaser is completed or the Payment Date in respect of any [Dwelling][Unit] remaining unsold at that date.
- (p) **Disposal Value** means:
- (i) In respect of a Market Dwelling which has been the subject of a Disposal:
 - a) the sales price shown in the Sale Report for the relevant Dwelling; or
 - b) where there is a dispute between the Developer and Homes England with regard to the sales price of any Market Dwelling, the amount

⁵⁰ This figure will be quoted by the compliance inspector in their bid and notified by the project manager for inclusion in the lease

agreed between the Parties or determined by an expert pursuant to **paragraph 10** of this Schedule

PLUS any positive PX Value of a PX Property acquired by the Developer in part consideration for the disposal of that Market Dwelling

LESS the Deductible Amount and/or Extras; or

- (ii) In respect of the Affordable Dwellings or Affordable Leasehold Buildings the amount payable by the Registered Provider in consideration of the transfer of such Dwellings or Buildings
- (iii) In respect of the PRS Dwellings or the PRS Leasehold Buildings the amount payable by the PRS Operator in consideration of the transfer of such Dwellings or Buildings
- (iv) [In respect of a Non-Residential Unit which has been the subject of a Disposal:
 - a) the sales price shown in the Sale Report for the relevant Non-Residential Unit; or
 - b) where there is a dispute between the Developer and Homes England with regard to the sales price of any Non-Residential Unit, the amount agreed between the Parties or determined by an expert pursuant to **paragraph 10** of this Schedule]
- (v) In respect of any [Dwelling][Unit][Leasehold Building] [Affordable Leasehold Building] [PRS Leasehold Building] which has not been Disposed of at the Payment Date the Market Value of such [Dwelling][Unit][Leasehold Building] [Affordable Leasehold Building] [PRS Leasehold Building]
- (q) **Extras** means the figure identified as 'Extras' in the Sale Report being a charge for extra specifications or facilities in relation to the relevant Dwelling that is made to the purchaser of a Dwelling over and above or in addition to the Dwelling specification in the Approved Plans
- (r) **Gross Development Costs** means [£■]⁵¹
- (s) **Homes England's Adjusted Payment** means the sum calculated in accordance with the following formula:

$$\text{HEAP} = (\text{HEP} \times 100) \div (100 + \text{SDLTPR})$$

Where:

HEAP = Homes England's Adjusted Payment

HEP = Homes England's Payment

SDLTPR = the SDLT Percentage Rate

⁵¹ As bid by the Developer and specified in instructions to solicitor

- (t) **Homes England's Payment** means Homes England's Percentage share of the Overage Fund plus the aggregate amount of any Overage Reductions
- (u) **Homes England's Percentage** means the percentage share of the Overage Fund payable to Homes England calculated in accordance with **paragraph 5** of this schedule and shown in the Relevant Row of the third column of the table that appears at **paragraph 5.3** of this schedule
- (v) **Longstop Date** means ■
- (w) **Market Value** means:
- (i) in respect of a Dwelling the value at the Payment Date at which such Dwelling; or
- (ii) in respect of a PX Property the value at which such PX Property at the date of disposal by the Developer of such PX Property
- (iii) [in respect of a Non-Residential Unit the value at which the Non-Residential Unit]
- might reasonably be expected to be sold at arm's length in the open market in good faith with vacant possession between a willing seller and a willing buyer [the Developer to produce suitable evidence of such value as Homes England may reasonably require (and where Homes England is not satisfied with such evidence or there is any disagreement as to such value the same shall be determined pursuant to **Clause 20** (Disputes).
- (x) **Overage Fund** means the sum calculated in accordance with **paragraph 3** of this Schedule less any Approved Additional Compliance Inspector Fee
- (y) **Overage SDLT** means the figure calculated by deducting Homes England's Adjusted Payment from Homes England's Payment
- (z) **Payment Date** means the earliest of the following dates to occur:
- (i) The Longstop Date; or
- (ii) the issue of the NHBC Buildmark Confirmation for the last [Dwelling][Unit]; or
- (iii) the Acceleration Date
- (aa) **Practical Completion** in respect of a Dwelling shall be evidenced by the issue of the NHBC Buildmark Confirmation in respect of that Dwelling[and in respect of a Non-Residential Unit shall be evidenced by the issue of the Compliance Certificate in respect of that Non-Residential Unit].
- (bb) **PX Property** means any property acquired or to be acquired by the Developer as part consideration payable to the Developer under the provisions of the contract for the disposal of a Dwelling.
- (cc) **PX Value** means the amount in pounds sterling calculated in accordance with the following formula:
- $$\text{PX Value} = X - (Y+Z)$$

Where:

X is the Market Value of the relevant PX Property

Y is the aggregate of all costs, fees, expenses incurred or expected to be incurred by the Developer in purchasing, holding, improving and selling the relevant PX Property prior to its disposal and the costs actually incurred or expected to be incurred by the Developer in respect of agent's and legal fees relating to the purchase and resale of the PX Property subject to an aggregate maximum of 5% of the Market Value of the PX Property

Z is the price at which the PX Property was acquired by the Developer pursuant to the contract for the disposal of the relevant Dwelling

provided that for the avoidance of doubt the PX Value may be a positive or negative figure

- (dd) **Relevant Row** means the row of the table that appears at **paragraph 5.3** identified pursuant to **paragraph 5.2**
- (ee) **SDLT Percentage Rate** means the percentage rate at which Stamp Duty Land Tax is payable by the Developer on Homes England's Payment

2. ACKNOWLEDGEMENTS

The Parties acknowledge that

- 2.1. the Price reflects expected Disposal Values and that the retention of overage by the Developer is intended to incentivise delivery of the Development in accordance with the Approved Plans.
- 2.2. The worked example that appears at Annexure ■ is an accurate representation of the Parties' agreement with regard to the method of calculation of the Developer's Payment and Homes England's Payment and may be relied on by either Party or by a third party in the event of a dispute

3. CALCULATION OF THE OVERAGE FUND

The Overage Fund shall be calculated in accordance with the following formula:

$$O = C - CIA - GDV$$

Where:

- O = The Overage Fund
- C = the aggregate of the Disposal Values for the [Dwellings] [Units] [Affordable Dwellings][PRS Dwellings] [Affordable Leasehold Buildings] [PRS Leasehold Buildings]
- CIA = the Cost Inflation Allowance
- GDV = ⁵²

⁵² Insert tendered gross development value (specified in instruction)

4. CALCULATING THE APPROVED ADDITIONAL COMPLIANCE INSPECTOR FEE

The Approved Additional Compliance Inspector Fee (if any) shall be determined in accordance with this paragraph:

- 4.1. The number of 4 week periods (or part thereof) between the Target House Build Completion Date and the Adjusted Target House Build Completion Date as recorded in the final memorandum of agreement signed by the Parties pursuant to **paragraph 8.8 of Schedule 2** shall be determined.
- 4.2. The number of 4 week periods determined pursuant to **paragraph 4.2** shall be multiplied by the Compliance Inspector Monthly Fee and the resultant figure shall be the Approved Additional Compliance Inspector Fee.

5. CALCULATING THE DEVELOPER PERCENTAGE AND THE HOMES ENGLAND PERCENTAGE

The Developer Percentage and the Homes England Percentage shall be determined in accordance with this paragraph.

- 5.1. The difference in weeks (rounded up to the nearest whole week) which the Actual House Build Completion Date is earlier or later than the Adjusted Target House Build Completion Date shall be calculated
- 5.2. The Relevant Row of the table below shall be identified: The difference in weeks calculated pursuant to **paragraph 5.1** is shown in the first column of the table below and whether the Actual House Build Completion Date is earlier or later than the Adjusted Target House Build Completion Date is shown in the second column of the table below.
- 5.3. The Developer’s Percentage and the Homes England’s Percentage shall be the percentage shown in the Relevant Row of the table below.

Time difference between the Adjusted Target House Build Completion Date and The Actual House Build Completion Date (in whole weeks rounded up)	Actual House Completion Date occurs earlier or later than the Adjusted Target House Build Completion Date?	Homes England’s Percentage (share of Overage Fund (%))	Developer’s Percentage share of Overage Fund (%)
<i>[insert time in whole weeks that is 10% of the</i>	Earlier	30	70

<i>Target House Build Period</i> ⁵³ weeks or greater			
<i>[insert time in whole weeks that is 9% of the Target House Build Period]</i> ⁵⁴ weeks	Earlier	32	68
<i>[insert time in whole weeks that is 8% of the Target House Build Period]</i> weeks	Earlier	34	66
<i>[insert time in whole weeks that is 7% of the Target House Build Period]</i> weeks	Earlier	36	64
<i>[insert time in whole weeks that is 6% of the Target House Build Period]</i> weeks	Earlier	38	62
<i>[insert time in whole weeks that is 5% of the Target House Build Period]</i> weeks	Earlier	40	60
<i>[insert time in whole weeks that is 4% of the Target House Build Period]</i> weeks	Earlier	42	58
<i>[insert time in whole weeks that is 3% of the</i>	Earlier	44	56

⁵³ These to be inserted manually on completion of the Lease based on the house build period as confirmed in instructions. This is the original house build period and not any extended period permitted due to extensions of time. For example, if the original house build period was 100 weeks, insert 10 weeks here. If it was 70 weeks, insert 7 weeks here.

⁵⁴ For example, if the original house build period was 100 weeks, insert 9 weeks here. If it was 70 weeks (9% is 6.3) so insert 7 weeks here

<i>Target House Build Period] weeks</i>			
<i>[insert time in whole weeks that is 2% of the Target House Build Period] weeks</i>	Earlier	46	54
<i>[insert time in whole weeks that is 1% of the Target House Build Period] weeks</i>	Earlier	48	52
0	On time	50	50
<i>[insert time in whole weeks that is 1% of the Target House Build Period] weeks</i>	Later	55	45
<i>[insert time in whole weeks that is 2% of the Target House Build Period] weeks</i>	Later	60	40
<i>[insert time in whole weeks that is 3% of the House Build Period] weeks</i>	Later	65	35
<i>[insert time in whole weeks that is 4% of the Target House Build Period] weeks</i>	Later	70	30
<i>[insert time in whole weeks that is 5% of the Target House Build Period] weeks</i>	Later	75	25

<i>[insert time in whole weeks that is 6% of the Target House Build Period]</i> weeks	Later	80	20
<i>[insert time in whole weeks that is 7% of the Target House Build Period]</i> weeks	Later	85	15
<i>[insert time in whole weeks that is 8% of the Target House Build Period]</i> weeks	Later	90	10
<i>[insert time in whole weeks that is 9% of the Target House Build Period]</i> weeks	Later	95	5
<i>[insert time in whole weeks that is 10% of the Target House Build Period]</i> weeks or greater	Later	100	0

6. DEVELOPER OVERAGE REDUCTIONS

- 6.1. When the Developer's Payment has been calculated the aggregate of any Overage Reductions imposed pursuant to the provisions of **Clause 19.6** shall be calculated and deducted from the Developer's Payment and added to Homes England's Percentage of the Overage Fund to calculate Homes England's Payment.
- 6.2. Once the Developer's Payment has reduced to zero there shall be no further Overage Reductions

7. STAMP DUTY LAND TAX

- 7.1. Following determination of the Homes England's Percentage of the Overage Fund Homes England's Adjusted Payment shall be calculated.
- 7.2. The Parties agree that when Homes England's Adjusted Payment has been finally calculated:

- (a) the Overage SDLT shall be retained by the Developer in addition to the Developer's Payment; and
- (b) the Developer shall account to HM Revenue and Customs for the Stamp Duty Land Tax due from the Developer as a result of paying Homes England's Adjusted Payment

8. PAYMENT OF THE OVERAGE

The Developer must pay to Homes England:

- 8.1. Homes England's Adjusted Payment on the Payment Date
- 8.2. all VAT on Homes England's Adjusted Payment on the Payment Date.
- 8.3. Interest on any sum payable under this paragraph which is not paid when payment is due.

9. ACCOUNTS AND INSPECTION AND AUDIT FACILITIES

- 9.1. The Developer shall maintain full and accurate accounts and documentary evidence for the Development on an Open Book basis.
- 9.2. The Developer shall at all times:
 - (a) maintain a full record of particulars of all the income received by the Developer in respect of the Development;
 - (b) when required to do so by Homes England or by the Compliance Inspector, provide a summary of any of the income referred to in **paragraph 9.2(a)** as Homes England or as the Compliance Inspector may require to enable it to monitor the performance by the Developer of its obligations under this Schedule;
 - (c) permit Homes England and persons authorised by Homes England to inspect audit and take copies of all reports books accounting records and vouchers which Homes England properly considers relevant to the Development; and
 - (d) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this **paragraph 9**
- 9.3. The Developer will at all times retain documentary evidence to support the Gross Development Costs of the Development and will maintain full and accurate accounts in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force
- 9.4. At the request of Homes England the Developer shall produce evidence to Homes England as Homes England may require of the disposal value of any Market Dwelling [and any Non-Residential Unit] in order to substantiate that the Developer has complied with its obligation[s] at **paragraph 1 of Schedule 3**[and **paragraph 1 of Schedule 7** (as appropriate)]

10. DISPUTES

Where Homes England is not satisfied with the evidence produced by the Developer pursuant to **paragraph 9.4** of this Schedule or where there is any disagreement between the Parties as to the disposal value of any Market Dwelling [or any Non-Residential Unit] the same shall be determined by an expert pursuant to **Clause 20** (Disputes)].

11. ADDITIONAL PROVISIONS

The Developer agrees and acknowledges that it is under a duty to Homes England:

- 11.1. (save where the [Dwelling][Unit] is to be disposed of to the Registered Provider as an Affordable Dwelling or a PRS Dwelling is to be disposed of to the PRS Operator) to freely expose the [Dwelling][Unit] to the market and to use reasonable endeavours to effect Disposals of the same
- 11.2. not to carry out any Act of Circumvention
- 11.3. to act at all times with the utmost good faith in connection with the terms and provisions and payments contained and/or referred to in this Schedule it being acknowledged that the consideration payable pursuant to this Lease comprises both the Price and the Overage

SCHEDULE 13 – OUTPUT DATA

Part 1 – Developer’s obligations

1. In this Schedule the following definitions apply:

Evidence means the evidence required to support achievement of an Output as specified in column 3 of the table which appears in part 2 of this Schedule

Outputs means the outputs detailed in column 1 of the table which appears in part 2 of this Schedule

Reporting Date means the date on which the event specified in column 2 of the table which appears in part 2 of this Schedule occurs

2. The Developer will procure that the Compliance Inspector provides written confirmation to Homes England of the Outputs in respect of which the Reporting Date has been achieved since the date of this Lease or (if appropriate) since last confirmation of Outputs was provided to Homes England pursuant to this **paragraph 2**.
3. The Developer will procure that the confirmation required pursuant to **paragraph 2** above at monthly intervals commencing on the date of this Lease.
4. The Developer will procure that there is included with the report provided pursuant to **paragraph 2** the relevant Evidence to support the achievement of the Output.

Part 2 - Table

Output	Reporting Date	Evidence
Housing Capacity	On exchange of conditional agreement for sale/lease or if no agreement on completion of lease or sale	Exchange or completion as appropriate
Start on site (numbers for affordable housing/ /market housing to be confirmed individually)	1. The Developer has taken possession of the site and either: (i) where a building contractor is employed, the completion of the building contract; or (ii) where the developer is building, the Developer has taken possession of the site and start on site works have commenced. Start on site works comprise the	1. Unconditional disposal; and 2. Evidence of start on site works to be provided from any one of the following: (i) Warranty provider (NHBC/LABCNHW or similar) (ii) Building control officer (local authority or independent or LPA planning officer (iii) professionally qualified

	<p>following:</p> <p>(a) excavation for strip or trench foundations or for pad footings;</p> <p>(b) digging out and preparation of ground for raft foundations;</p> <p>(c) vibroflotation, piling, boring for piles or pile driving; or</p> <p>(d) drainage work specific to the scheme/phase</p> <p>(e) infrastructure works and demolition works (where these works are included in the building contract or development agreement) for example drainage, on-site highway works and open spaces. Where the infrastructure or demolition works have been separately procured by Homes England, infrastructure or demolition works are not included</p>	<p>contract administrator of employer's agent</p> <p>(iv) a site digital photograph which includes geographical location data (geotagged photograph)</p>
Housing completions (numbers for affordable housing/ /market housing to be confirmed individually)	Physical completion of the individual Dwelling or, in the case of flats, physical completion of the block. The property must be habitable.	issue of NHBC Buildmark Confirmation.
Employment floorspace (square metres)	On practical completion of a commercial building	Production of the certificate of practical completion and a copy of the approved drawings which identify the floorspace area

SCHEDULE 14 – EMPLOYMENT AND SKILLS

Overview

The Employment and Skills Plan sets out the process by which the Developer can ensure that skills development and employment initiatives are integrated within its construction scheme for the Development. This is achieved by the implementation and observation of the Employment and Skills Plan.

Obligations

1. Prior to Start on Site the Developer shall provide Homes England with contact details of the Developer's nominated representative responsible for liaising with Homes England's Representative in respect of the Employment Commitments.
2. The Developer shall provide to Homes England's Representative on a quarterly basis in accordance with the dates set out in **paragraph 3** a report (in a format to be agreed with Homes England) outlining the achievements during the previous quarter against the Employment Commitments, Employment and Skills Plan and Method Statement and will provide details of the various employment and skills activities delivered in the previous quarter.
3. The report referred to in **paragraph 2** shall be provided to Homes England's Representative on the following dates:
 - 3.1 **31 July** for the period 1 April to 30 June;
 - 3.2 **31 October** for the period 1 July to 30 September;
 - 3.3 **31 January** for the period 1 October to 31 December;
 - 3.4 **30 April** for the period 1 January to 31 March.
4. Homes England's Representative shall be responsible for monitoring compliance with and implementation of the Employment and Skills Plan and the Method Statement and such monitoring shall form part of Homes England's assessment of the Developer's compliance with the Employment Commitments.
5. The Developer shall provide written confirmation and such evidence as Homes England may reasonably require that the Employment Commitments have been achieved in respect of the Development.
6. The Developer and Homes England's Representative shall attend a meeting (to be convened by Homes England's Representative) on practical completion of the Development as a whole to review the completed Development and the Developer's performance against the Employment Commitments and its compliance and implementation of the Employment and Skills Plan and Method Statement and to consider the scope for further improvement on future projects.
7. Any and all costs relating to the compliance and implementation of the Employment and Skills Plan and Method Statement will be the responsibility of the Developer.

Annexures

1. Plans
2. Approved Plans Schedule
3. Base Values
4. Notice of Remainder Land (**Clause 10.1**)
5. Memorandum of Agreement (Schedule 2 **paragraph 8.8**)
6. Overage Worked Example
7. Employment and Skills Plan
8. [Landscape Works Specification]
9. [Constraints Plan]
10. [Homes England's Infrastructure Works Specification]

EXECUTED by the Parties as a Deed

The Common Seal of)
Homes and Communities Agency)
was hereunto affixed in the presence of:)

Authorised Signatory

Print Name

The Common Seal of)
[**])
was affixed in the presence of:)

Director

Director/Secretary

Executed as a deed by **)
[Limited] [Plc])
acting by its secretary and a director)
or by two directors)

Director

Director/Secretary

ANNEXURE 1
Plans

ANNEXURE 2
Approved Plans Schedule

ANNEXURE 3
Base Values

ANNEXURE 4
Notice of Remainder Land (**Clause 10.1**)

☐[*name of PM*]
Homes England
☐[*office address*]

☐ [Date]

By Post [and Email]:

FAO:
Reference: PCS ☐

URGENT: THIS LETTER CONTAINS A NOTICE WHICH HOMES ENGLAND IS REQUIRED TO RESPOND TO WITH WITHIN 10 WORKING DAYS

Dear Sirs

☐ [SITE NAME] ("LAND")
☐ [DEVELOPER] ("DEVELOPER")
BUILDING LEASE DATED ☐ ("LEASE")
SERVICE OF RELEASE NOTICE IN ACCORDANCE WITH CLAUSE 10.1 OF THE LEASE

This letter is served on you by the Developer under the provisions of clause 10.1 of the Lease.

This Letter encloses a Digital Plan (as defined in the Lease) which identifies the Remainder Land (as defined in the Lease) being the parts of the Land the freehold of which is still vested in Homes England and which is not the subject of another transfer under the Lease.

In accordance with Clause 10.4 of the Lease, Homes England is required to confirm to the Developer within 10 working days:

- (a) which part or parts of the Remainder Land Homes England requires the Developer to take a transfer of prior to the issue of the Final Completion Certificate (as defined in the Lease); and
- (b) the date by which Homes England requires such transfer to complete.

Yours faithfully

ANNEXURE 5
Memorandum of Agreement (**Schedule 2 paragraph 8.8**)

Memorandum of Agreement to Adjustment of Time

Lease: Building Lease relating to [insert name of development]

Date:

Original parties:

Landlord: Homes and Communities Agency (trading as Homes England)

Tenant:

Guarantor:

Current Landlord: [as above][or]

Current Tenant: [as above][or]

Current Guarantor: [as above][or]

Target House Build Commencement Date:

Target House Build Completion Date:

House Build Targets:

Construction Related Deadlines:

The [Current]Landlord and the [Current]Tenant record that the following adjustments of time are agreed pursuant to the Lease:

Adjusted Target House Build Commencement Date:

Adjusted Target House Build Completion Date:

Adjusted House Build Targets:

with effect from [date], subject to further review in accordance with the Lease.

The [Current]Landlord and the [Current]Tenant further record that for the purposes of **paragraph 4.1** of **Schedule 12** of the Lease the number of 4 week periods (or part thereof) between the Target House Build Completion Date and the Adjusted Target House Build Completion Date is

Date:

Signed on behalf of the Current Landlord

Signed on behalf of the Current Tenant

Signed on behalf of the Current Guarantor

ANNEXURE 6
Overage Worked Example

ANNEXURE 7
Employment and Skills Plan

ANNEXURE 8
[Landscape Works Specification]

ANNEXURE 9
[Constraints Plan]

ANNEXURE 10
[Homes England's Infrastructure Works Specification]

EVALUATION SCORING GUIDANCE

Overview

Homes England is pleased that your organisation has been shortlisted to participate in the 'Invitation to Tender' (ITT) stage of this site disposal.

This guidance note is intended to help bidders to understand what information Homes England expects you to submit as part of your tender and how Homes England will use this information to award marks and select a preferred development partner for this site.

The development partner that Homes England selects will be the bidder who both 'passes' **all** the mandatory pass / fail criteria **and** achieves the highest score out of the 100 marks available (which are divided between marks for the bidder's 'price' offer and marks for the more qualitative 'non-price' elements of the bidder's scheme).

This guidance note is set out as follows:

- Summary of the information that bidders must provide and information on how the pass / fail measures will be adjudged
- Summary of how the 'price' marks are awarded
- Summary of how the 'non-price' marks are awarded

Submission Guidance & Pass / Fail Measures

Bidders must provide all the information requested in the ITT – and which is summarised in the 'Submission Item' and 'Description' columns in the below table.

If the information provided by the bidder scores a 'fail' against any of the measures outlined below, then their tender submission will be disqualified from the bidding process.

Submission Item	Description	Price	Non-Price	Pass / Fail Measure
Bid Summary	Summary of revenues, costs, milestones, funding arrangements and land value offer			<p>Bidder will score a 'fail' if they do not fully complete the form</p> <p>Bidder will score a 'fail' if their information in the Bid Summary does not correspond to information set out elsewhere in the bid submission</p>
Tender Form 1	Revenue schedule			<p>Bidder will score a 'fail' if they do not fully complete the form</p> <p>The bidder will score a 'fail' if they do not adopt any revenue assumptions (e.g. fixed assumptions on affordable revenues) that might have been stipulated in the ITT.</p>
Tender Form 2 and 2(a)	Cost schedule	5 marks		<p>Bidder will score a 'fail' if they do not fully complete the forms 2 and 2(a)</p> <p>The bidder will score a 'fail' if they do not adopt any provisional cost assumptions that might have been stipulated in the ITT.</p> <p>The bidder will score a 'fail' if they do not achieve a minimum score of 2 marks from the 5 available for this assessment theme.</p>
Tender Form 3	Project Timings			<p>Bidder will score a 'fail' if they do not fully complete the form</p> <p>The period of time between House Build Commencement</p>

				and House Build Completion will score a 'fail' if it is not less than or equal to the maximum time allowance set in the ITT.
Tender Form 4	MMC schedule		10 marks	<p>Bidder will score a 'fail' if they do not fully complete the form</p> <p>The score achieved must be equal to or greater than the minimum MMC score set out in the ITT.</p>
Tender Form 5	Legal clarification schedule			<p>Bidder will score a 'fail' if they do not fully complete the form</p> <p>Bidders will score a 'fail' if their submission seeks to remove / substantially amend any of the following:</p> <ul style="list-style-type: none"> • The fundamental / headline principles of the forfeiture provisions • The fundamental / headline principles of the 'extension of time' provisions and the Market Downturn clause • If freehold transfers (in part or whole) are requested at golden brick stage • If intellectual property rights over house types (applicable to the scheme in question only) will not be given to Homes England • The fundamental / headline principles of the restrictions on sales concerning the last 2 scheme dwellings are not accepted
Tender Form 6 (if applicable)	If the bidder wishes to condition their offer, only those conditions set out in			<p>None.</p> <p>Acceptability of the tendered conditions will be discussed</p>

	Tender Form 6 will be considered			with bidders at bid clarification stage.
Tender Form 7	Financial offer schedule	65 marks		<p>Bidder will score a 'fail' if they do not fully complete the form.</p> <p>Bidders will score a 'fail' if their offer does not fit with the deferred timescale parameters set out in the ITT.</p>
Plans	Plans 1 – 5 (as set out in the ITT)			Bidder will score a 'fail' if they do not provide the requested plans or if these are not provided in the format requested.
Tenures	Plans must reflect a quantum of each tenure type as stipulated in the ITT			<p>The bidder will score a 'fail' if they do not meet the tenure specifications as set out in the ITT</p> <p>The revenue, costs and land value offer must reflect the tenure assumptions the bidder has been asked to adopt through the ITT</p>
House types	Provide CGIs / images / floor plans of house types proposed			Bidder will score a 'fail' if they do not provide requested floor plans and images
Design assessment 1	Building for Life 12 self-assessment			<p>Bidder will score a 'fail' if they do not provide the completed BfL12 self-assessment</p> <p>Assessments not achieving the minimum number of 'green' outcomes (as set out in the ITT) will be scored as a 'fail'.</p> <p>If Homes England disagrees with the conclusions of your self-assessment, and has doubts that your scheme merits the number of 'greens' that you have awarded yourself –</p>

				the Agency will raise these issues with the bidder at bid clarification stage. If the bidder is unable to provide evidence to the Agency at clarification stage that their tendered scheme is worthy of a minimum of 8 'greens', then the bidder will score a 'fail' and their submission will be disqualified.
Design assessment 2	Provide images and supporting captions for each of the 9 questions related to principle 5 (character)		9 marks	No pass / fail measures. Non-provision of a response, an inadequate response or a response which exceeds the page limit will be scored down when evaluating the award of marks.
Design assessment 3	Provide written response to question asking regarding design toolkits		1 mark	No pass / fail measures. Non-provision of a response, an inadequate response or a response which exceeds the page limit will be scored down when evaluating the award of marks.
Planning	Evidence of why the bidder's scheme will achieve a planning approval			Bidders will score a 'fail' if they do not provide details / evidence to confirm why their scheme will secure planning approval, Homes England acknowledges that refinements to the tendered layout, etc... will likely be required in response to the outcome of consultation activities carried out in the lead up to the planning submission. However, if Homes England has concerns with the robustness of the evidence / reasoning provided by bidders in respect of planning matters and / or if it believes that substantial changes to the tendered layout, materials,

				<p>dwelling numbers, etc... would be required, then it will raise these concerns with bidders at bid clarification stage.</p> <p>If the bidder is unable to respond to the issues / concerns raised by Homes England at bid clarification stage, then the planning element of the submission will score a 'fail' and the submission will be disqualified.</p>
Management	Bidders must provide details of the management arrangements (and associated costs) of the long term management of all non-saleable elements of the site			<p>Bidder will score a 'fail' if they do not provide details of their approach to management.</p> <p>Proposals that are not robust in verifying the adoptability of their proposed materials or in their cost allowances for management will score a 'fail'</p>
Values & Marketing Strategy	Provide details of your sales and marketing strategy using the information prompts provided in the ITT			<p>Bidder will score a 'fail' if they do not provide a value and marketing strategy</p> <p>Strategies not robust in their reasoning and evidence will score a 'fail'. Values that are unsubstantiated by market evidence will score a 'fail'. Inadequate evidence as to the insureability / mortgageability of your dwellings will score a 'fail'</p> <p>Strategy must correspond to values in the tender form 2</p>
Programme	Programme covering the entire life time of the project to be provided in Gannt format			<p>Bidder will score a 'fail' if they do not provide a programme in gannt format</p> <p>Timescales must correspond to timescales in tender form 3</p>

Risk Register	Provide the register of technical risks in the format requested in the ITT		10 marks	<p>Bidder will score a 'fail' if they do not provide risk register</p> <p>Bidders will score a 'fail' if they do not score a minimum of 4 from the 10 marks that are available for this assessment theme.</p>
Resource & Expertise	Bidders must provide details of their capacity to deliver the project and the main consulting and / contracting teams they are working with in accordance with the information prompts set out in the ITT.			<p>Bidder will score a 'fail' if they do not fully provide all the information requested</p> <p>Bidders will score a 'fail' if the IPR, warranties and / or step in rights will not be provided in favour of Homes England by any of your consultant / contractor team members who will be appointed based on work packages exceeding £2m in value and / or who have design responsibility.</p>
Appraisal	Appraisal to be provided in the bidder's own company format			<p>Bidder will score a 'fail' if they do not provide an appraisal</p> <p>Costs, revenues and land value offer must correspond to tender forms 2, 3 and 7</p>
Cash flow	Cash flow to be provided in the bidder's own company format			<p>Bidder will score a 'fail' if they do not provide a cash flow</p> <p>Costs, revenues and land value offer must correspond to tender forms 2, 3 and 7</p>
Funding	Bidders must provide details of their funding using the information prompts set out in the ITT			<p>Bidder will score a 'fail' if they do not fully provide all the information requested.</p> <p>Bidders will score a 'fail' if Homes England's business appraisal team highlight concerns with the financial capacity of your organisation or your ability to raise finance via the strategy you have proposed in your tender response</p>

Forward Sale Funders (if applicable)	Bidders must provide details of their forward funders using the information prompts set out in the ITT			<p>Bidder will score a 'fail' if they do not fully provide all the information requested</p> <p>Bidder will be scored a 'fail' if their forward funder requires a transfer (in part or whole) as security for their investments (i.e. sub leases to the building lease will be the only permitted form of security)</p>
TOTAL		70 marks	30 marks	

Summary of Price Mark Awards

Price marks represented 70% of the total score weighting.

A total of 65 marks are awarded for the bidder's land value offer and 5 marks are awarded for the robustness of the bidder's cost appraisal.

Land Value Offer – 65 marks

The developer who submits the highest unique land value offer will score the full 65 marks.

Scores for Land Value are awarded as follows:

- The bidder offering the highest land value will score 65 marks
- All other bidders will be score marks as a proportion of their offer versus the offer of the highest bidder

- Land value offers will be the subject of NPV calculations so that bids made on varying deferred payment terms can be compared on a fair and equal basis. Offers will be NPV adjusted back to the date of the tender submission close, with a discount factor of 3.7% being adopted for the calculation
- The following example illustrates how scores would be calculated:

Bidder	Gross Offer	NPV Adjusted Offer	Proportion of Best Offer	Multiplier	Mark
Bidder A	£10,000,000	£9,300,000	0.99465	65	64.65
Bidder B	£9,500,000	£9,350,000	1	65	65.00
Bidder C	£10,200,000	£9,100,000	0.97326	65	63.26
Bidder D	£9,000,000	£8,500,000	0.90909	65	59.09

Cost Robustness – 5 Marks

Homes England is seeking as much cost certainty from developers at bid stage as possible. To this end, the Agency has provided a full technical pack to assist developers in quantifying their scheme costs.

In awarding marks for the 'cost robustness' section, Homes England will assess your responses provided in Tender Form 2 and 2(a) ('Cost Schedule'). Consideration will also be given to your responses given in the 'Risk Register' and Tender Form 6 ('Conditions Schedule').

Highest marks will be given to bidders who:

- Tender as many of their costs as possible on a certain (i.e. not provisional) basis
- Provide details of what their cost assessment has been based upon – and provide reassurances as to the reliability of this information
- In the event that costs have had to be tendered on a provisional basis, set out what they will do (and by when) to turn this into a firm cost

- In the event of provisional costs, are able to tender a cost cap so that Homes England has certainty that actual costs will not escalate beyond this set threshold
- Clearly set out in their risk register the likelihood of cost escalations and their impacts associated with any provisional costs
- Have no (or else few) conditions attached to their offers associated with cost escalations

The assessment theme will be scored on the basis of marks out of 5 using the score descriptions provided in Appendix A. The assessment theme carries an overall score weighting of 1, meaning that the score out of 5 will be multiplied by the score weighting to determine a final score out of 5.

The following example illustrates how scores would be calculated:

Bidder	Score	Weighting Multiplier	Total Marks
Bidder A	5	1	5
Bidder B	4	1	4
Bidder C	3	1	3
Bidder D	2	1	2

Bidders must score a minimum of 2 marks from the 5 available for this assessment theme. A score of below 2 marks would mean that Homes England can assign little reliability to your cost appraisal – meaning that the Agency may be vulnerable at a later point in contract negotiations, etc... to conceding price reductions.

Summary of Non-Price Mark Awards

Non-price marks account for 30% of the overall scores.

A total of 10 marks are awarded in respect of MMC, 10 marks for your understanding and appreciation of technical risks associated with the scheme and 10 marks for design.

MMC – 10 marks

Bidders will be tasked with achieving a minimum mark for this assessment theme as set out in the ITT.

Bidders are asked to self-assess their MMC score out of 10 by completing the table provided in Tender Form 4. This would involve the bidder determining which category of MMC they believe each of their dwelling types falls into – and inputting into the table the total number of homes fitting this category type.

An illustrative example for a 200 home scheme is provided below:

Bidder A

MMC Type	Weighting	No. of Homes in Category	% of Homes in Category	Mark
Volumetric	10	0	0%	0
Hybrid	6	0	0%	0
Panellised	4	0	0%	0
Sub-assemblies	1	200	100%	1
Traditional Build	0	0	0%	0
TOTAL		200	100%	1

Bidder B

MMC Type	Weighting	No. of Homes in Category	% of Homes in Category	Mark
Volumetric	10	0	0%	0
Hybrid	6	0	0%	0
Panellised	4	70	35%	1.4
Sub-assemblies	1	60	30%	0.3
Traditional Build	0	70	35%	0
TOTAL		200	100%	1.7

Bidder C

MMC Type	Weighting	No. of Homes in Category	% of Homes in Category	Mark
Volumetric	10	20	10%	2

Hybrid	6	0	0%	0
Panellised	4	70	35%	1.4
Sub-assemblies	1	60	30%	0.3
Traditional Build	0	50	25%	0
TOTAL		200	100%	3.7

Technical Assessment of Risks – 10%

Bidders will be tasked with achieving a minimum score for this assessment theme as set out in the ITT.

Bidders are asked to assess any and all risks that they believe would potentially affect the project. This can cover cost risks, value risks, planning risks, risks to delivery timescales and / or risks to reputation.

Homes England will award highest marks to the bidders who it feels have fully appreciated and understood the project risks, who have made the effort to fully quantify their impacts and who have identified mitigation strategies to either avoid the risk or to lessen its quantified impact.

Accordingly, responses to this theme should seek to:

- Provide a thorough assessment of all project risks
- Identify the likelihood of the occurrence of this risk – and quantify its impact (if applicable) on the costs, values and / or timings of delivery
- In respect of each of the identified risks, set out a strategy that will help to reduce the likelihood of the risk occurring or else mitigate the impact of the risk should it occur
- In respect of the identified mitigation strategies, indicate what cost implications might result from the implementation of these strategies – and advise on how these costs would be met / funded

The assessment theme will be scored on the basis of marks out of 5 using the score descriptions provided in Appendix A of this document. The assessment theme carries an overall score weighting of 2, meaning that the score out of 5 will be multiplied by the score weighting to determine a final score out of 10.

The following example illustrates how scores would be calculated:

Bidder	Score	Weighting Multiplier	Total Marks
Bidder A	5	2	10
Bidder B	4	2	8
Bidder C	3	2	3
Bidder D	2	2	4

Bidders must score a minimum of 4 marks from the 10 available for this assessment theme. A score of below 4 marks would mean that Homes England does not believe your organisation has fully appraised and quantified all risks associated with this project.

Design – 10 marks

Bidders will be tasked with achieving a minimum score for this assessment theme as set out in the ITT.

As part of their response to the design theme, bidders are asked to provide:

- A Building for Life 12 (BfL12) self-assessment
- Responses to the 9 questions provided on the theme of BfL12 question 5 ('Character')
- Details of any other industry recognised design toolkits / techniques that the developer may have used to shape their design proposals for the site

The BfL12 self-assessment will be measured on a pass / fail basis. The bidder must achieve a minimum number of 'greens' as stipulated in the tender in order to pass this part of the evaluation. If Homes England disagrees with the outcome of your tendered self-assessment – or feels the evidence / justification you have provided to support your assessment is insufficient – it will raise this with bidders at the bid clarification stage.

If the developer is unable to satisfy Homes England's concerns at bid clarification stage, the bidder will be assigned a 'fail' score and will be disqualified from the bidding process.

The design assessment also includes 10 questions that each carry the potential of 1 mark. Nine of these question relate to question 5 ('Character') of the BfL12 toolkit and one question relates to any other industry recognised toolkits or techniques that the developer might have employed as part of the scheme design process.

Responses to these questions need to be visually led and need to adhere to the page limit caps set out in the ITT.

Each response to each question will be individually assessed, meaning that each of the 10 questions will carry an individual mark of one. Accordingly, bidders might be awarded a score of any number between 0 and 10 for their response to the design theme.

Each question will be assessed using the scoring system referred to in Appendix A of this document. This means that each individual question will be awarded a mark of between 0 and 5, with a score weighting multiplier of 0.2 than applied.

The following illustrates a possible score award scenario:

Design Question	Score	Weighting	Total Marks
Question 1	5	0.2	1
Question 2	3	0.2	0.6
Question 3	4	0.2	0.8
Question 4	5	0.2	1
Question 5	5	0.2	1
Question 6	5	0.2	1
Question 7	2	0.2	0.4
Question 8	1	0.2	0.2
Question 9	0	0.2	0
Question 10	4	0.2	0.8
TOTAL			6.8

Appendix A – Score Assessment

Assessment Summary	Score	Interpretation
Excellent	5	Satisfies the requirement and demonstrates exceptional understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services. Response identifies factors that will offer potential added value, with evidence to support the response.
Good	4	Satisfies the requirement with minor additional benefits. Above average demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services. Response identifies factors that will offer potential added value, with evidence to support the response.
Acceptable	3	Satisfies the requirement. Demonstration by the Tenderer of the understanding and evidence in their ability/proposed methodology to deliver a solution for the required supplies/services
Minor Reservations	2	Satisfies the requirement with minor reservations. Some minor reservations of the Tenderer's understanding and proposed methodology, with limited evidence to support the response.
Serious Reservations / Non-Compliant	1	Satisfies the requirement with major reservations. Major reservations of the Tenderer's understanding and proposed methodology, with little or no evidence to support the response.
Unacceptable / Non-Compliant	0	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Tenderer has the understanding or suitable methodology, with little or no evidence to support the response.

ANNEXURE 6 - OVERAGE WORKED EXAMPLES

Ref.	Description	Input	Unit	Comment / Input Formula
(1)	Gross Development Cost	30,000,000	£	Tendered costs
(2)	Gross Development Value	45,000,000	£	Tendered revenues
(3)	Start on Site Date	1st January 2019	Date	Date specified in the Building Lease
(4)	Enabling Works End Date	29th March 2019	Date	Date specified in the Building Lease
(5)	Enabling Works Period	13	Weeks	Time in weeks between (3) and (4)
(6)	Target House Build Commencement Date	1st April 2019	Date	Date specified in the Building Lease
(7)	Target House Build Completion Date	30th October 2020	Date	Date specified in the Building Lease
(8)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(9)	Total Programme	96	Weeks	Time in weeks between (3) and (7) - rounded up
(10)	House Build Targets:			
(11)	Month 12	30	Homes	Targets specified in the Building Lease
(12)	Month 15	60	Homes	Targets specified in the Building Lease
(13)	Month 18	90	Homes	Targets specified in the Building Lease
(14)	Month 21	120	Homes	Targets specified in the Building Lease
(15)	Month 24	150	Homes	Targets specified in the Building Lease
(16)	BCIS Initial Index	300	Index	Index score as at the date the tender window closes
(17)	BCIS Final Index	369	Index	Index score as at (7)
(18)	BCIS Mean Index	335	Index	= [(16) + (17)] / 2
(19)	BCIS Multiplier	0.1150	No.	= [(18) - (16)] / (16)
(20)	Adjusted Gross Development Cost	33,450,000	£	= [(1) + [(1) x (19)]]
(21)	Developer's Incentives	660,000	£	Actual figure from sales report
(22)	Customer Extras	180,000	£	Actual figure from sales report
(23)	Part Exchange Property Purchase Price	150,000	£	Market value
(24)	No. of Part Exchange Properties	2	No.	Actual no. of properties
(25)	Part Exchange Aggregate Purchase Outlay	300,000	£	= (23) x (24)
(26)	Costs invested in Part Exchange Properties	30,000	£	Actual figure from sales report
(27)	Sale Revenues achieved from sale of Part Exchange Properties	310,000	£	Market value
(28)	Part Exchange Value	20,000	£	= [(25) + (26)] - (27)
(29)	Total Deductibles	860,000	£	= (21) + (22) + (28)
(30)	Aggregate Disposal Values (before Deductibles)	52,000,000	£	Sum of all the sales values (before netting off of Deductibles)
(31)	Aggregate Disposal Values (after Deductibles)	51,140,000	£	Sum of all the sales values as reflected in the Sale Reports
(32)	Cost Inflation Allowance	3,450,000	£	= (20) - (1)
(33)	Overage Sum	2,690,000	£	= (31) - (32) - (2)

SCENARIO 1

Scenario involving the developer building the scheme out faster than the prescribed pace of build. No Reduction Events have occurred

(34)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(35)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(36)	Actual House Build Completion Date	18th September 2020	Date	Actual verified date of completion
(37)	Actual House Build Period	77	Weeks	Time in weeks between (6) and (34) - rounded up
(38)	%age actual pace above target pace	7.23%	Percent	= 1 - [(37) / (35)] x 100%
(39)	Rounded up %age	8%	Percent	Rounded up
(40)	Developer's Percentage	66%	Percent	8% pace acceleration equates to 66% share of overage
(41)	Developer's Payment	1,775,400	£	= (33) x (40)
(42)	Reduction Events	0%	Percent	No reduction events deemed to have occurred
(43)	Developer's Payment with Reduction Event Adjustment	1,775,400	£	= (41) x [100% - (42)]
(44)	Homes England's Percentage	34%	Percent	= 1 - (40)
(45)	Homes England's Payment	914,600	£	= (33) x (44)
(46)	Homes England's Payment with Reduction Event Adjustment	914,600	£	= (45) + [(41) - (43)]
(47)	Homes England's Adjusted Payment	871,048	£	= [(46) x 100%] / [100% + 5%] where 5% = the SDLT percentage rate
(48)	Overage SDLT	43,552	£	= (46) - (47) being the sum allowed to the developer to settle SDLT costs

SCENARIO 2

Scenario involving the developer building the scheme out faster than the prescribed pace of build. Two Reduction Events are confirmed as having occurred

(46)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(47)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(48)	Actual House Build Completion Date	9th October 2020	Date	Actual verified date of completion
(49)	Actual House Build Period	80	Weeks	Time in weeks between (6) and (42) - rounded up
(50)	%age actual pace above target pace	3.61%	Percent	= 1 - [(49) / (47)] x 100%
(51)	Rounded up %age	4%	Percent	Rounded up
(52)	Developer's Percentage	58%	Percent	4% pace acceleration equates to 58% share of overage
(53)	Developer's Payment	1,560,200	£	= (33) x (52)

Table 1: Development Programme / Timings

	TOTAL PROGRAMME		ENABLING WORKS		HOUSE BUILD WORKS	
	Months	Weeks	Months	Weeks	Months	Weeks
Jan-19	1	4.33	1	4.33		
Feb-19	2	8.67	2	8.67		
Mar-19	3	13.00	3	13.00		
Apr-19	4	17.33			1	4.33
May-19	5	21.67			2	8.67
Jun-19	6	26.00			3	13.00
Jul-19	7	30.33			4	17.33
Aug-19	8	34.67			5	21.67
Sep-19	9	39.00			6	26.00
Oct-19	10	43.33			7	30.33
Nov-19	11	47.67			8	34.67
Dec-19	12	52.00			9	39.00
Jan-20	13	56.33			10	43.33
Feb-20	14	60.67			11	47.67
Mar-20	15	65.00			12	52.00
Apr-20	16	69.33			13	56.33
May-20	17	73.67			14	60.67
Jun-20	18	78.00			15	65.00
Jul-20	19	82.33			16	69.33
Aug-20	20	86.67			17	73.67
	21	91			18	78
Oct-20	22	95.33			19	82.33

Table 2: Developer / Homes England Share of Overage (according to pace of delivery)

% Quicker / Slower	Pace	HE Share of Overage	Developer Share of Overage
10%	Quicker	30%	70%
9%	Quicker	32%	68%
8%	Quicker	34%	66%
7%	Quicker	36%	64%
6%	Quicker	38%	62%
5%	Quicker	40%	60%
4%	Quicker	42%	58%
3%	Quicker	44%	56%
2%	Quicker	46%	54%
1%	Quicker	48%	52%
0%	On time	50%	50%
1%	Slower	55%	45%
2%	Slower	60%	40%
3%	Slower	65%	35%
4%	Slower	70%	30%
5%	Slower	75%	25%
6%	Slower	80%	20%
7%	Slower	85%	15%
8%	Slower	90%	10%
9%	Slower	95%	5%
10%	Slower	100%	0%

(54)	Reduction Events	20%	Percent	= 2 x 10% confirmed reduction events
(55)	Developer's Payment with Reduction Event Adjustment	1,248,160	£	= (53) x [100% - (54)]
(56)	Homes England's Percentage	42%	Percent	= 1 - (52)
(57)	Homes England's Payment	1,129,800	£	= (33) x (56)
(58)	Homes England's Payment with Reduction Event Adjustment	1,441,840	£	= (57) + [(53) - (55)]
(59)	Homes England's Adjusted Payment	1,373,181	£	= [(58) x 100%] / [100% + 5%] where 5% = the SDLT percentage rate
(60)	Overage SDLT	68,659	£	= (58) - (59) being the sum allowed to the developer to settle SDLT costs

SCENARIO 3

Scenario involving the developer building the scheme out slower than the prescribed pace of build. No Reduction Events have occurred

(61)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(62)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(63)	Actual House Build Completion Date	20th November 2020	Date	Actual verified date of completion
(64)	Actual House Build Period	86	Weeks	Time in weeks between (6) and (50) - rounded up
(65)	%age actual pace above target pace	-3.61%	Percent	= 1 - [(64) / (62)] x 100%
(66)	Rounded up %age	-4%	Percent	Rounded up
(67)	Developer's Percentage	30%	Percent	4% slower pace equates to 30% share of overage
(68)	Developer's Payment	807,000	£	= (33) x (67)
(69)	Reduction Events	0%	Percent	No reduction events deemed to have occurred
(70)	Developer's Payment with Reduction Event Adjustment	807,000	£	= (68) x [100% - (69)]
(71)	Homes England's Percentage	70%	Percent	= 1 - (67)
(72)	Homes England's Payment	609,733	£	= (33) x (71)
(73)	Homes England's Payment with Reduction Event Adjustment	609,733	£	= (72) + [(68) - (70)]
(74)	Homes England's Adjusted Payment	580,698	£	= [(73) x 100%] / [100% + 5%] where 5% = the SDLT percentage rate
(75)	Overage SDLT	29,035	£	= (73) - (74) being the sum allowed to the developer to settle SDLT costs

SCENARIO 4

Scenario involving the developer building the scheme out slower than the prescribed pace of build. Two Reduction Events are confirmed as having occurred

(76)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(77)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(78)	Actual House Build Completion Date	18th December 2020	Date	Actual verified date of completion
(79)	Actual House Build Period	91	Weeks	Time in weeks between (6) and (58) - rounded up
(80)	%age actual pace above target pace	-9.64%	Percent	= 1 - [(79) / (77)] x 100%
(81)	Rounded up %age	-10%	Percent	Rounded up
(82)	Developer's Percentage	0%	Percent	10% slower pace equates to 0% share of overage
(83)	Developer's Payment	0	£	= (33) x (82)
(84)	Reduction Events	20%	Percent	= 2 x 10% confirmed reduction events
(85)	Developer's Payment with Reduction Event Adjustment	0	£	= (83) x [100% - (84)]
(86)	Homes England's Percentage	100%	Percent	= 1 - (82)
(87)	Homes England's Payment	1,373,181	£	= (33) x (86)
(88)	Homes England's Payment with Reduction Event Adjustment	1,373,181	£	= (87) + [(83) - (85)]
(89)	Homes England's Adjusted Payment	1,307,791	£	= [(88) x 100%] / [100% + 5%] where 5% = the SDLT percentage rate
(90)	Overage SDLT	65,390	£	= (88) - (89) being the sum allowed to the developer to settle SDLT costs

SCENARIO 5

Scenario involving the developer being granted an extension of time - and building the scheme out slower than the prescribed pace of build (inclusive of the permitted time extension). No Reduction Events have occurred

(91)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(92)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(93)	Time Extension Granted	12	Weeks	Time extension granted owing to force majeure issues
(94)	Adjusted House Build Period	95	Weeks	(92) + (93)
(95)	Actual House Build Completion Date	19th February 2021	Date	Actual verified date of completion
(96)	Actual House Build Period	100	Weeks	Time in weeks between (6) and (95) - rounded up
(97)	Actual House Build when adjusting for Time Extension	88	Weeks	(96) - (93)
(98)	%age actual pace above target pace	-6.02%	Percent	= 1 - [(97) / (83)] x 100%
(99)	Rounded up %age	-7%	Percent	Rounded up
(100)	Developer's Percentage	15%	Percent	7% slower pace equates to 15% share of overage
(101)	Developer's Payment	403,500	£	= (33) x (100)
(102)	Reduction Events	0%	Percent	No reduction events deemed to have occurred
(103)	Developer's Payment with Reduction Event Adjustment	403,500	£	= (101) x [100% - (102)]
(104)	Homes England's Percentage	85%	Percent	= 1 - (100)
(105)	Homes England's Payment	2,286,500	£	= (33) x (104)
(106)	Homes England's Payment with Reduction Event Adjustment	2,286,500	£	= (105) + [(101) - (103)]
(107)	Homes England's Adjusted Payment	2,177,619	£	= [(106) x 100%] / [100% + 5%] where 5% = the SDLT percentage rate
(108)	Overage SDLT	108,881	£	= (106) - (107) being the sum allowed to the developer to settle SDLT costs

SCENARIO 6

Scenario involving the developer being granted an extension of time - and building the scheme out faster than the prescribed pace of build (inclusive of the permitted time extension). No Reduction Events have occurred

(109)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(110)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(111)	Time Extension Granted	12	Weeks	Time extension granted owing to force majeure issues
(112)	Adjusted House Build Period	95	Weeks	(110) + (111)
(113)	Actual House Build Completion Date	11th December 2020	Date	Actual verified date of completion
(114)	Actual House Build Period	91	Weeks	Time in weeks between (6) and (113) - rounded up
(115)	Actual House Build when adjusting for Time Extension	79	Weeks	(114) - (111)
(116)	%age actual pace above target pace	4.82%	Percent	$= 1 - [(115) / (110)] \times 100\%$
(117)	Rounded up %age	5%	Percent	Rounded up
(118)	Developer's Percentage	60%	Percent	5% quicker pace equates to 60% share of overage
(119)	Developer's Payment	1,614,000	£	$= (33) \times (82)$
(120)	Reduction Events	0%	Percent	No reduction events deemed to have occurred
(121)	Developer's Payment with Reduction Event Adjustment	1,614,000	£	$= (119) \times [100\% - (120)]$
(122)	Homes England's Percentage	40%	Percent	$= 1 - (118)$
(123)	Homes England's Payment	1,076,000	£	$= (33) \times (122)$
(124)	Homes England's Payment with Reduction Event Adjustment	1,076,000	£	$= (123) + [(119) - (121)]$
(125)	Homes England's Adjusted Payment	1,024,762	£	$= [(124) \times 100\%] / [100\% + 5\%]$ where 5% = the SDLT percentage rate
(126)	Overage SDLT	51,238	£	$= (124) - (125)$ being the sum allowed to the developer to settle SDLT costs

SCENARIO 7

Scenario involving the developer being granted an extension of time - and building the scheme out slower than the prescribed pace of build (inclusive of the permitted time extension). Two Reduction Events are confirmed as having occurred

(127)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(128)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(129)	Time Extension Granted	12	Weeks	Time extension granted owing to force majeure issues
(130)	Adjusted House Build Period	95	Weeks	(128) + (129)
(131)	Actual House Build Completion Date	19th February 2021	Date	Actual verified date of completion
(132)	Actual House Build Period	100	Weeks	Time in weeks between (6) and (131) - rounded up
(133)	Actual House Build when adjusting for Time Extension	88	Weeks	(132) - (129)
(134)	%age actual pace above target pace	-6.02%	Percent	$= 1 - [(133) / (128)] \times 100\%$
(135)	Rounded up %age	-7%	Percent	Rounded up
(136)	Developer's Percentage	15%	Percent	7% slower pace equates to 15% share of overage
(137)	Developer's Payment	403,500	£	$= (33) \times (136)$
(138)	Reduction Events	20%	Percent	$= 2 \times 10\%$ confirmed reduction events
(139)	Developer's Payment with Reduction Event Adjustment	322,800	£	$= (137) \times [100\% - (138)]$
(140)	Homes England's Percentage	85%	Percent	$= 1 - (136)$
(141)	Homes England's Payment	2,286,500	£	$= (33) \times (140)$
(142)	Homes England's Payment with Reduction Event Adjustment	2,367,200	£	$= (141) + [(137) - (139)]$
(143)	Homes England's Adjusted Payment	2,254,476	£	$= [(142) \times 100\%] / [100\% + 5\%]$ where 5% = the SDLT percentage rate
(144)	Overage SDLT	112,724	£	$= (142) - (143)$ being the sum allowed to the developer to settle SDLT costs

SCENARIO 8

Scenario involving the developer being granted an extension of time - and building the scheme out faster than the prescribed pace of build (inclusive of the permitted time extension). Two Reduction Events are confirmed as having occurred

(145)	Target House Build Completion Date	30th October 2020	Date	Specified completion date in the Building Lease
(146)	Target House Build Period	83	Weeks	Time in weeks between (6) and (7) - rounded up
(147)	Time Extension Granted	12	Weeks	Time extension granted owing to force majeure issues
(148)	Adjusted House Build Period	95	Weeks	(146) + (147)
(149)	Actual House Build Completion Date	11th December 2020	Date	Actual verified date of completion
(150)	Actual House Build Period	91	Weeks	Time in weeks between (6) and (149) - rounded up
(151)	Actual House Build when adjusting for Time Extension	79	Weeks	(150) - (147)
(152)	%age actual pace above target pace	4.82%	Percent	$= 1 - [(151) / (146)] \times 100\%$
(153)	Rounded up %age	5%	Percent	Rounded up
(154)	Developer's Percentage	60%	Percent	5% quicker pace equates to 60% share of overage
(155)	Developer's Payment	1,614,000	£	$= (33) \times (154)$
(156)	Reduction Events	20%	Percent	$= 2 \times 10\%$ confirmed reduction events
(157)	Developer's Payment with Reduction Event Adjustment	1,291,200	£	$= (155) \times [100\% - (156)]$
(158)	Homes England's Percentage	40%	Percent	$= 1 - (154)$
(159)	Homes England's Payment	1,076,000	£	$= (33) \times (158)$
(160)	Homes England's Payment with Reduction Event Adjustment	1,398,800	£	$= (159) + [(155) - (157)]$
(161)	Homes England's Adjusted Payment	1,332,190	£	$= [(160) \times 100\%] / [100\% + 5\%]$ where 5% = the SDLT percentage rate
(162)	Overage SDLT	66,610	£	$= (160) - (161)$ being the sum allowed to the developer to settle SDLT costs

APPENDIX X - Formula Based Scoring

This tab details to method of scoring to be applied to the following themes:

1. MMC
2. Programme
3. Financial Offer

MMC

Bidders must assess the method of construction associated with all dwellings bid as part of their scheme and determine which of the following categories they fall within:

MODERN METHODS OF CONSTRUCTION CATEGORIES
<p>OSM – Volumetric</p> <p>Volumetric construction (also known as modular construction) involves the production of three-dimensional units in controlled factory conditions prior to transportation to site. Modules can be brought to site in a variety of forms ranging from a basic structure to one with all internal and external finishes and services installed, all ready for assembly. A family sized dwelling might typically be manufactured in four modules plus roof module(s).</p>
<p>OSM – Hybrid</p> <p>A method - also referred to as semi-volumetric - which combines both panellised and volumetric approaches. Typically, volumetric units (sometimes referred to as 'Pods') are used for the highly serviced and more repeatable areas such as kitchens and bathrooms, with the remainder of the dwelling or building constructed using panels. The hybrid approach is sometimes used to provide added flexibility on complex sites and those requiring additional communal areas. As with both volumetric and panellised approaches the degree of factory-based fabrication is variable.</p>
<p>OSM – Panellised</p> <p>Flat panel units are produced in a factory and assembled on-site to produce a three dimensional structure. The most common approach is to use open panels, or frames, which consist of a skeletal structure only with services, insulation, external cladding and internal finishing occurring on-site. More complex panels - typically referred to as closed panels - involve more factory-based fabrication and may include lining materials and insulation. These may also include services, windows, doors, internal wall finishes and external claddings. This category embraces newer panellised approaches such as Structurally Insulated Panels (SIPs), SIG Offsite and H+H I-House System and Cross Laminated Timber (CLT) panels.</p>
<p>OSM - Sub-Assemblies and Components</p> <p>This category is intended to encompass approaches that fall short of being classified as systemic OSM but which utilise several factory fabricated innovative sub-assemblies or components in an otherwise traditionally built structural fabric. Typically, schemes incorporating the use of floor or roof cassettes, pre-cast concrete foundation assemblies, pre-formed wiring looms, mechanical engineering composites, etc. would fall into this category. Traditional constructed schemes utilising manufactured units – such as windows, door-sets, roof trusses, etc, which might otherwise be part of the fabrication process in the other OSM categories – should not be included as sub-assemblies or components in this category.</p>
<p><u>Not scored</u></p> <p>Non-OSM Modern Methods of Construction.</p> <p>This category is intended to encompass schemes utilising innovative housing building techniques and structural systems that fall outside the OSM categories. The presence of innovation is an essential feature that might manifest itself through an innovative non-OSM building system, through a building technique familiar in other sectors but new to house-building, or through traditional components being combined in innovative ways. Typically, insulated concrete</p>

formwork (ICF), 'TunnelForm', H + H Celcon 'Thin joint blocks' and other innovative masonry or concrete approaches would fall within this category.

Traditional build

This category is intended to encompass all 'Traditional' site-based new build schemes and site-based rehabilitation, refurbishment and conversion.

In circumstances where a dwelling is to be developed using multiple technologies (meaning it could fit into more than one category), the bidder must consider what is the most predominant form of technology used to develop that particular dwelling type, and assign the dwelling to the relevant category. For example, a dwelling developed using pre-cast floors and foundations - however with volumetric features such as off-site developed bathroom / kitchen pods - would be classified under the 'sub-assemblies' for the purposes of evaluation.

Bidders should note that each dwelling in the scheme can only be assigned against one category. Once you have determined which category each dwelling falls under, the table provided at Tender Form 6 should be populated by the developer. An illustrative example of a populated Tender Form 6 table is provided below - and demonstrates how a score out of 5 is determined:

Technology	Weighting (1)	Number of Homes in Category (2)	Percentage of Homes in Category (3)	Marks (4)
Volumetric	5	19	5%	0.25
Hybrid	3	55	15%	0.45
Panelised	2	37	10%	0.2
Sub-assemblies & components	1	222	60%	0.6
Traditional	0	37	10%	0
TOTAL		370	100%	1.5

Where the Marks (4) are determined by multiplying the Weighting (1) by the percentage of homes in that category (3) and adding up the individual scores for each category to determine a consolidated score out of 5 (1.5 in the case of the case of the example above).

HE recognises that there may be an element of interpretation involved in assigning various dwelling types to categories. If HE disagrees with the approach you have used to assigning dwellings to categories, it will raise its concerns with bidders at the post-tender clarification stage. Bidders should be aware that HE will ultimately have the final decision in regard to MMC scoring - and if it so chooses - may decide to re-assign dwellings to a different category (thereby changing the overall score) if its feels there is justification to do so.

Bidders must achieve a minimum score of 1 in order to pass the pass / fail threshold set out in the ITT. This can be achieved by delivering dwellings via range of construction techniques (as demonstrated in the example above) - or else by deliveroing 100% of dwellings in their scheme using sub-assembly techniques & off site manufactured components.

Programme

The maximum construction period (start on site through to practical completion of the scheme's last dwelling) has been set at 60 months for this project. Any bidder's whose programme shows construction activities stretching beyond 60 months will fail the pass / fail element of the assessment and their bid will not be considered further.

It is a further pass / fail criteria that bidders must populate the programme template provided at Tender Form 5. Bidders may add in lines to this programme temaplate if they choose. This programme covers timescales associated with all aspects of the project (i.e. not just the construction period) and will give HE an overview of timescales associated with all stages of the scheme.

Beyond the pass / fail element of the assessment, HE wants to encourage bidders to build at the fastest rate they feel possible - and proposes to award bidders marks out of 5 according to the length of time they propose for their construction period. The pace of construction tendered by the selected bidder will then be included in the legal documents as the pace of build they are legally obliged to achieve. This will also be used as the timescale for determining how overage is apportioned (i.e. if delivered faster than the tendered timescale - 70% overage to be awarded to the bidder and if delivered slower than the tendered timescale - 0% overage to the bidder).

Marks will be awarded by assessing the bidder's tendered construction period - and comparing this against the shortest construction period tendered by a bidder. A weighting multiplier

is then applied according to the ranking of the bidders.

An illustrative example is provided below:

Tender Summary

Bidder	Construction period tendered	Ranking	Weighing
Bidder 1	48 months	1	100%
Bidder 2	50 months	2	80%
Bidder 3	51 months	3	60%
Bidder 4	56 months	4	40%
Bidder 5	58 months	5	20%
Bidder 6	60 months	6	0%

Scoring Summary

Bidder	Construction period tendered	Pro-rata calculation	Pro-rata score	Weighing calculation	Weighting Score	Marks Calculation	Marks out of 5
Bidder 1	48 months	48 months / 48 months	1.00	1.00 x 100%	1.00	1.00 x 5	5.00
Bidder 2	50 months	48 months / 50 months	0.96	0.96 x 80%	0.77	0.77 x 5	3.84
Bidder 3	51 months	48 months / 51 months	0.94	0.94 x 60%	0.56	0.56 x 5	2.82
Bidder 4	56 months	48 months / 56 months	0.86	0.86 x 40%	0.34	0.34 x 5	1.71
Bidder 5	58 months	48 months / 58 months	0.83	0.83 x 20%	0.17	0.17 x 5	0.83
Bidder 6	60 months	48 months / 60 months	0.80	0.80 x 0%	0.00	0.00 x 5	0.00

Financial Offer

The prices tendered by bidders will be subjected to an NPV calculation (using a discount factor of 3.7% per annum) to determine the present day value of all financial offers received.

Once the NPV's present day value of each financial offer has been determined, each bidder's financial offer will be assessed against the highest financial offer received. The resulting weighted figure will then be multiplied by 65 (the total marks available under this evaluation theme).

An illustrative example is provided below:

Bidder	Tendered NPV financial offer	%age of highest offer	Score out of 65
Bidder 1	28,000,000	100.00%	65.00
Bidder 2	27,500,000	98.21%	63.84
Bidder 3	26,000,000	92.86%	60.36
Bidder 4	25,750,000	91.96%	59.78
Bidder 5	25,000,000	89.29%	58.04
Bidder 6	24,000,000	85.71%	55.71

BID SUMMARY

Name of Bidder
Version No.
Date

BIDDERS MUST POPULATE THE SCHEDULE BELOW BASED ON THE INFORMATION SET OUT ELSEWHERE ACROSS THESE BID TEMPLATES

Scheme Details	Bidder Response
Total Dwelling Nos Proposed	
Total development floor area (sq.ft)	
Private sale development floor area (sq.ft)	
PRS development floor area (sq.ft)	
Shared ownership development floor area (sq.ft)	
Discount to Market development floor area (sq.ft)	
Affordable rent development floor area (sq.ft)	
No. of 1 bed dwellings	
No. of 2 bed dwellings	
No. of 3 bed dwellings	
No. of 4 bed dwellings	
No. of 5 bed dwellings	
No. of private sale dwellings	
No. of PRS dwellings	
No. of shared ownership dwellings	
No. of discount to market dwellings	
No. of affordable rent dwellings	
Programme	
Estimated start on site date (month / year)	
Estimated house build commencement date (month / year)	
Estimated date of first sale (month / year)	
Estimated practical completion date of construction activities (month / year)	
Estimated completion date of sales activities (month / year)	
Total estimated time duration between start on site and house build commencement (months & days)	
Total estimated time duration between house build commencement and practical completion (months & days)*	
Total estimated time duration between start on site and completion of last sale (months & days)	
Rate of Practical Completions for Units**	
No. of units completed by mon h 12	
No. of units completed by mon h 15	
No. of units completed by mon h 18	
No. of units completed by mon h 21	
No. of units completed by mon h 24	
No. of units completed by mon h 27	
No. of units completed by mon h 30	
No. of units completed by mon h 33	
No. of units completed by mon h 36	
No. of units completed by mon h 39	
No. of units completed by mon h 42	
No. of units completed by mon h 45	
No. of units completed by mon h 48	
No. of units completed by mon h 51	
No. of units completed by mon h 54	
No. of units completed by mon h 56	
Value Details	
Tendered Gross Development Value	
Average value per sq.ft across all tenures	
Average values per sq.ft - open market sale	
Average values per sq.ft - PRS sale	
Average values per sq.ft - shared ownership	
Average values per sq.ft - discount to market	
Average values per sq.ft - affordable rent	
Are values for PRS based on estimates or based on a tendered offer from an investor?	
Has a PRS investment partner been identified? If so, who?	
Are values for affordable rent / shared ownerships based on estimates or based on a tendered offer from an RP?	
Has an RP partner been identified? If so, who?	
Cost Details	
Tendered GDC	
Overall cost per sq.ft (incl. profit)	
Developer profit (£)	
Developer profit on value (%age)	
Developer profit on cost (%age)	
Developer Return on Capital Employed (%age)	
Acquisition costs (excl. SDLT)	
Acquisition costs per sq.ft (excl. SDLT)	
Pre-start on site / Reserved Matters planning costs	
Pre-start on site / Reserved Matters planning costs per sq.ft	
Total House Build Cost	
Total House Build Cost per sq.ft	
Total Plot External Costs	
Total Plot External Costs per sq.ft	
Total groundwork / remediation costs	

Total groundwork / remediation costs per sq.ft	
Total utilities costs	
Total utilities costs per sq.ft	
Total drainage costs	
Total drainage costs per sq.ft	
Total foundation costs	
Total foundation costs per sq.ft	
Total infrastructure costs	
Total infrastructure per sq.ft costs	
Total ecology mitigation costs	
Total ecology mitigation costs per sq.ft	
Total public open space costs	
Total public open space costs per sq.ft	
Total prelim costs	
Total prelims costs per sq.ft	
Overheads	
Overheads per sq.ft	
Total Fees	
Total Fees per sq.ft	
Non-recoverable VAT	
Non-recoverable VAT per sq.ft	
Aftercare Costs	
Aftercare Costs per sq.ft	
Total Contingency Costs	
Total Contingency Cost (as %age of GDC)	
Total Contingency Cost per sq.ft	
Sales & marketing	
Sales & marketing per sq.ft	
Cost of sales incentives	
Cost of sales incentives per sq.ft	
Total Finance Cost	
Total Finance Cost per sq.ft	
S106 Costs	
SDLT	
Does the bidder intend to appoint an external Compliance Inspector for Interim Sign Offs?	
Cost allowed for external Compliance Inspector appointment for Interim Sign Offs	
Cost allowed for Compliance Inspector for Final Sign Off	
Commuted sum allowance for adoption of highways / POS	
Allowance for a management dower (if applicable)	
Other costs	
Finance	
%age rate of Finance obtained from creditor	
Status of credit (i.e. immediately available or still to be applied for?)	
Extent of GDC to be funded from:	
- Bidder's own equity (£)	
- Debt (£)	
- Recycled sales income (£)	
Month at which peak debt is hit	
Month at which debt is fully repaid	
Financial Offer (to be stated exclusive of VAT)	
Total cash value of land value offer	
Deposit payable on exchange of Agreement for Lease	
Amount payable on completion of the Building Lease	
Amount proposed for deferral	

*The time interval between house build commencement and practical completion must not exceed the pace threshold set as a pass / fail measure for this tender

**The rate of completions entered under this section will become legally binding commitments in the Building Lease

Rates per sq.ft should be provided based on the sq.ft of the development floor space - i.e. the cost divided by the figure inputted into cell B12

ENDER FORM 2 Cost Schedule

Name of Bidder
Version No.
Date

Summary

Gross Development Cost (GDC)

--

	Total Cost	Cost per sq ft (based on NSA)	Costs as %age of GDC	Please list a list sub-categories of cost included within this cost heading	Please list any assumptions underpinning the cost and provide details of the source of the cost	Please confirm if you are tendering this cost on an unconditional fixed basis	If this cost is tendered on a provisional basis please state what actions need to be taken in order to make this a fixed cost
Acquisition costs (except SDLT)							
Reserved Matters planning costs							
Total House Build Cost							
Total Plot External Costs							
Total ground preparation / remediation costs							
Abnormal foundation costs							
Total utilities costs							
Total drainage costs							
Total infrastructure costs							
Total ecology mitigation costs							
Total public open space costs							
Total Pre-implantation Costs							
Overheads							
Total Fees							
Non-recoverable VAT							
Aftercare Costs							
Total Contingency Costs							
Sales & marketing							
Cost of sales incentives							
Total Finance Cost							
S106 Costs							
SDLT							
Road / PPS adoption costs							
Profit on Open Market Sale Product (if applicable)							
Profit on Shared Ownership Product (if applicable)							
Profit on Discount to Market Product (if applicable)							
Profit on Affordable Rent Product (if applicable)							
Profit on PRS Product (if applicable)							
Total Blended Profit (i.e. aggregate of individual profits by tenure)							
Other Costs (if costs associated with your scheme do not fit into any of the categories listed above - please capture these costs here - and provide a description below as to what is included under this cost heading)							

ENDER FORM 2(a) Cost Schedule Fence House

Name of Bidder
Version No.
Date

Summary

Gross Development Cost (GDC)

--

Cost Category	Total Cost	Cost per sq ft (based on NSA)	Costs as %age of GDC	Please list a list of sub-categories of cost included within this cost heading	Please list any assumptions underpinning the cost and provide details of the source of the cost	Please confirm if you are tendering this cost on an unconditional fixed basis	If this cost is tendered on a provisional basis please state what actions need to be taken in order to make this a fixed cost
Acquisition costs (except SDLT)							
Reserved Matters planning costs							
Total House Build Cost							
Total Plot External Costs							
Total ground preparation / remediation costs							
Demolition costs associated with the remediation of any ACMs within the existing building	£1 m/ha		0%		This cost is to be fixed at £1 until a Refurbishment & Demolition Asbestos Survey has been undertaken at Agreement for Lease stage.	Bidders should fix this cost to £1 in their proposal	
Abnormal foundation costs							
Total utilities costs							
Total drainage costs							
Total infrastructure costs							
Total ecology mitigation costs							
Total public open space costs							
Total Fire Insurance Costs							
Overheads							
Total Fees							
Non-recoverable VAT							
Aftercare Costs							
Total Contingency Costs							
Sales & marketing							
Cost of sales incentives							
Total Finance Cost							
S106 Costs							
SDLT							
Road / PDS adoption costs							
Profit on Open Market Sale Product (if applicable)							
Profit on Shared Ownership Product (if applicable)							
Profit on Discount to Market Product (if applicable)							
Profit on Affordable Rent Product (if applicable)							
Profit on PRS Product (if applicable)							
Total Blended Profit (i.e. aggregate of individual profits by tenure)							
Other Costs (Costs associated with your scheme do not fit into any of the categories listed above - please capture these costs here - and provide a description below as to what is included under this cost heading)							

TENDER FORM 3 - Programme

Name of Bidder
Version No.
Date

Milestone	Indicative Date (MM/YY)	Month
Exchange of Contracts Date		1
Reserved Matters Submission		
Reserved Matters Determination		
Discharge of Pre-Start Planning Conditions		
Completion of Building Lease		
Start on Site Date		
House Build Commencement Date		
Commencement of Sales / Marketing		
Completion of First Sale(s)		
House Build Final Completion		
Completion of all External Works & S.38 Agreement		
Completion of Last Sale		

House Build Targets	No. of Homes
No. of Build Completions achieved at 'House Build Commencement Date' +12 months	
No. of Build Completions achieved at 'House Build Commencement Date' +15 months	
No. of Build Completions achieved at 'House Build Commencement Date' +18 months	
No. of Build Completions achieved at 'House Build Commencement Date' +21 months	
No. of Build Completions achieved at 'House Build Commencement Date' +24 months	
No. of Build Completions achieved at 'House Build Commencement Date' +27 months	
No. of Build Completions achieved at 'House Build Commencement Date' +30 months	
No. of Build Completions achieved at 'House Build Commencement Date' +33 months	
No. of Build Completions achieved at 'House Build Commencement Date' +36 months	
No. of Build Completions achieved at 'House Build Commencement Date' +39 months	
No. of Build Completions achieved at 'House Build Commencement Date' +42 months	
No. of Build Completions achieved at 'House Build Commencement Date' +45 months	
No. of Build Completions achieved at 'House Build Commencement Date' +48 months	
No. of Build Completions achieved at 'House Build Commencement Date' +51 months	
No. of Build Completions achieved at 'House Build Commencement Date' +54 months	

Instruction to Bidders

Bidders should provide details of the dates they anticipate achieving each of the milestones set out above. Using the anticipated date of the exchange of contracts as the baseline 'month 1' date - bidders should state the number of months following this baseline date that they anticipate each milestone being achieved. For example, if the exchange of contract date is given at 01/19 and the submission of Reserved Matters is given as 03/19, then the figure stated in the 'Month' column should be 3.

Bidders should note that 'Start on Site', 'House Build Commencement Date' and 'House Build Targets' have specific legal meanings in the context of the Building Lease (please refer to the template legal documents provided in the technical pack).

Bidders should be aware that the time intervals between 'Exchange of Contracts' and 'Completion of the Building Lease' and between the House Build Commencement Date' and 'House Build Final Completion' cannot exceed the timescales described as minimum 'pass / fail' requirements as set out in the template legal documents and ITT

Furthermore, bidders should be aware that the information they tender in respect of the House Build Targets table above will be used to populate schedules within the Building Lease - and will become legally binding obligations on the developer. Accordingly, bidders should only tender a position in regard pace of completions that they would be prepared to commit to as their legal performance obligations

Name of Bidder
 Valuation No.
 Date

INPUT UNIT
 NUMBERS HERE

DO NOT EDIT

Item No.	Quantity	Unit	Description	Material	Labour	Overhead	Profit	Subtotal	Remarks
Volume	0		RDV 0'	RDV 0'					
Sub-assembly	0		RDV 0'	RDV 0'					
Sub-assembly	0		RDV 0'	RDV 0'					
Sub-assemblies & components	0		RDV 0'	RDV 0'					
Sub-assembly	0		RDV 0'	RDV 0'					

Beyond the MMAC technologies that you have tendered above (and which you will become contractually obliged to deliver), please state below whether there are any other types / approaches to MMAC that you would be prepared to incorporate into your scheme on a non-actual basis?



Homes
England

Delivery Partner Panel Member
North West Lot

21st December 2018

Dear Delivery Partner Panel Member,

**SITE DISPOSAL, INVITATION TO TENDER RELATING TO:
LAND AT FENCE AVENUE, MACCLESFIELD, CHESHIRE SK10 1DT**

Homes England is pleased to provide you with notice of its intention to invite your organisation to tender for its residential development land located at Fence Avenue, Macclesfield, Cheshire SK10 1DT.

The Procurement Process

The procurement process for this development opportunity is running in three stages – namely:

- Expression of interest (EOI) - *complete*
- Sifting Stage - *complete*
- Invitation to tender (ITT) – *launch from 3rd January 2019*

The circulation of this letter represents Homes England's intention to invite your organisation to tender from 3rd January 2019.

Back in October the EOI stage commenced and was circulated to all 39 members of the DPP3 (NW) and invites panel members to confirm if they are interested in this opportunity. Following the EOI stage a number of parties were invited to respond to a 'Sifting Stage' whereby a series of questions, set by Homes England, were responded to by those parties who had already expressed an interest in this site.

If more than 6 panel members express interest in the opportunity before the EOI deadline, it will be necessary to conduct a 'Sifting' stage. The sifting stage was used by the Agency to determine a shortlist of no more than 6 bidders who will go forward to the ITT stage.

Homes England
Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 4DJ

0300 1234 500
homesengland.gov.uk

██████████@homesengland.gov.uk
██████████

Launch of Tender Pack

It is proposed the formal launch of the Homes England tender pack for Fence Avenue will be accessible via the e-tendering system from **3rd January 2019**.

A data room has been created by Savills comprising various technical documents to inform bidder submissions. Any outstanding documents will be uploaded by mid-January.

Access to the data room can be found [HERE](#).

The password for the data room is: **FenceAvMacc**

The deadline for tenders is **1pm, Wednesday 27th March 2019**.

The procurement process for Fence Avenue is being managed on Homes England's behalf by its agents Savills, and is being conducted through the e-tendering format.

Any queries in advance of the formal launch of the tender pack, or during the tender period should be submitted via the e-tendering system.

Yours sincerely,

s. 40(2)

s. 40(2) (encl.)



Homes
England

Making homes happen

Stage 3 – Invitation to Tender

Land at Fence Avenue, Macclesfield SK10 1DT

Submission Deadline: 1pm, Wednesday 27th March 2019



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Development of Homes England Land: Fence Avenue, Macclesfield, Cheshire SK10 1DT



Section 1: Introduction

This 'Invitation to Tender' (ITT) represents the final stage of a three stage procurement process being arranged by Homes England (HE).

HE is seeking to procure a preferred Development Partner concerning the development of its 13.5oha landholdings currently occupied and operated as King's School, Macclesfield (referred to throughout this ITT as 'Fence Avenue').

You have received this ITT because you are one of 5 parties from the HE's Delivery Partner Panel 3 (DPP3) North West Lot that have been shortlisted to participate in the final tender stage of this procurement process.

The ITT is being managed on HE's behalf by Savills, who will coordinate the e-tendering process and will operate as the primary point of contact for bidders should they require clarifications on the contents of this ITT pack.

Section 2: The Site

A brochure for the site was made available to DPP3 members as part of the initial 'Expression of Interest' stage – which provided key details pertaining to the site. Key points of note concerning the site / project are detailed below.

General Overview

- The site is located approximately half a mile east of Macclesfield town centre, and closer still to Macclesfield Railway Station providing connections to the West Coast Mainline.
- The site comprises 13.5oha of part Greenfield, part brownfield land currently occupied and operated as King's School Macclesfield.
- Access to the site is readily available via adopted highways running adjacent to the site
- The land at Fence Avenue secured outline planning consent for up to 300 homes as part of application ref. 15/4287M – which was approved by Cheshire East Council on 23rd January 2017
- Access to the application documents is provided [HERE](#)
- The planning permission includes the demolition of the existing school buildings whilst retaining Fence Avenue for conversion to residential apartments
- The s106 stipulates that 10% of the first 280 units at Fence Avenue are required to be delivered specifically to the market at 20% discount to open market value
- 30% of the additional units provided at Fence Avenue above the first 280 are to be provided as affordable

Constraints

The site is an existing operational school with multiple teaching and ancillary buildings with hard and greenfield external areas extending to the rear of the red line boundary. The existing access is from Fence Avenue and Lime Grove, the latter a residential cul-de-sac.

The site's notable development consideration is the retention of the main school building - Fence House – for conversion into flatted accommodation. The remaining school buildings are proposed for demolition, which would present a cleared site for development.

The entire site remains occupied by King's School Macclesfield on a leaseback arrangement until December 2020. This ITT document is running concurrently with the schools' occupation whilst the new campus at Prestbury Fields is being constructed – the campus is expected to reach practical completion in summer 2020.

Whilst the school remains in occupation as tenant of Homes England during the tender period, it has or will not be possible to undertake a full refurbishment and demolition survey across the existing buildings.

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It is therefore proposed that the preferred bidder will undertake a R&D asbestos survey on a strictly open book basis at Agreement for Lease stage to assess and quantify the costs associated with the removal of any potential ACM's. This cost will be netted off the tendered land value as an abnormal cost.

To accommodate this unknown abnormal cost at tender stage, bidders should fix this cost in their appraisal to £1.

In terms of wider constraints, HE has compiled a comprehensive Data Room to assist bidders in assessing risk.

Ahead of the launch of this ITT, HE invited shortlisted bidders to review the information held in the Data Room to obtain feedback on any areas of information which bidders believe might be missing. There was a consensus amongst bidders that no further technical information would need to be provided – and therefore it is not HE's intention to commission any further work to add to the Data Room.

The suite of information provided in the Data Room includes a complete suite of documents compiled by Savills to secure the outline planning consent with further documents commissioned by Homes England.

The data room is hosted by Savills and can be accessed directly [HERE](#)

A letter distributed via the e-tendering system to all shortlisted parties contained details for accessing the data room. Further information will be added to the data room in January 2019.

Section 3: Homes England Objectives

HE's objectives from this disposal exercise are as follows:

- To receive offers for the site which are conditioned on reserved matters approval and the outcome of a full R&D survey
- To exchange contracts on an Agreement to Lease with its selected development partner by August 2019 and for its selected development partner to secure a reserved matters consent for its tendered scheme by January 2020
- For the selected development partner to start on site by January 2021 (or sooner if vacant possession can be achieved earlier)
- For proposals to be tendered which demonstrate high standards of urban design and consider Building for Life 12 principles, which propose a wide range of house types such that buyers are presented with choice (and which helps to avoid monotony / repetition of product) and which are set out against a backdrop of high quality POS
- To secure the highest possible land value receipt from the disposal

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- For its selected development partner to build out its consented scheme in the shortest timeframe possible (and which, in any event, cannot exceed 56 months)
- For its selected development partner to build out the scheme using a variety of Modern Methods of Construction (MMC) techniques (and which, in any event, cannot fall below the minimum MMC threshold set for this project)
- For all dwellings delivered across the scheme to be sold freehold, and therefore free from any ground rent arrangements

Section 4: Contracting Structure

The contractual arrangements around this site disposal are generally standard in so far as they will involve the selected development partner entering into:

- An agreement for lease
- A building lease

The developer's main obligation under the agreement for lease will be to obtain a reserved matters consent within a specified time period. Once the developer has discharged its obligations under the agreement for lease, the building lease will be completed. The developer will be obligated to start on site within a fixed period of following draw down of the lease – and once the development has commenced – it must achieve the practical completion of all dwellings in accordance with the programme it has tendered (which, in any event, cannot exceed 56 months).

Whilst Homes England will adopt an agreement for lease and building lease it is recognised that developers may wish to partner with non-DPP3 members to deliver the entire scheme. In either case, the approach to contracting between Homes England and the preferred developer will require the selected development partner to enter into the above documents.

The developer will also be contractually obliged to develop the scheme in accordance with the MMC techniques / specifications set out in its tender response to this ITT.

Payments of the agreed price premium must be made in accordance with the timings set out within the developer's tender.

Under HE's new approach to land disposals; overage will be used as a mechanism for rewarding developers who build at pace.

In this regard, if the developer completes their scheme to the exact date set out in the contract – overage will be shared on a 50:50 basis. If the developer completes the scheme faster than the contracted date, then they will receive an increased share of overage (up to a cap of 70%) and if they complete the scheme slower than the contracted date they will receive a lesser share of overage (down to a lower threshold of 0%).

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The faster the scheme is completed, the greater the share received and the slower the scheme is completed the lesser the share.

Developers will be given a 10% time tolerance on the contracted completion date. If they complete the scheme late – however within this 10% tolerance – the only impact will be that their share of overage will be less than 50% (with their actual percentage share being determined based on how late within the 10% time window they complete). Developers completing after the 10% time window may be subject to forfeiture.

Extensions of time to the contracted target completion date will be granted to developers should matters outside their control occur that cause unforeseen delays to the programme.

Section 5: Developer Responsibilities

The following section sets out the services that HE's selected development partner would be required to perform and describes mandatory points that bidders must address within their tender submissions.

Developer Duties

- Commission and instruct a full Refurbishment & Demolition Asbestos survey on a strictly open book basis to assess and quantify any abnormal costs associated with the removal and/ or remediation of any ACM's
- Secure Reserved Matters approval for their scheme, the basis of which must be consistent with the scheme tendered to HE as part of this ITT
- Discharge all planning conditions associated with the scheme
- Discharge payment of the scheme's agreed S106 cost
- Enter into a S.278 agreement with the local authority relating to the need for improvement works to the accesses serving the development site
- Satisfy HE's requirements in respect of:
 - The minimum build out pace
 - The minimum MMC specification score
- Pay all SDLT costs owed in accordance with HMRC requirements. It should be noted that the site is not elected for Tax – meaning VAT is not payable against the purchase price tendered
- Raise the level of finance required to cover the scheme's peak funding requirement – and arrange any credit lines that may be needed to meet cost overruns / cash flow shortfalls

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- In respect of the affordable housing provision, the developer must identify and work with an RP partner to take on responsibility the affordable rent and shared ownership units where these tenures become applicable
- Upon draw down of the Building Lease, coordinate effective management of the site and discharge all statutory health and safety duties
- Arrange the delivery and management of all construction activities across the site in compliance with the terms of the planning approval
- Secure all appropriate accreditations (NHBC, etc...) for completed dwellings such as to ensure they are insurable / mortgageable
- Manage all marketing and sales of dwellings across the site
- Carry out snagging activities and provide all appropriate maintenance and aftercare services to buyers
- Agree and complete adoption agreements with the local authority in respect of key roads within the development and with the local authority or a nominated management company in respect of the scheme's public open spaces
- Comply with any duties / services required of the developer under the terms of the warranty agreements provided to buyers
- Instruct a Compliance Inspector to carry out monthly monitoring reports
- Otherwise comply with any and all obligations set out within the Agreement to Lease and Building Lease

Mandatory Requirements to be reflected in Tender Submission

Bidders are required to tender submissions to this ITT which address the following mandatory requirements:

- Bidders must submit proposals for the site which 1) comply with the scheme's outline planning conditions and 2) otherwise adhere to all planning policy that is relevant at the time of their reserved matters planning submission (including, however not limited to – the NPPF, etc...)
- The time frame tendered in relation to the period between the commencement of house building and the completion of house building must not exceed 56 months. I.e. the minimum timeframe only relates to house building – and does not include time associated planning, site set up, enabling works / remediation works and sales activities
- Bidders must achieve a minimum score of 1.25 under the MMC evaluation theme. Please refer to the evaluation section of this ITT for further details in this regard

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- Affordable housing must be tendered on the basis of the existing outline planning permission (see Planning Guide in the data room)
- In regard to financial offers:
 - A minimum of 5% of the tendered premium must be made payable on exchange of contracts on the Agreement for Lease as a deposit
 - A minimum of 10% of the premium must be made payable on completion of the Building Lease
 - The full balance of the premium must be made payable by the earlier of either a) the developer's mid-point of their construction programme or b) the mid-point of their sales programme
- Bidders are prohibited from including ground rents as part of their sales / revenue strategy for the scheme
- Bidders must populate and submit all Tender Forms provided in the alongside this ITT
- Bidders must provide a written submission in support of their Tender Forms responses – and use this written submission to set out the various information requirements referred to in Section 6
- Provide all supporting plans, dwelling layouts, appraisal print outs and CGI images required in support of your written submission
- Bidders must achieve a minimum Building for Life¹² score of 8 (out of 12) green lights in their self-assessment response. Homes England reserves the right to clarify any self-assessment assumptions made by the bidder that do not robustly evidence their self-assessment scoring.

Section 6: Tender Submission Guide

Tender Forms

This ITT is provided alongside 7 Tender Forms (including the 'Bid Summary' form) which are to be completed / populated by bidders as part of their responses to this tender opportunity.

For the purposes of Fence Avenue, bidders are required to separate their cost schedules for the new-build element and the Fence House refurbishment. Two Tender Forms (2 and 2(a)) have been provided.

These are:

BID SUMMARY FORM:	Summary of Bid
TENDER FORM 1:	Property & Revenues Form
TENDER FORM 2:	Cost Schedule (new-build)
TENDER FORM 2(a):	Cost Schedule (Fence House)
TENDER FORM 3:	Programme
TENDER FORM 4:	MMC Scoring Form

TENDER FORM 5: Legal Clarifications Form
TENDER FORM 6: Financial Offer & Conditions Form

Written Submission

Whilst the Tender Form responses will form a key part of the information that is assessed by Homes England (HE) to determine a preferred bidder – bidders are also asked to provide a Written Submission to support their offer.

Written Submissions are an opportunity for bidders to expand upon the responses given in their Tender Forms. The submission should be presented in the form of a single PDF document – and should be divided into 7 parts as follows:

PART 1: Scheme Plans & House Types

Bidders should provide:

- PLAN 1: A constraints and opportunities plans
- PLAN 2: A layout for their proposed scheme which shows each dwelling marked by their tenure
- PLAN 3: A plan showing the layout and specification details of their public open space /public realm (including embedded CGIs or images of the materials you are proposing for your POS / public realm)
- PLAN 4: A plan indicating which highways / POS across the development you propose to have adopted by the local authority and highways / POS you propose to vest with a nominated management company
- PLAN 5: A construction and sales phasing plan
- Floor plans and CGIs / photos of each of the dwelling types proposed as part of your scheme (these can either be embedded into your written submission or else provided as separate appendices).

Submission to be limited to plans / drawings only. CGI images of the bidder's proposed street scenes would also be welcome – however please note that these are not mandatory. Mandatory information is limited to plans 1 – 5, plus images of the bidder's proposed house types

PART 2: Design

2(a). Bidders should provide a Building for Life 12 self-assessment. This should be presented in the format of a table with column headings as follows:

- COLUMN 1: Building for Life 12 Question
- COLUMN 2: Bidder's answer / response
- COLUMN 3: Score rating (red, amber or green)
- COLUMN 4: Continuous improvement strategy

Submission to be limited to a table only.

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2(b). Bidders should also respond to the following 9 questions related for Building for Life 12 question 5 – ‘Character’:

- 1. Show how setbacks will be used to create clear rigour and rhythm to the building line*
- 2. Show how gable and terraced roofs will be combined to create rhythm and visual interest*
- 3. Show how house types will be used to create obvious symmetry between them*
- 4. Show how principal materials proposed for your elevations are either local or distinctive*
- 5. Show how utility and meter boxes will not clutter the street-facing elevation.*
- 6. Show how you plan to stop service strips spoiling the fronts of plots*
- 7. Detail how boundaries between plots and the public realm will be constructed*
- 8. Detail your green landscaping choices for the main streets / main open spaces within your scheme*
- 9. Detail your hard landscaping choices for the main streets / main open spaces within your scheme*

Submissions to be limited to a 1 page response per question (i.e. 9 pages in total).

Responses should be provided in the format of CGI images, drawings or photographs plus written supporting captions. The image(s) and caption(s) provided should illustrate what design approach you are proposing to adopt within your scheme that responds to the question asked.

Bidders can provide multiple images per page to illustrate their response to each question – provided the 1 page limit per question is not exceeded.

Bidders should also show / comment on where (in locational terms) across the development the design feature illustrated by your images / captions to be used.

2(c). Bidders should describe what other recognised design toolkits or techniques they have used to shape their designs for the scheme and provide examples to show how these have been embedded into your proposals

Submissions to be limited to 1 page.

Responses should be provided in the format of CGI images, drawings or photographs of design themes / features bidders intend to incorporate into their scheme together with written narrative explaining what design toolkit / technique the image draws influence from and describing how the provided image links to this toolkit / technique

PART 3: Planning & Management

Bidders should:

- Outline why their tendered scheme would be successful in securing a reserved matters planning consent – including details of any interaction they have had with the local authority which has helped them in shaping their proposals for the scheme and which gives them confidence that they would secure planning approval

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- Indicate what their long term proposed management arrangements are for all non-saleable parts of the scheme – and confirm the cost of these management arrangements and how they are to be funded (i.e. commuted sum payment netted off the land value, a management company paid for by residents through an annual management fee, etc...)
- In the event of bidders electing to have part of their scheme adopted by the local authority, they must confirm why they believe their chosen landscape materials would be acceptable for adoption

Responses should be limited to no more than 1,000 words

PART 4: Values & Marketing Strategy

Bidders responses to this section should correspond to the information you have provided in your response to Tender Form 1.

Bidders should provide:

- Evidence to verify that their tendered sale values per sq.ft (across all tenures) are achievable
- Why they believe there is sufficient choice in your proposed house type range to maintain buyer interest over the course of the project
- Who they regard as being their core market audience
- The marketing brands they will use and the types of promotional marketing activities they will use to maintain your tendered pace of sales
- Confirmation and evidence that their homes will be mortgageable and insurable (irrespective of MMC technology used), including details of the accreditations that your product types will secure

Responses should be limited to no more than 1,500 words

PART 5: Project Risks & Programme

Bidders should provide:

- A risk register identifying:
 - The bidder's opinion of all the key risks / constraints associated with the project
 - The likelihood of the risk occurring
 - The likely impact of the risk
 - How the risk will be mitigated
 - A summary of the costs (if any) you have allocated to mitigation of the risk and whether these costs are accounted for as contingencies which have been netted off your land value offer
- A development programme (in a gannt chart format of their choosing) which demonstrates time allowances for all work stages associated with the project – and which corresponds to the timing set out in Tender Form 3

Response to be provided in the form of a table (risk register) and gantt chart (programme)

PART 6: Funding

Bidder should provide:

- A print out of their organisation's own internal development appraisal and cash flow for the scheme (at Homes England's discretion, we may ask you to provide these documents in an editable format)
- Details of the proportion of the scheme's Gross Development Cost that will be met from:
 - The developer's own equity
 - Debt
 - Recycled sales receipts
- In regard to those projects to be funded through debt, bidders must indicate:
 - Who their lender is / lenders are
 - The level of debt to be borrowed
 - Whether this debt is currently in place or still to be approved by the lender
 - In the event of their debt funding having already been approved, please provide evidence
 - What terms of security their investor requires
- Please indicate how any cost overruns that might arise from the scheme would be paid for
- In the event that elements of the bidder's scheme are to be funded / part funded through forward sale arrangements (e.g. affordable housing, PRS, etc...), the bidder must indicate:
 - Who their forward sale investor is / investors are
 - The stage payment terms they have agreed with this party
 - The status of the legals between the bidder and forward funder (i.e. no agreement yet in place, heads of terms agreed, conditional agreement in place, etc...)
 - That your forward funder is satisfied with the Golden Brick security arrangements referred to in the legal pack provided by Homes England

Responses should be limited to no more than 500 words – with the developer's appraisal and cash flow provided as a separate appendix to their submission

PART 7: Resource & Expertise

Bidders should provide:

- A case study demonstrating their track record for delivering a scheme / schemes of a similar scale and with a similar peak debt / gross build cost to this scheme

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- Confirm that they have the necessary in-house staffing, financial and supply chain capacity to successfully resource a project of this scale within the timescales tendered
- In respect of those members of your consultancy team or sub-contractors who will have either i) design responsibility or ii) will be appointed on the basis of work packages valued at £2m or more:
 - Details of who these organisations are
 - Confirmation that collateral warranties, IPR and step in rights can be provided in the event of your withdrawal from the project
- In respect of those developers or SME's you propose to partner with to deliver the whole scheme:
 - Details of who these organisations are
 - Description and structure of proposed management/ contracting arrangements with these partner organisations
 - The extent or proportion of the entire scheme it is proposed partner organisations will be delivering (i.e. number of dwellings, site area)

Responses should be limited to no more than 1,500 words and supporting layout plan(s) to illustrate the areas to be delivered by a development partner.

Section 7 – Evaluation of Bids

HE intends to use responses provided to this ITT to appoint a single preferred bidder for the site.

The Written Submission and completed Tender Forms provided by bidders will be assessed against the following three assessment themes:

- Pass / fail
- Non-price – accounting for 30% of marks
- Price – accounting for 70% of marks

The bidder who 1) passes each of the pass / fail requirements and 2) who scores the highest unique mark out of 100 will be appointed as HE's preferred development partner.

Pass / Fail

Tender proposals put forward by bidders must incorporate all mandatory requirements, as set out in Section 5 of this ITT. Tender submissions must also include all information required by HE, as set out in Section 6.

Should bidders fail to incorporate any of HE's mandatory requirements within their scheme proposals and / or fail to provide all information requested by HE as part of their submissions, then the bidder's tender proposal will not be put forward for evaluation against the price / non-price criteria, and will be discounted from the bidding process.

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At its own discretion, HE may consult with the local planning authority to independently ascertain the likelihood of each bidder's tendered scheme securing a planning consent.

In the event that the local authority does not believe the scheme proposed by the bidder would secure a Reserved Matters approval, the bidder's submission – at HE's discretion – may be discounted from the bidding process.

Non Price

Non-price elements of the scoring will account for 30% of marks. The following summarises how scores within the non-price category will be apportioned:

10% - Design

10% - MMC

10% - Developer's understanding of the technical risks and project constraints

The evaluation criteria guidance appended to this tender brief sets out how each of these three elements will be assessed.

Price

Price elements of the scoring will account for 70% of marks. The following summarises how scores within the price category will be apportioned:

5% - Cost robustness

65% - Price

A detailed evaluation guide is provided in the ITT appendices, setting out how the information HE has required in Section 6 will be evaluated and scores awarded.

This includes details of what information must be provided to achieve a 'pass' against the pass / fail criteria and example calculations to show how score formulas are intended to operate.

Section 8 – Programme & Bidding Deadline

The following programme indicates key milestones within the ITT procurement programme:

Milestone	Date
Soft launch of data room	21 st December 2018
Formal launch of ITT	4 th January 2019
Mid-Tender Meetings (if required by bidders)	w/c 18 th February 2019

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Site Walkover (if required by bidders)	w/c 18 th February 2019
Close date for bids	1pm, 27 th March 2019
Post-Tender Clarification Meetings (if required by HE)	w/c 8 th April 2019
Confirmation of Preferred Bidder	w/c 20 th May 2019
Completion of Agreement to Lease with Preferred Bidder	From August 2019

Bidders must submit their tenders via the DPP3 e-tendering system. Accordingly, bidders should be aware that tenders need to be submitted in an electronic format only – and that the submission of hard copies is not permitted.

Bidders are required to upload their tenders through the e-tendering system by a time / date not later than 1pm, Wednesday 27th March 2019.

Section 9 – Mid Tender Meetings & Contact Details

Mid Tender Meetings

HE intends to give bidders the opportunity to have a mid-tender meeting. In this regard, HE proposes to allow time during the week commencing 18th February 2019 to meet each bidder individually to discuss any queries they might have.

Time slots with each developer will be agreed in due course. Attendance at the mid tender meeting is not mandatory – and the offer of a mid-tender meeting session only needs to be accepted by bidders if they feel a meeting with the Agency would be beneficial in clarifying uncertain aspects of the tender.

In addition to mid-tender meetings, bidders will have the opportunity to carry out a site walkover during February half-term week whilst the school is not in full occupation. The opportunity to carry out a site walkover will take place the week commencing 18th February 2019 and should be arranged through Savills.

Aside from mid tender meetings, bidders are welcome to raise queries / seek clarifications through the e-tendering system at any time during the ITT tender window. In this regard, HE will aim to respond to any queries raised within 3 working days of the question being posted.

Unless the question or HE's given response is commercially sensitive in respect of a bidder, all questions and answers provided through the mid tender meeting process or e-tendering system will be shared on an equal basis with all bidders.

Contact Details

The lead contacts in relation to this ITT are as follows:

HOMES ENGLAND

Matt Wackett MRICS

Homes England

Matthew.wackett@homesengland.gov.uk

07967 782 167

Berit Rose MRICS

Savills

Brose@savills.com

0161 244 7791

All enquiries concerning this ITT should, in the first instance, be directed through the e-tendering system.

Should Bidders wish to engage with Cheshire East Council planners to discuss their scheme, they should progress a pre-application advice request (which is chargeable) via the procedures set out in the below link:

https://www.cheshireeast.gov.uk/planning/view_a_planning_application/pre-application_advice/pre-application_advice.aspx

Appendices

A – Evaluation Scoring Guidance

B – Tender Forms

C – ITT Letter (21st December 2018)

D – List of Interested SME's/ Developers

HOMES ENGLAND

enquiries@homesengland.gov.uk

0300 1234 500

gov.uk/homes-england



From: s. 40(2)
To: s. 40(2)
Cc: s. 40(2)
Subject: RE: Fence Avenue Tender Docs
Date: 07 January 2019 09:01:00
Attachments: [Homes England - Invitation to Tender Fence Avenue - 07012019.docx](#)
[A - Evaluation Scoring Guidance - Fence Avenue Macclesfield.pdf](#)
[image001.gif](#)
[image002.jpg](#)

Morning both,

Many thanks for your comments, much appreciated. As discussed with s. 40(2) on Friday I have responded in red below and re-attached the ITT brief with the Evaluation Criteria (to be appended to the ITT).

My aim is to release this via the Pro-Contract system today (lunchtime if possible), so please do let me know if you have any further queries.

Many thanks,

s. 40(2)

From: s. 40(2) [redacted]@savills.com]
Sent: 04 January 2019 16:04
To: s. 40(2) [redacted]
Cc: [redacted]
Subject: Fence Avenue Tender Docs

Good Afternoon s. 40(2)

Thank you for sending over the tender documents and some of the EPC documents.

We await the remaining documents from WSP, which I assume will include updated gas monitoring results? We hope that these updated results and the foundation zoning plan will bring more clarity to the report, as currently there are several caveats and it advises further investigations which may make it difficult for parties to make the unconditional offers HE are looking for.

With regards to the Tender Documents themselves we would make the following comments:

Invitation to Tender

- The development time frame appears to be capped at 56 months and we assume that this is taken from the shortest timescale provided in the sifting brief? However, we would question whether this would preclude other parties from tendering if they don't believe they can meet this timescale given that the majority of the total development from VP timescales are around 70 months (70, 72, 54, 70, 67.5), this would also have a marked impact upon the achievable value of the site. Are bidders automatically disqualified if they bid on a basis in excess of 56 months? **As discussed, the 56 months is for the house-build period alone. The sifting brief and its responses referred to the development as a whole – therefore if you add the site setup/ prelims etc (say 9 - 12 months) to 56 months you are at 65 - 68 months which is not too dissimilar to the above. The standard legal documents include a 'Standing Stock Clause' that allow for a pause if it can be reasonably demonstrated that units cannot be sold on the open market.**
- The penultimate paragraph of page 6 there is a typo – “developers who build at pace”
Amended.
- Developers who exceed 62 months may be subject to forfeiture – how strict do HE tend to be

on this and what does it constitute? This is more a question for our understanding **Homes England would prefer not to take back any sites, however the protection is required in the event of developer default or non-performance.**

- The first point on page 8 refers to Affordable Rent and Shared Ownership and not Discount to Market Value, given that these tenure types will only become applicable after 280 units, is this relevant? Or should the statement be amended to account for DMV's and the fact that the other tenure types are only applicable after 280 units. **Point amended.**
- The developer duties does not include the creation of a management company for the POS etc. Is it worth adding an a requirement or are you satisfied that this is covered under the planning consent? **See point 7, page 8.**
- We comment that the 5% deposit on agreement for lease contract exchange could be circa £1.25M which would be a large outlay given the timescales to VP from that point. Is this a standard position for HE? Or is there negotiation here? **This is non-negotiable. This will be held in ESCROW anyway as a stakeholder deposit, so developers should cash-flow accordingly.**
- Plan 1 of Part 1 of the Written Submission (A constraints and opportunities plan) - we believe that it may be helpful to provide some guidance to parties on what is required for this. **We can pick this up as a clarification with bidders if it is unclear.**
- Part 2b concerning design should be covered in the planning and Cheshire East's design code. Question 3 of this part does not seem to make sense (although I am not a design expert!) **The 9 x design questions have been led by design experts, however your feedback is noted. Given this is a new input to HE tenders I think we will need to manage any teething as we go.**
- The final point of Part 4 has a typo – “including details **of** the accreditations” **Amended.**
- Is the 5% of scoring attributable to cost robustness adequately explained in the appendices (we have not had sight of the appendices) **See attached.**
- The time from the confirmation of preferred bidder to the completion of agreement for lease is quite tight. Is the requirement to exchange by August 2019 simply linked to the expected RM planning timescales. Is this a strict requirement to exchange by August? **Amended as discussed on Friday.**

Tender Form 3

- Should the house build targets table carry on for longer than 39 months? **Amended.**

Bid Summary

- The number of practical completions section exceeds 56 months, is this correct? **Amended.**

I look forward to receiving your comments.

Kind Regards

s. 40(2)


Development

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From: s. 40(2)
To: s. 40(2)
Subject: RE: WSP Structural Survey Quotation for Fence House
Date: 22 July 2019 10:55:41
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi s. 40(2)

Can you remember if you raised an ITP for this appointment?

We don't have record of one at our end.

Kind Regards

s. 40(2)

From: s. 40(2) [redacted]@homesengland.gov.uk]
Sent: 07 March 2019 15:00
To: s. 40(2) [redacted]
Cc: s. 40(2) [redacted]
Subject: RE: WSP Structural Survey Quotation for Fence House

s. 40(2)

Thanks for this report – please see a few comments/ queries on the attached from me.

I am happy to discuss on a call or face-to-face if helpful.

Thanks,

s. 40(2)

From: s. 40(2) [redacted]@wsp.com]
Sent: 01 March 2019 17:12
To: [redacted]
Cc: s. 40(2) [redacted]
Subject: RE: WSP Structural Survey Quotation for Fence House

s. 40(2)

Please see attached our Structural Survey Report for King's School, Macclesfield. I trust this proves helpful, should you have any queries or wish to discuss any of the points raise in our report please do not hesitate to contact me.

Regards,

s. 40(2)

[redacted]
Associate Director



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M +44 [redacted]

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From: S. 40(2) [redacted] <[redacted]@homesengland.gov.uk>

Sent: 12 February 2019 17:42

To: [redacted] <[redacted]@wsp.com>

Cc: S. 40(2) [redacted] <[redacted]@wsp.com>

Subject: RE: WSP Structural Survey Quotation for Fence House

[redacted]

I have confirmed 9:30am on Monday with S. 40(2) [redacted] who is the Estate Manager at the school. S. 40(2) [redacted] is happy for you to contact him on S. 40(2) [redacted] beforehand.

Regards,

[redacted]

From: S. 40(2) [redacted] <[redacted]@wsp.com>

Sent: 12 February 2019 15:26

To: [redacted]

Cc: [redacted]

Subject: RE: WSP Structural Survey Quotation for Fence House

[redacted]

Monday 18th is OK. It will be myself, contact information below. I can be on site from 9.30am and I will probably need all day on site. I will need somebody from maintenance or facilities to provide access to plant rooms, risers etc. Also a set of step ladders to access ceiling voids, if the ceiling tiles can be lifted. If you pass on any contact details I can speak to them direct to confirm any details.

Regards,

S. 40(2) [redacted]

[redacted]
Associate Director



T
M [redacted]

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From: Matthew Wackett [mailto:Matthew.Wackett@homesengland.gov.uk]

Sent: 12 February 2019 09:50

To: Williamson, John <John.Williamson@wsp.com>

Cc: Moore, Andrew <Andrew.Moore@wsp.com>; Clare, Stephen <Stephen.Clare@wsp.com>; Lloyd, Peter

<Peter.Lloyd@wsp.com>

Subject: RE: WSP Structural Survey Quotation for Fence House

John,

Thanks for your revised proposed for a visual structural survey of Fence House. It is acknowledged that an aerial inspection of the roof is not recommended or appropriate given the availability of equipment.

Please can you therefore carry out the scope of services as set out below in line with the timescales provided. I understand you have had sight of all the documents (AMP, Schedule of Condition) discussed below, however if you require further information please do let me know.

I can arrange access for you on Monday 18th February, if you can provide times, names of visitors and requirements of your site visit.

Regards,

Matt

From: S. 40(2) [REDACTED]@wsp.com
Sent: 08 February 2019 09:03
To: [REDACTED]
Cc: S. 40(2) [REDACTED]
Subject: RE: WSP Structural Survey Quotation for Fence House

[REDACTED]

Further to our earlier discussions regarding the proposed scope of works for the Visual Structural Survey. Unfortunately we wouldn't be able to procure a MEWP for a high-level survey, normally this would be done via a contractor and provided for us. However the Rowley Szilagy Photographic Record Survey sent through this morning appears to be very comprehensive. The report includes photographs of each roof slope, the chimneys and of the retained building facades, so the level of information available is already very good. Access to the front elevation of the building was not possible so photographs of the roofs and parapets were taken at high level from the sides and the front façade from ground level, but are they still generally good. Closer photographs of the back of the front parapet would be useful, but this is unlikely to be possible unless permission could be obtained to position a MEWP in Fence Avenue.

I would suggest that a detailed review of and commentary on the Rowley Szilagy report, supplemented with a visual inspection with binoculars from ground level, should provide sufficient detail for our report.

Please see below our amended fee proposal:

Scope of Services

We will provide advice on the general condition of the structural elements of the Property. Identify structural issues which may require remediation works and comment on the suitability of the existing structure for the proposed residential use. In providing the Services we will undertake a visual structural survey of the Property in a single visit on the 19th February. Carry out a detailed review and comment on the additional survey information provided including the Rowley Szilagy Photographic Record of Condition report and the Survey Systems measured survey. It is proposed that the following will be specifically addressed in our subsequent Structural Survey Report:-

- The overall design and method of construction of the Property.
- The general quality of construction and condition of the structure of the Property.
- A description of the main structural elements together with an assessment of the current state of their repair and the requirement for remediation works.
- Identification of the main load-bearing walls and comment on the contribution of the walls to the lateral stability of the building.
- A detailed review of the Rowley Szilagy Photographic Record of Condition report and commentary on the condition of the high-level structures.
- Advise the Client whether it is desirable or prudent to obtain any advice from specialist consultants relating to any matter affecting the condition or construction of the Property.

- Make initial recommendations to the Client on the technical viability of the Property for the proposed reuse.

Given the limited timescale and to facilitate the survey it is anticipated that the detailed review of the available survey information will need to take place ahead of the survey and an instruction will be required by 12th of February. Following our inspection of the Property we report in writing our findings to the Client by 1st March. The report we be addressed to the Client and will be for the benefit of the Client only unless otherwise agreed.

Assumptions and Exclusions

This proposal is based upon the following assumptions:-

- A copy of the Asbestos Management Plan for the building will be provided a week before the proposed survey date.
- The survey will be limited to the main three storey section of the school, will not cover any areas beyond the original main building. Such as the Main Hall, Kitchen and additional class room all which are considered subsequent additions.
- The survey will consist of a visual inspection of the generally accessible areas of the existing building only. No intrusive investigations or removal of finishes will be carried out.
- The survey will identify structural defects to inform a contractor but not provide a measured survey or schedule for pricing.
- Facilities or maintenance staff we be available to provide safe access to plant rooms, service risers and ceiling voids etc as required.
- Inspection of the external facades of the building will consist of a visual inspection from ground level to supplement the Rowley Szilagy Photographic Record of Condition report.

Fees and Disbursements

Our base fee requirements for the project will be a lump sum of [REDACTED] (ex VAT) inclusive of expenses.

In the event that additional duties are required, then these will be the subject of separately agreed lump sum fees or undertaken on a time charge basis.

Any queries please give me a call.

Regards,

[REDACTED]

[REDACTED]
Associate Director



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From: [REDACTED] [REDACTED]@homesengland.gov.uk]

Sent: 05 February 2019 15:41

To: [REDACTED]@wsp.com>

Cc: [REDACTED]@wsp.com>

Subject: RE: WSP Structural Survey Quotation for Fence House

[REDACTED]

Thanks for your time earlier this afternoon. As discussed, please can you consider our conversation and tweak your scope/ proposal as required – we are essentially trying to provide a basis for developers to bid costs for the refurbishment of Fence House.

I have also enclosed a Zip folder containing floor plans for the whole building and an Asbestos Management Plan for the whole site.

Regards,

s. 40(2)

[REDACTED]
Development Manager



DD: [REDACTED]

M: [REDACTED]

Twitter: [REDACTED]

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From: [REDACTED]@wsp.com]
Sent: 05 February 2019 11:59
To: s. 40(2)
Cc: [REDACTED]
Subject: RE: WSP Structural Survey Quotation for Fence House

s. 40(2)

Yes we will be able to carry out the inspection on the 19th and issue the report by the end of the following week the 1st of March. If you are happy to proceed on this basis can you please drop Andy and myself a line back to confirm. Also it would probably be useful to have a chat to talk through your requirements. If you could give me a call when it is convenient it would be appreciated, my number is on my signature below.

Regards,

s. 40(2)

[REDACTED]
Associate Director



[REDACTED]

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From: S. 40(2) [redacted]@homesengland.gov.uk]

Sent: 05 February 2019 08:44

To: S. 40(2) [redacted]@wsp.com>

Cc: S. 40(2) [redacted]@wsp.com>

Subject: RE: WSP Structural Survey Quotation for Fence House

[redacted]

Thanks for this, would your team be able to carry out an inspection on Tuesday 19th February?

We would also require the report by the end of w/c 25th February, will this be possible?

Many thanks,

[redacted]

From: [redacted]@wsp.com]

Sent: 01 February 2019 13:42

To: S. 40(2) [redacted]

Cc: [redacted]

Subject: WSP Structural Survey Quotation for Fence House

S. 40(2)

Further to your recent enquiry we are pleased to submit our consultancy proposal for this project.

We understand that the project involves a visual structural survey of the Property during the week commencing 18th February and preparation of a survey report summarising our findings.

Scope of Services

We will provide advice on the general condition of the structural elements of the Property. Identify structural issues which may require remediation works and comment on the suitability of the existing structure for the proposed residential use. In providing the Services we will undertake a visual structural survey of the Property in a single visit on a date agreed with the Client. It is proposed that the following will be specifically addressed in our subsequent Structural Survey Report:-

- The overall design and method of construction of the Property.
- The general quality of construction and condition of the structure of the Property.
- A description of the main structural elements together with an assessment of the current state of their repair and the requirement for remediation works.
- Advise the Client whether it is desirable or prudent to obtain any advice from specialist consultants relating to any matter affecting the condition or construction of the Property.
- Make initial recommendations to the Client on the technical viability of the Property for the proposed reuse.

Following our inspection of the Property we report in writing our findings to the Client within two weeks of the date of the survey. The report will be addressed to the Client and will be for the benefit of the Client only unless otherwise agreed.

Assumptions and Exclusions

This proposal is based upon the following assumptions:-

- A copy of the Asbestos Management Plan for the building will be provided a week before the proposed survey date.
- The survey will be limited to the main three storey section of the school, will not cover any areas beyond the original main building. Such as the Main Hall, Kitchen and additional class room all which are considered subsequent additions.
- The survey will consist of a visual inspection of the generally accessible areas of the existing building only. No intrusive investigations or removal of finishes will be carried out.
- Facilities or maintenance staff will be available to provide safe access to plant rooms, service risers and ceiling

voids etc as required.

- Inspection of the external facades of the building will consist of a visual inspection from ground level only.

Fees and Disbursements

Our base fee requirements for the project will be a lump sum of [REDACTED] (ex VAT) inclusive of expenses.

In the event that additional duties are required, then these will be the subject of separately agreed lump sum fees or undertaken on a time charge basis.

Kind Regards

s. 40(2)

[REDACTED]
[REDACTED]
Technical Director | Ground Risk & Remediation



[REDACTED]

8 First Street, Manchester, M15 4RP

wsp.com

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TENDER FORM 6 – Financial Offer & Conditionality

RESIDENTIAL DEVELOPMENT LAND AT FENCE AVENUE, MACCLESFIELD

Bidders should note that:

- A minimum of 5% of the premium tendered is payable as a deposit on exchange of contracts on the Agreement for Lease
- A minimum of 10% of the premium is payable on completion of the Building Lease
- All balancing payments must be made not later than the mid-point of the bidder's sales programme (i.e. payment in full must be made by the time 50% of the scheme is sold)

Financial Offer

(PLEASE COMPLETE FULL NAME IN BLOCK CAPITALS)

I/We _____ ("the Developer")

of _____

(Company Number: _____) Daytime Tel No: _____

provide an **Offer Price** for the global sum of (in words)

£ _____ (in figures) exclusive of Value Added Tax (the "Offer Price")

Payable as follows:-

1. On exchange of contracts for the Agreement for Lease, the sum of

_____ (in words)

£ _____ (in figures)

Will be paid, which reflects a sum equivalent to ____% of the overall offer price ('the deposit')

2. On completion of the Building Lease, the sum of

_____ (in words)

£ _____ (in figures)

Will be paid, which reflects a sum equivalent to ____% of the overall offer price

3. In the event that the full offer price is not paid at completion of the Building Lease, please set out your schedule of payments below:

Milestone / event on which payment would be made	Number of months after start on site the milestone / event will occur	The amount (in figures) to be paid	The %age proportion of the offer price this reflects

Conditionality

The following table should capture all conditions to be attached to the bidder's offer – no matter how minor. HE's preference is that offers are tendered on a 'subject to planning' basis only – however if your offer is (for example) made subject to funding, subject to board / internal approvals, subject to a report on title, subject to being assigned all warranties by HE for technical studies, subject to utility assessments or subject to provisional costs, etc... – then these must be captured below.

Description of condition attached to offer	What action do you propose to take to discharge / withdraw this condition?	What is the likelihood of your action to discharge the condition being successful?	Please indicate timescales for discharging the condition

The Developer's designated officer is

Name : _____

Address : _____

Telephone Number _____

Fax Number _____

e-mail: _____

The Developer's Solicitors are:

Firm Details: _____

Address : _____

DX: _____

Contact Name _____

Telephone Number _____

Fax Number _____

e-mail: _____

The Developer acknowledges that its bid is submitted with due regard to and on the basis of all the items contained in the Tender Documents which comprise all the documents and information published in the data room.

Signed _____ **Dated** _____ **20**_____
(by the authority of the Developer)

Please print name

Status/position