

Dated 202[]

Homes and Communities Agency

and

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Help to Buy Equity Loan Funding Administration Agreement

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Help to Buy Equity Loan Funding Administration Agreement

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Parties

- (1) **Homes and Communities Agency** (trading as Homes England) a body corporate under Section 1 of the Housing and Regeneration Act 2008, of One Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**); and
- (2) [] (company number []) whose registered office is at [] (the **Developer**).

Background

- (A) Homes England is empowered under Section 19 of the Housing and Regeneration Act 2008 to provide financial assistance to any person by way of a loan.
- (B) Homes England has agreed pursuant to the Help to Buy Initiative to make funds available for the purpose of providing equity loans secured by a mortgage to Eligible Purchasers in order to enable such Eligible Purchasers to purchase Eligible Dwellings for their own occupation.
- (C) The Developer has registered with Homes England in order to promote and facilitate access to the Help to Buy Initiative amongst Potential Purchasers in relation to its Eligible Dwellings.
- (D) It is a condition of Homes England's provision of funding that the Contribution Percentage will be secured on the title of the Eligible Dwelling purchased by an Eligible Purchaser by way of an equity mortgage in favour of Homes England.
- (E) It is a further condition of the Help to Buy Initiative that any purchaser wishing to participate in the scheme irrevocably agrees (as part of their application) to the Homes England Contribution being paid directly to the Developer (via the Developer's Solicitor) upon completion of the sale of the relevant Eligible Dwelling.
- (F) The parties have entered into this Agreement in order to document the terms relating to the administration and receipt of the Equity Loan Funding and to enable the Developer and Homes England to agree forecasts for future potential sales (subject always to purchaser led demand) in order to effectively manage the Help to Buy Initiative.

Agreed Terms

1 Definitions and interpretation

1.1 Definitions

In this Agreement where the context so admits;

Additional Area means an Area in relation to which there is no identified Equity Loan Funding Projected Capacity;

Advertising Requirements means:

- (a) Any policies, procedures, documentation and/or such form of wording together with warnings examples and APR illustrations as Homes England may from time to time either specify as part of the Participation Guidance or provide to the Developer for the purposes of inclusion within any advertisement or relevant communication relating to the Help to Buy Initiative; and
- (b) all other legislative and regulatory requirements relating to the advertisement of credit agreements to individual borrowers including where applicable the Financial Promotions regime so far as the same are applicable to this Agreement and the Developer's participation in the Help to Buy Initiative

Agreement means this Help to Buy Equity Loan Funding Administration Agreement (including its schedules, Annexures and Appendices (if any));

Annual Forecast means the annual sales and delivery forecast for each Year submitted by the Developer to Homes England via IMS or by such other means and in such other form as Homes England shall notify the Developer of from time to time;

Approved Lender means the lender providing mortgage finance to the Eligible Purchaser (secured by a prior legal charge) and who is:

- (a) a Qualifying Lender; and
- (b) who is aware of the terms of Help to Buy and who has confirmed that it will provide prior loans to Eligible Purchasers participating in Help to Buy

Approved Inspector has identical meaning as defined within Section 49(1) of the Building Act 1984

Area means either one of the eight geographical areas detailed in Schedule 2 Part 1 or the London Area;

Authority to Exchange means a notice served by the Nominated Help to Buy Agent on the Eligible Purchaser's conveyancer in the form set out in the Conveyancer's Pack or such other form as Homes England may from time to time reasonably require providing Homes England's consent to exchange contracts on the Eligible Dwelling;

Authority to Proceed means a notice served by the Nominated Help to Buy Agent on the Eligible Purchaser's conveyancer and the Developer in the form set out in the Conveyancer's Pack or such other form as Homes England may from time to time reasonably require;

Building Regulations means the building regulations regime in force in England and Wales being as a minimum standard either:

(a) Building Regulations 2000 (as amended by The Building and Approved Inspectors (Amendment) Regulations 2006); or

(b) the Building Regulations 2010

Building Regulation Requirements means:

(a) the Building Regulations standards in respect of the relevant Eligible Dwelling prescribed by either:

(i) the Building Control Department; or

(ii) within the Initial Notice issued by an Approved Inspector to the Building Control Department where Building Regulations are being supervised by an Approved Inspector; and

(b) (Unless the Eligible Dwelling is not an Exempt Flat) Part L 2013 Building Regulations.

Building a Safer Future Charter means the charter entitled "Building a Safer Future Charter" which sets out a list of build environment safety values for homebuilders to comply with ahead of all other building priorities as more particularly described at <https://buildingasaferfuture.org.uk/>;

Building Control Department means the building control department located within the Local Planning Authority responsible for the supervision for the relevant Eligible Dwelling;

Building Lease means any building lease or building licence entered into between the Developer and the Freehold Owner in respect of any Eligible Dwelling where the Developer does not have a Secure Legal Interest;

Business Day means any day other than a Saturday, Sunday or a statutory Bank Holiday in England or any day between 24 December and 3 January (inclusive);

Conditions Precedent means the conditions precedent (including where relevant dates for satisfaction of the same) set out in Schedule 3;

Confidential Information means in respect of Homes England all information relating to Homes England or the existence or terms of this Agreement or any Equity Mortgage in respect of which the Developer becomes aware in its capacity as a party to this Agreement or which is received by the Developer in relation to this Agreement or any Equity Mortgage from either Homes England or any of its advisors or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its

advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Developer means such specific information as the Developer shall have identified to Homes England in writing prior to the date of this Agreement as confidential information for the purposes of this Agreement;

Consents means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any governmental or other authority, the local planning authority, landlords funder, adjoining landowners or any other person required to undertake the works and deliver the Dwellings;

Contribution Percentage means the percentage of the Full Purchase Price specified as such in the relevant Authority to Proceed and being calculated as follows:

$$\frac{\text{Homes England Contribution}}{\text{Full Purchase Price}} \times 100$$

provided that in no case shall the Contribution Percentage:

- (a) exceed 20% or be less than 10% for Non-London Area Dwellings; and
- (b) exceed 40% or be less than 10% for London Area Dwellings;

Crown Estate means the statutory corporation constituted under the Crown Estate Act 1961;

Developer Default means:

- (a) the Developer or where applicable any subcontractor, employee, officer or agent commits a Prohibited Act (in respect of which the Waiver Condition has not been satisfied) or breaches the provisions of Clause 30;
- (b) an Insolvency Event occurs in respect of the Developer (or in respect of any corporate directors of the Developer) and/or the Developer ceases trading;
- (c) the Developer experiences a Material change in its financial or commercial circumstances;
- (d) any representation or warranty (including any Warranty) made by the Developer pursuant to Clause 5 is incorrect in any Material respect when made or repeated;
- (e) the Developer fails to comply with the Advertising Requirements;
- (f) the Developer commits a Material breach of this Agreement (either alone or in the context of any previous breaches);

- (g) any senior employee, executive, board member or partner (as applicable) of the Developer is convicted of dishonesty or fraud;
- (h) any Disposal of an Eligible Dwelling to an Eligible Purchaser where a Solicitor Form 1 Undertaking has not been provided before exchange of contracts and/or a Solicitor Form 2 Undertaking has not been provided in advance of completion, in both cases signed by and on behalf of the relevant Eligible Purchaser's conveyancer;
- (i) any Consent (which is considered to be Material) is withdrawn or revoked;
- (j) any Eligible Dwelling not having been completed to the Required Standards;
- (k) any claim for Equity Loan Funding is submitted by or on behalf of the Developer in respect of any dwelling which does not qualify as an Eligible Dwelling or any purchaser who does not qualify as an Eligible Purchaser;
- (l) there has been an act/omission on the part of the Developer or any of its subcontractors, employees, officers or agents that in Homes England's opinion (using its absolute discretion) harms the reputation of Homes England, the Help to Buy Initiative or brings them into disrepute; and
- (m) Homes England becomes aware of any changes (which are considered to be Material) in any of the information provided at any time by or on behalf of the Developer (including by the Developer's Solicitor) to Homes England.

Developer Personnel means all employees, agents, consultants and contractors of the Developer and/or of any sub-contractors;

Developer's Solicitor means a solicitor whose details have been provided to Homes England and the Nominated Help to Buy Agent in writing from time to time as being the sole solicitor who is appointed by the Developer for all the Areas under this Agreement and who is capable of holding the Homes England Contribution to order within its interest bearing client account;

Discounted Market Sale Dwelling means any dwelling being provided by the Developer at a discount to its Market Value;

Disposal means an assent or transfer;

Dispute Resolution Procedure means the procedure set out in Clause 18;

Dwelling means any unit identified by the Developer as potentially eligible for funding in accordance with the terms of this Agreement;

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;

Eligible Dwelling means a Dwelling which immediately prior to the call for a transfer of Equity Loan Funding by Homes England to the Developer pursuant to Clause 7.13:

- (a) is fit for beneficial occupation as a residential dwelling in accordance with the requirements of the NHBC or equivalent requirements;
- (b) has the benefit of a suitable Listed Warranty Product;
- (c) complies with all:
 - (i) relevant Legislation;
 - (ii) pre-commencement and pre-occupation planning conditions set out within the relevant Planning Permission and/or any Planning Agreement affecting an Eligible Dwelling; and
 - (iii) Building Regulation Requirements;
- (d) has a Market Value below the Maximum Limit;
- (e) has reached Practical Completion on or before the First Longstop Date for the relevant Year;
- (f) (in the case of any House which does not qualify as an Exempt Leasehold House) will be disposed of on the basis of a freehold transfer to the Eligible Purchaser;
- (g) is not provided as affordable housing in satisfaction of a Planning Agreement or other Planning Permission;
- (h) is not being provided by the Developer as a Discounted Market Sale Dwelling;
- (i) does not have the benefit of grant or public subsidy (other than the Equity Loan Funding or any Local Authority Accelerated Construction Funding, the Home Building Fund or any alternative funding or scheme confirmed by Homes England as being subject to this exception);
- (j) is not (and shall not be as a result of the sale of such Dwelling to an Eligible Purchaser) subject to any ground rent or charge of any similar nature which is higher than a peppercorn (excluding for the avoidance of doubt standard reasonable management, service or estate charges);
- (k) complies with any such additional build quality standards as the Secretary of State may prescribe and publicise as applying to properties which qualify to be funded by the Help to Buy Initiative from time to time; and
- (l) complies with Paragraph 12 of Schedule 4 (Warranties) of this Agreement.

Eligible Purchaser means a person:

- (a) who satisfies the eligibility criteria issued from time to time by Homes England in relation to Help to Buy;
- (b) who is a First Time Buyer;
- (c) who has been approved as eligible by the Nominated Help to Buy Agent;
- (d) who is taking out a prior first fixed charge with an Approved Lender; and
- (e) who is not connected with the Developer (save where Homes England confirms in writing that any such person qualifies as an Eligible Purchaser).

Eligible Purchaser's Certificate of Title means a certificate of title substantially in the form set out in the Conveyancer's Pack;

Equity Loan Funding means the amount payable by Homes England (pursuant to its powers set out in Section 19 of the Housing and Regeneration Act 2008) on a unit-by-unit basis, which shall be set as the equivalent of the Homes England Contribution in respect of each Eligible Dwelling, and which shall in aggregate be up to but not exceed the Equity Loan Funding Projected Capacity per Area (subject always to the terms of this Agreement);

Equity Loan Funding Projected Capacity has the meaning set out in the Forecast Details, as may be amended from time to time in accordance with the terms of this Agreement;

Equity Mortgage means the equity mortgage in the form published by Homes England and as may be updated by Homes England from time to time;

Estate Rent Charge means a rentcharge created pursuant to Section 2(4) of the Rentcharges Act 1977;

Exempt Flat means any Flat located within a building which;

(a) has had its foundations constructed on or before 30 April 2020; or

(b) (subject to specific approval in writing by Homes England) the design of the building cannot be adapted to comply with Part L 2013 Building Regulations.

Exempt Leasehold House means a House which the Developer's Solicitor confirms in writing to Homes England (supported by such documentary title evidence as Homes England may reasonably require) is constructed on either Qualifying Crown Estate Land or the Qualifying National Trust Land

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

FCA means the Financial Conduct Authority or any successor body taking over its regulatory functions;

First Longstop Date shall mean the First Year 1 Longstop Date or the First Year 2 Longstop Date as applicable;

First Prospectus means the prospectus originally published on 4 October 2016 by Homes England (as may be updated from time to time);

First Time Buyer means a person who meets the criteria set out in Schedule 6;

First Year 1 Longstop Date means 31 December 2021 or such other date as may be agreed between the parties (which shall not in any event be later than the Second Year 1 Longstop Date);

First Year 2 Longstop Date means 31 December 2022 or such other date as may be agreed between the parties (which shall not in any event be later than the Second Year 2 Longstop Date);

Flat means any self-contained Dwelling located within a building which comprises two or more Dwellings;

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;

Forecast Details means for each Area and for each of Year 1 and Year 2 (as applicable):

- (a) the Equity Loan Funding Projected Capacity; and
- (b) the Forecast Numbers;

as set out in Schedule 1 or as subsequently detailed on IMS as the same may be amended from time to time by the parties in accordance with Clause 8.

Forecast Number means the number of sales of Eligible Dwellings in each Area forecasted by the Developer as anticipated to be achieved prior to the relevant Second Longstop Date for that Year as set out in the Forecast Details;

Freehold Owner means (if different to the Developer) the registered proprietor of the freehold title to the Eligible Dwelling registered at HM Land Registry and who is also able to demonstrate a Secure Legal Interest.

Full Purchase Price means the full purchase price of any Eligible Dwelling which would be payable to the Developer by any purchaser but for the operation of this Agreement (such price being equal in the case of a Disposal to an Eligible Purchaser to the Reduced Purchase Price plus the Homes England Contribution) and which may not exceed the Maximum Limit;

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

Group Company means any company which is also:

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

where subsidiary and holding company shall have the meanings ascribed thereto in Section 1159 of the Companies Act 2006;

Help to Buy Agent means any agent appointed by Homes England pursuant to any Help to Buy Agent's competition carried out by Homes England;

Help to Buy and **Help to Buy Initiative** means the government home ownership initiative of the same name as described in the Help to Buy Participation Guidance;

Help to Buy Participation Guidance means the document entitled "*Help to Buy: Equity Loan (2021-2023): builder participation guidance*" in the form published by Homes England and as may be updated by Homes England from time to time;

HBF Star Rating Scheme means the star rating scheme operated by the Home Builders Federation which awards participant homebuilders' stars for customer satisfaction;

Home Builders Federation means the Home Builders Federation of HBF House, 27 Broadwall London, DE1 9PL or such other replacement or successor trade body for homebuilders in England and Wales or its replacement or successor;

Home Building Fund means the funding programme administered by Homes England as described in the First Prospectus;

Homes England Contribution means Homes England's contribution in value per Eligible Dwelling (as specified in the relevant Authority to Proceed or as subsequently agreed with the Nominated Help to Buy Agent) which shall be:

- (a) for Non-London Area Dwellings between 20% and 10% of the Market Value of the Eligible Dwelling; and
- (b) for London Area Dwellings between 40% and 10% of the Market Value of the Eligible Dwelling;

Homes England Data means:-

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - i supplied to the Developer by or on behalf of Homes England; or
 - ii which the Developer is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which Homes England is the Data Controller.

Homes England Representative means the individual notified to the Developer by Homes England at the commencement of this Agreement or such other individual as Homes England may notify to the Developer from time to time;

Home Purchase Plan means a home purchase plan in accordance with article 63F(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544);

House means any building designed or adapted as a single dwelling provided that in circumstances where the building is not structurally detached:

- (a) such building is not divided horizontally into flats or maisonettes; and
- (b) (where a building is divided vertically) notwithstanding that the building as a whole is not a house.

IMS means Homes England's on-line investment management system from time to time or any successor system;

Incentives means any inducement or incentive provided to Eligible Purchasers of Eligible Dwellings over and above the standard specification for such dwellings (including without limitation any subsidies services cash-backs white goods additional fixtures fittings or enhanced specifications);

Initial Notice has identical meaning as defined within Section 47(1) of the Building Act 1984;

Information means:

- (a) in relation to FOIA has the meaning given under section 84 of the FOIA which is held by Homes England at the time of receipt of an RFI; and
- (b) in relation to EIR has the meaning given under the definition of **Environmental Information** in section 2 of EIR and which is held by Homes England at the time of receipt of an RFI;

Information Commissioner has the meaning set out in section 114 of the Data Protection Act 2018 and for the avoidance of doubt is the UK's independent body set up to uphold and enforce information rights;

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

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness;

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

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Business Days of commencement; or
- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Developer;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;

Know your customer requirements means any know your customer requirements specified by Homes England to the Developer from time to time;

Legislation means:

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

in each case in the United Kingdom;

Listed Warranty Product means one of the new build home guarantee or similar warranty products detailed in the table published by Homes England from time to time;

Local Authority Accelerated Construction Funding means the funding programme administered by Homes England as described in the Second Prospectus;

London Area means the geographical area detailed in Schedule 2 Part 2;

London Area Dwelling means an Eligible Dwelling situated within the London Area;

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands suffered or incurred by Homes England including interest at the Prescribed Rate such interest to run from the date upon which the Losses are incurred until the date upon which Homes England receives full reimbursement of its Losses;

Market Value means the best price reasonably obtainable in the open market for each Eligible Dwelling (disregarding the existence of this Agreement and the availability of the Equity Mortgage) as confirmed by the valuation report obtained by the Qualifying Lender (or as stated in the mortgage offer where the valuation report is not available) in relation to an individual purchase of an Eligible Dwelling;

Material means any circumstances or factors which could, in the opinion of Homes England (using its absolute discretion):

- (a) materially impair the ability of the Developer to perform and comply with its obligations under this Agreement; or
- (b) materially affect the validity or enforceability of, or the effectiveness of any rights or remedies of Homes England under this Agreement or any Equity Mortgage;

Maximum Limit means the amount set by Homes England from time to time for each Operating Area and the applicable amounts at the date of this Agreement are set out in Schedule 7;

National Trust means The National Trust for Places of Historic Interest or Natural Beauty' a registered charity under number 205846, incorporated and deriving its powers from the National Trust Acts 1907;

New Homes Ombudsman means the New Homes Ombudsman¹ or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

NHBC means the National House Builders' Council;

¹ As established pursuant to any legislation passed pursuant to the Building Safety Bill

Nominated Help to Buy Agent means such Help to Buy Agent as Homes England shall from time to time notify the Developer in writing will be a Nominated Help to Buy Agent for the purposes of this Agreement provided always that Homes England may itself fulfil the role of Nominated Help to Buy Agent where none has been appointed;

Non London Area Dwelling means an Eligible Dwelling which is in an Area which is not the London Area;

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

Operating Area means the regions identified as HCA Operating Areas in Schedule 2;

Other Buyers means other buyers of Dwellings who are not Eligible Purchasers;

Part L 2013 Building Regulations means the 2013 energy efficiency requirements of Building Regulations (Part L) contained within the Building Regulations 2010 approved document published by the Ministry of Housing Communities and Local Government and entitled; "*Approved Document L1A: Conservation of fuel and power in new dwellings*".

Permitted Incentives means Incentives to a value equal to those which would be made available to any purchaser of the relevant Eligible Dwelling whether or not they are an Eligible Purchaser participating in the Help to Buy Initiative PROVIDED THAT:

- (a) the value of such Incentives shall not be such that their existence or absence would affect the Market Value of the Eligible Dwellings;
- (b) the value of such Incentives shall not in any event exceed 5% (five per cent) of the Full Purchase Price of the Eligible Dwelling; and
- (c) such Incentives comply with the requirements of UK Finance and which for the avoidance of doubt shall be disclosed on UK Finance's disclosure of incentives form;

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

Planning Permission means the grant of detailed planning permission either by the local planning authority or the Secretary of State;

Potential Purchaser means:

- (a) any persons interested (or may be interested) in purchasing an Eligible Dwelling from the Developer; and
- (b) who has not exchanged contracts in respect of an Eligible Dwelling.

References to **Potential Purchaser** shall include references to:

- i any Potential Purchaser who subsequently becomes an Eligible Purchaser and whose application for Help to Buy has been approved by the Help to Buy Agent via the issue of the Authority to Proceed; or
- ii any Potential Purchaser whose application for Help to Buy is rejected by the Help to Buy Agent.

Practical Completion means the Dwelling has been completed in accordance with the terms of the relevant building contract and is fit for beneficial occupation as a residential dwelling in accordance with NHBC or equivalent requirements current at the date of inspection, subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Dwelling and which would be reasonable to include in a snagging list;

Prescribed Rate means 2% (two per cent) above the base lending rate of the Royal Bank of Scotland plc from time to time;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - ii for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement (or any other agreement relative to this Agreement to which Homes England is a party) in circumstances where commission has been paid or has been agreed to be paid either:
 - iii by the Developer, or
 - iv on its behalf, or
 - v to its knowledge,

to any other party (including Homes England) unless before the relevant agreement is entered into particulars of any such commission (including

the terms and conditions of its payment) have been disclosed in writing to Homes England;

- (c) committing any offence:
 - i under Legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement;
or
 - iii under the Bribery Act 2010 and/or Prevention of Corruption Acts 1889-1916; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England;

Property Information Form means a notice served by the Eligible Purchaser on the Nominated Help to Buy Agent providing details of the Eligible Dwelling in such form as Homes England may prescribe from time to time;

Qualifying Lender means an institution authorised by the Financial Conduct Authority pursuant to the Financial Services and Markets Act 2000 to "enter into a regulated mortgage contract as lender" and "Qualifying Lenders" shall be construed accordingly;

Qualifying Crown Estate Land means inalienable freehold land held by the Crown Estate upon which the Developer has constructed the relevant dwelling;

Qualifying National Trust Land means inalienable freehold land held by the National Trust upon which the Developer has constructed the relevant dwelling;

Reduced Purchase Price means the amount payable by an Eligible Purchaser in cash terms (excluding any mortgage fees of the relevant Qualifying Lender) for the purchase of an Eligible Dwelling after deducting the Homes England Contribution from the Full Purchase Price;

Regulations means the regulations from time to time issued by Homes England in respect of the Help to Buy;

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Homes England and "Regulatory Body" shall be construed accordingly;

Relevant Disposal means the Disposal of an Eligible Dwelling to an Eligible Purchaser;

Request for Information/RFI shall have the meaning set out in FOIA or any request for information under EIR which may relate to any Dwelling and/or Site, this Agreement any Equity Mortgage or any activities or business of Homes England;

Required Standards means the requirements of this Agreement, Good Industry Practice, all Consents and Legislation;

Requisite Contract Terms means the provisions to be included in the contract for the sale of any Eligible Dwelling to an Eligible Purchaser as set out in the Conveyancer's Pack or as the same may from time to time reasonably be required to be amended by Homes England with the approval of the Developer (such approval not to be unreasonably withheld or delayed);

Second Longstop Date shall mean the Second Year 1 Longstop Date or the Second Year 2 Longstop Date as applicable;

Second Prospectus means the prospectus originally published on 3 January 2017 by Homes England (as may be updated from time to time);

Second Year 1 Longstop Date means 31 March 2022 or such other date as may be agreed between the parties;

Second Year 2 Longstop Date means 31 March 2023 or such other date as may be agreed between the parties;

Secretary of State means the Secretary of State for Housing, Communities and Local Government or such other secretary of state who may have responsibility for the Help to Buy Initiative from time to time;

Secure Legal Interest means the Developer or the Freehold Owner (as applicable) has in respect of the Eligible Dwelling a:

- (a) freehold title registered with title absolute;
- (b) leasehold title (where the lease has at least 120 years unexpired duration) registered with title absolute; or
- (c) freehold title registered with possessory title or good leasehold title (where the lease has at least 120 years unexpired duration) and defective title indemnity insurance in favour of the Developer (and for the benefit of any Eligible Purchaser and their mortgagees) with a limit of indemnity to at least the equivalent of the Market Value of the total number of Eligible Dwellings available on that Site.

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

Senior Officer means the employee of the Developer holding the title "Finance Director" or such other person with equivalent seniority notified in writing to Homes England by the Developer;

Significant Event means an event which could reasonably be considered to prejudice the reputation of Homes England or the Help to Buy Initiative;

Site means the overall development site upon which the Dwelling is located;

Solicitor's Form 1 Undertaking means an undertaking duly completed in favour of Homes England by a conveyancer acting on behalf of the Eligible Purchaser and its Approved Lender substantially in the form set out in the Conveyancer's Pack;

Solicitor's Form 2 Undertaking means an unqualified Eligible Purchaser's Certificate of Title and undertaking duly completed in favour of Homes England by a conveyancer acting on behalf of the Eligible Purchaser and its Approved Lender substantially in the form set out in the Conveyancer's Pack;

Conveyancer's Pack means a pack of documentation to be provided to Eligible Purchaser's legal representatives in substantially the form as published by Homes England as may be updated by Homes England from time to time;

Standard Literature means the explanatory and other documentation from time to time supplied by Homes England or the Nominated Help to Buy Agent for provision to the Eligible Purchaser, the Approved Lender and the Eligible Purchaser's conveyancers;

Transaction Confirmation means a notice served by the Help to Buy Agent on the Developer's Solicitor in accordance with Clause 7 in such form as Homes England may prescribe from time to time;

UK Finance means UK Finance of 5th Floor, 1 Angel Court, London EC2R 7HJ or any successor body;

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

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

- (a) an employee acting independently of the Developer and such employee's employment is terminated within twenty (20) Business Days of Homes England serving notice on the Developer of such Prohibited Act; or
- (b) a subcontractor (or any employee of a subcontractor not acting independently of the subcontractor) and the relevant subcontract is terminated within twenty (20) Business Days of Homes England serving notice on the Developer of such Prohibited Act; or
- (c) an employee of a subcontractor acting independently of such subcontractor and such employee's employment is terminated within twenty (20) Business Days of Homes England serving notice on the Developer of such Prohibited Act; or
- (d) any person not specified in parts (a), (b) or (c) and the Developer (or any subcontractor) has severed links with such person (whether his employment, appointment or any other link) within twenty (20) Business Days of Homes England serving notice on the Developer of such Prohibited Act;

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Developer or relevant subcontractor;

Warranties means the warranties set out in Schedule 4;

Warranty means any one of the Warranties;

Year means Year 1 or Year 2 as applicable;

Year 1 means the period from 1 April 2021 to 31 March 2022;

Year 2 means the period from 1 April 2022 to 31 March 2023;

1.2 Interpretation

1.2.1 The masculine includes the feminine and vice versa.

1.2.2 The singular includes the plural and vice versa.

1.2.3 Any reference in this Agreement to any clause, sub-clause, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, appendix or section heading of this Agreement.

1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.

1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.

1.2.6 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1.2.7 Headings are for convenience of reference only.

1.2.8 A time of day shall be a reference to London time.

1.2.9 A party means a party to this Agreement.

1.2.10 The words includes or including are to be construed without limitation.

1.2.11 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.

1.2.12 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such

consent or approval or notice shall only be validly given if it is in writing and signed by such person as may be specified by Homes England by notice in writing to the Developer.

- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.16 Save where a contrary intention is shown, or where an express discretion is given by this Agreement, Homes England shall act reasonably in exercising its rights hereunder.
- 1.2.17 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.18 No review comment or approval by Homes England under the provisions of this Agreement shall operate to exclude or limit the Developer's obligations or liabilities under this Agreement save where Homes England have confirmed the said review comment or approval in writing.
- 1.2.19 The Developer shall be responsible as against Homes England for the acts or omissions of any of its subcontractors, officers, employees and agents as if they were the acts or omissions of the Developer.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve the Developer of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.

2 Commencement and duration

- 2.1 Subject always to Clause 2.2 this Agreement shall commence on the date of this Agreement and Homes England's obligation to pay any Equity Loan Funding and the Developer's obligation to market and dispose of Eligible Dwellings to Eligible Purchasers in order to access Equity Loan Funding shall continue (subject to earlier termination) until the Second Year 2 Longstop Date.
- 2.2 Homes England's obligation to pay Equity Loan Funding in accordance with the terms of this Agreement shall only arise:

- 2.2.1 where an Eligible Purchaser purchases an Eligible Dwelling in accordance with the conditions of the Help to Buy Initiative; and
 - 2.2.2 where the required amount of Equity Loan Funding for any such purchase does not result in the aggregate sum of the Homes England Contributions paid or payable (at the direction of the relevant Eligible Purchaser) to the Developer pursuant to this Agreement exceeding the Equity Loan Funding Projected Capacity in each Area unless such payment is specifically authorised in writing in advance by Homes England.
 - 2.2.3 where Homes England have received all the documents and other evidence listed in **Part 1, Schedule 3 (Conditions Precedent)**, each in form and substance satisfactory to Homes England; and
 - 2.2.4 where each time that the Developer calls on Homes England for the Equity Loan Funding pursuant to Clause 7.13 the Developer has confirmed to Homes England (in a form and substance satisfactory to Homes England) that it has satisfied the conditions precedent set out at **Part 2 Schedule 3 (Conditions Precedent)**
- 2.3 Homes England shall notify the Developer promptly upon being satisfied with the Developer's compliance of Clause 2.2.3.
- 2.4 The Conditions Precedent are for the sole benefit of Homes England and may only be waived or otherwise deferred by Homes England in writing at its entire discretion.

3 **Equity Loan Funding – Agreed Conditions**

- 3.1 Homes England has agreed to make Equity Loan Funding available to Eligible Purchasers on a unit-by-unit basis in part payment of their purchase of an Eligible Dwelling and to pay such Equity Loan Funding to the Developer (with the agreement of the Eligible Purchaser) subject to and in accordance with the terms and conditions of this Agreement.
- 3.2 Homes England shall, subject as hereinafter provided, pay the Equity Loan Funding to the Developer (as described in Clause 3.1) in accordance with the terms of Clause 4.
- 3.3 The Developer undertakes to comply with the terms and conditions subject to which Equity Loan Funding is made available and all the obligations to be observed or otherwise complied with by it under this Agreement.
- 3.4 In accordance with the terms of the Help to Buy Initiative and provided the Conditions Precedent have been satisfied in accordance with the requirements of Clause 3.2 for each transaction, the Developer shall only:
 - 3.4.1 sell the relevant Eligible Dwellings to the approved Eligible Purchaser for the Full Purchase Price which shall be treated as satisfied by payment of the Reduced Purchase Price and the Eligible Purchaser entering into the Equity Mortgage; and
 - 3.4.2 deduct the Homes England Contribution from the Full Purchase Price;

- 3.5 The Developer acknowledges and agrees that the Equity Loan Funding is made available by Homes England solely for the purpose of assisting Eligible Purchasers to purchase Eligible Dwellings on equity mortgage terms pursuant to the Help to Buy initiative. The parties have entered into this Agreement:
- 3.5.1 to enable the payment of such Equity Loan Funding which is properly due and payable to Eligible Purchasers directly to the Developer on a per unit basis;
 - 3.5.2 enable the parties to agree and monitor forecasts for the availability of the Developer's Eligible Dwellings for purchase under the Help to Buy Initiative; and
 - 3.5.3 to assist Homes England with the monitoring and projections of spend.
- 3.6 In the absence of the Developer or its solicitor being placed on notice to the contrary the Developer shall not be responsible for verifying the due completion of the Equity Mortgage and the relevant Conditions Precedent shall be treated as satisfied if the Developer obtains an undertaking in favour of its solicitor (from the legal advisor acting for the Eligible Purchaser and its Approved Lender) that the Solicitor's Form 2 Undertaking has been duly provided to the Nominated Help to Buy Agent and that that it will comply with its terms PROVIDED THAT (if required by Homes England) the Developer shall use all reasonable endeavours to procure that the undertaking which has been received by its solicitor is enforced and complied with.
- 3.7 The parties hereby agree that the Forecast Details for each Year represent the Developer's estimate of the potential demand for the Help to Buy Initiative from Potential Purchasers in relation to their Eligible Dwellings and that, subject to any changes agreed pursuant to Clause 8, the Developer shall use reasonable endeavours to promote and market the Help to Buy Initiative in order to achieve the Forecast Number for each Area by the relevant Second Longstop Date in each Year.

4 **Payment and repayment**

4.1 **Calculation of Contributions**

Subject to Clause 4.4 Homes England shall contribute by way of a loan to an Eligible Purchaser no less than 10% (ten per cent) but no more than 20% (twenty per cent) of the Market Value of the Eligible Dwelling for a Non London Area Dwelling and no less than 10% but no more than 40% for a London Area Dwelling depending on the outcome of the eligibility and financial assessment of the Eligible Purchaser by the Nominated Help to Buy Agent.

4.2 **Pricing and Progress**

4.2.1 The Developer shall dispose of all Eligible Dwellings at no more than Market Value. In determining an estimated Market Value for the purposes of marketing the Eligible Dwellings the Developer shall act in good faith and shall not make any distinction between dwellings being disposed of to Eligible Purchasers and dwellings being disposed of to Other Buyers.

4.2.2 In the case of the Disposal of any Eligible Dwelling to an Eligible Purchaser the Developer shall ensure:

- (a) that the Full Purchase Price is no more than the Market Value for that Eligible Dwelling;
- (b) that no Incentives are provided or allowed other than Permitted Incentives; and
- (c) that the amount of the deposit paid by the Eligible Purchaser upon exchange of contracts shall be 5% (five per cent) of the Full Purchase Price less any reservation paid by that purchaser. (For the avoidance of doubt any such reservation fee shall not exceed £500).

4.3 **Continuation of obligation to make Contributions**

Notwithstanding any Developer Default, the parties acknowledge and agree that Homes England's obligation to pay the Homes England Contribution shall continue to apply in relation to any Eligible Purchaser who has exchanged contracts, provided that the sale of the Eligible Dwelling to such Eligible Purchaser completes prior to the relevant Second Longstop Date and otherwise in accordance with the terms of this Agreement.

4.4 **No obligation to pay Equity Loan Funding**

Subject to Clause 4.3, Homes England shall have no obligation to make any payment of Equity Loan Funding to the Developer and shall be entitled to terminate this Agreement in whole or part or exercise any other available remedy in accordance with Clause 12 upon the occurrence of a Developer Default.

4.5 **Repayment of Equity Loan Funding**

Subject to Clause 4.3 but notwithstanding any other term of this Agreement, Homes England reserves the right (which right the Developer expressly acknowledges and agrees) to recover all or part of the Equity Loan Funding on demand from the Developer in circumstances where:

- 4.5.1 Equity Loan Funding has been overpaid;
- 4.5.2 all or part of the Equity Loan Funding has been wrongly paid on the basis of a misrepresentation or a Prohibited Act by or on behalf of the Developer;
- 4.5.3 this Agreement is terminated (in whole or in part) save to the extent of any Equity Loan Funding secured on an Eligible Dwelling pursuant to a Equity Mortgage; and
- 4.5.4 where Clause 7.18 applies.

together with interest which shall accrue at the Prescribed Rate from the date such Equity Loan Funding (or relevant part) was paid until it is repaid in full.

4.6 **Non-compliant contracts with purchaser**

The Developer hereby agrees that in the event it enters into any contract with an Eligible Purchaser for the purchase of an Eligible Dwelling using the Help to Buy Initiative and the

Developer is not eligible to receive Equity Loan Funding in relation to such transaction (whether as a result of a Developer Default or otherwise) then the Developer shall unconditionally release the Eligible Purchaser from such contract and return to them all deposit and/or the full reservation fees paid by that Eligible Purchaser in respect of the Eligible Dwelling.

5 Warranties and Covenants

- 5.1 As at the date of the Agreement and on each day this Agreement is subsisting (by reference to the facts and circumstances then existing) the Developer makes the representations and warranties set out in terms of the Warranties to Homes England.
- 5.2 Each of the Warranties shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.
- 5.3 All warranties (including the Warranties), representations, undertakings, indemnities and other obligations made, given or undertaken by the Developer in this Agreement are cumulative and none shall be given a limited construction by reference to any other.
- 5.4 The Developer shall indemnify and keep indemnified Homes England from and against any liabilities and Losses incurred by Homes England as a result of any breach of any of the Warranties.
- 5.5 Homes England will take reasonable steps to mitigate any Losses incurred by it as a result of any breach of any of the Warranties.

6 Developer Obligations

6.1 Marketing

- 6.1.1 Prior to undertaking any marketing in respect of Help to Buy, the Developer shall ensure it is in a position to comply with the Advertising Requirements in respect of the Equity Mortgage;
- 6.1.2 The Developer shall procure that:
- (a) all Potential Purchasers of Eligible Dwellings (who are introduced to it or who introduce themselves) are provided with the Standard Literature;
 - (b) no representations about Help to Buy or its suitability for Eligible Purchasers are made or permitted to be made by or on its behalf save as set out in the Standard Literature;
 - (c) all Potential Purchasers of Eligible Dwellings will be permitted to view the actual Eligible Dwelling that they are purchasing on or after Practical Completion (with their own surveyor if desired) before legal completion of their purchase; and
 - (d) in no circumstances shall the Developer itself either approve or determine the eligibility of any Potential Purchaser for Help to Buy or restrict any

Eligible Purchaser's ability to consult an independent financial and/or legal advisor.

- 6.1.3 The Developer shall procure that any advertisement issued by or on its behalf which makes reference to Help to Buy or the assistance available from Homes England shall comply with the Advertising Requirements;
- 6.1.4 (Where the Developer is a member of the HBF Star Rating Scheme) the Developer shall:
- (a) clearly communicate the Developer's HBF Star Rating on all Help to Buy related communications and advertisements of an Eligible Dwelling; and
 - (b) notify Homes England of any deterioration in the Developer's HBF Star Rating and co-operate promptly with any requirements communicated to the Developer by Homes England in order to address the causes.
- 6.1.5 The Developer shall procure that it takes its own legal advice in relation to complying with the Advertising Requirements;
- 6.1.6 The Developer shall procure that Homes England and Nominated Help to Buy Agent have up to date information in respect of the marketing of Eligible Dwellings and current availability and that such information is supplied in a manner which enables it to be uploaded directly onto any web site maintained by the Nominated Help to Buy Agent;
- 6.1.7 The Developer shall also procure that the information referred to in Clause 6.1.6 is also made available on request to other Help to Buy Agents who are appointed in respect of Help to Buy;
- 6.1.8 In marketing and selling the Eligible Dwellings to Eligible Purchasers:
- (a) the Developer acknowledges that it will be responsible for site specific marketing of the Dwellings and for the avoidance of doubt the Nominated Help to Buy Agent will not be responsible for marketing the Dwellings on the Developer's behalf; and
 - (b) the Developer shall use all reasonable endeavours to co-operate with the Nominated Help to Buy Agent in relation to the Disposal of the Eligible Dwellings to Eligible Purchasers;
- 6.1.9 Where an Eligible Purchaser wishes to reserve any Dwelling more than nine (9) months prior to the anticipated date of completion of the Disposal (or where this is not known, the anticipated date of Practical Completion), such reservation shall only be permitted on the basis that and the Developer shall ensure that:
- (a) the Property Information Form and reservation form in relation to any such Dwelling shall not be completed or submitted by the Eligible Purchaser more than ten (10) months prior to the anticipated legal date of completion of the Disposal (or where this is not known, the anticipated date of Practical Completion); and

- (b) without prejudice to Clause 7.9, the Developer shall not exchange contracts with the Eligible Purchaser more than six (6) months prior to the anticipated legal completion date of the Disposal (and only with the benefit of a valid Authority to Proceed and Authority to Exchange) and the actual legal completion date of the Disposal must not be more than six (6) months from the date of exchange.

6.2 Compliance with legislation

The Developer shall ensure that in exercising its rights and performing its obligations under this Agreement and in selecting and appointing any subcontractor it shall at all times comply with:

- 6.2.1 all applicable Legislation (including but not limited to legislation relating to health and safety, welfare at work, equality and diversity, anti-bribery, minimum and living wages, modern slavery and other relevant employment matters);
- 6.2.2 the Regulations and
- 6.2.3 Good Industry Practice.

6.3 New Homes Ombudsman

The Developer:

- 6.3.1 acknowledges that it is subject to the jurisdiction of the New Homes Ombudsman;
- 6.3.2 shall co-operate fully with any investigation that the New Homes Ombudsman may carry out when investigating a complaint made against the Developer; and
- 6.3.3 comply in full with the requirements that the findings of any investigation by the New Homes Ombudsman may impose upon the Developer.

6.4 Building a Safer Future Charter

The Developer shall become a registered signatory to the Building a Safer Future Charter prior to developing any Eligible Dwellings that form part of a building that is above either 18 metres or 6 floors in height, whichever is the lower.

7 Procedure for receiving payment of Equity Loan Funding

- 7.1 The Developer shall procure that all Potential Purchasers of Eligible Dwellings (who are introduced to it or who introduce themselves to the Developer) are notified of the availability of Help to Buy in respect of such Eligible Dwellings.
- 7.2 The Developer shall work with the Potential Purchaser in order to fully complete the Property Information Form and the Developer shall ensure that the completed form is supplied to the Nominated Help to Buy Agent. The Developer shall ensure that the Potential Purchaser is notified of the contents of the declaration contained in the Property Information Form prior to signing the form, particularly in relation to:

- 7.2.1 the Potential Purchaser's confirmation that they are a First Time Buyer;
 - 7.2.2 the obligation to ensure that all information provided on the Property Information Form is accurate and true; and
 - 7.2.3 the provision of the Potential Purchaser's prior consent to Homes England paying the Equity Loan Funding directly to the Developer in accordance with the terms of this Agreement
- 7.3 The Developer and Homes England shall use all reasonable endeavours to put in place (in so far as practicable) arrangements to ensure that any Potential Purchaser and their proposed purchase are subject to a full assessment by the Nominated Help to Buy Agent for eligibility (subject to full consideration of their formal application via the Property Information Form).
- 7.4 The Developer shall be entitled to require a Potential Purchaser to make a reservation of an Eligible Dwelling at the point of completing the Property Information Form provided that it is acknowledged that:
- 7.4.1 both the Developer and the Potential Purchaser shall be entitled to withdraw from a reservation prior to exchange of contracts on the same terms as would be applied to any other buyer;
 - 7.4.2 notwithstanding the generality of Clause 7.4.1 if either:
 - (a) the Authority to Proceed is not issued within twenty (20) Business Days of receipt of the fully completed Property Information Form by the Nominated Help to Buy Agent; or
 - (b) the Nominated Help to Buy Agent confirms that an Authority to Proceed authorising the Eligible Purchaser to proceed with the purchase will not be issued or shall be withdrawn prior to exchange of contracts)

either the Developer or the Potential Purchaser shall be entitled to withdraw such Eligible Dwelling from the reservation; and
 - 7.4.3 in the event that either the Developer or the Potential Purchaser withdraws from the reservation pursuant to this Clause 7.4 the Developer agrees to promptly return any reservation fee (which shall be no greater than £500) in accordance with Clause 4.2.2(c) in full to the Potential Purchaser who reserved the Eligible Dwelling
- 7.5 Homes England shall use reasonable endeavours to procure that the Nominated Help to Buy Agent;
- 7.5.1 acts expeditiously when considering any duly completed Property Information Form from a Potential Purchaser in respect of an Eligible Dwelling; and
 - 7.5.2 (in the event that the Potential Purchaser's application is approved) as soon as reasonably practicable from the date of the Nominated Help to Buy Agent's receipt of the completed Property Information Form, serves the Authority to

Proceed on the Developer and the Potential Purchaser's conveyancer as soon as reasonably practicable from the date of the Nominated Help to Buy Agents receipt of the completed Property Information Form. The Authority to Proceed will confirm in respect of the relevant Eligible Dwelling:

- (a) the Full Purchase Price;
- (b) the Homes England Contribution and the Contribution Percentage;
- (c) the Reduced Purchase Price; and
- (d) any additional cash monies that the Eligible Purchaser proposes or will be required by the Nominated Help to Buy Agent or the relevant Qualifying Lender to use in the purchase.

7.6 Homes England shall use reasonable endeavours to procure that at the same time as issuing an Authority to Proceed, the Nominated Help to Buy Agent shall issue to the Eligible Purchaser's conveyancer:

- (a) a duly completed Conveyancer's Pack; and
- (b) the completed original Equity Mortgage;

7.7 Homes England and the Developer hereby agree to comply with their respective obligations as set out in the Conveyancer's Pack.

7.8 Homes England shall use reasonable endeavours to procure that the Nominated Help to Buy Agent shall issue an Authority to Exchange to the Eligible Purchaser's conveyancer (copied to the Developer and Homes England) as soon as reasonably practicable following receipt of the duly signed Solicitor's Form 1 Undertaking.

7.9 Following receipt of both the Authority to Proceed and the Authority to Exchange the Developer shall proceed to exchange contracts for the sale of the relevant Eligible Dwelling to the Eligible Purchaser within no more than three (3) months after the date of the Authority to Proceed (save where the Authority to Proceed is confirmed in writing by the Nominated Help to Buy Agent to be extended for a further period in which case the extended period shall apply). The contract for sale of the Eligible Dwelling to the Eligible Purchaser shall:

- 7.9.1 include the Requisite Contract Terms; and
- 7.9.2 be on terms that accord with, the Authority to Proceed and the Authority to Exchange; and
- 7.9.3 require completion of the Disposal of the Eligible Dwelling to take place within six (6) months of the date of the contract or by the relevant Second Longstop Date for that year (if earlier).

7.10 If exchange of contracts in respect of the sale of the Eligible Dwelling to the Eligible Purchaser does not occur within three (3) months of the Authority to Proceed (or any confirmed period of extension as detailed in Clause 7.9) the Authority to Proceed shall cease to have effect and the Developer shall promptly notify the Nominated Help to Buy Agent.

7.11 Following exchange of contracts to dispose of an Eligible Dwelling to an Eligible Purchaser the Developer shall forthwith provide to the Nominated Help to Buy Agent a copy of the contract of sale for the Eligible Dwelling together with written confirmation of:

7.11.1 the date of exchange;

7.11.2 the proposed (or anticipated) date of completion of the Disposal; and

7.11.3 the amount of the Equity Loan Funding payable to the Developer on completion of the Disposal of that Eligible Dwelling.

7.12 Homes England shall use reasonable endeavours to procure that the Nominated Help to Buy Agent shall issue a Transaction Confirmation to the Developer following receipt of the Solicitor's Form 2 Undertaking in relation to the relevant Eligible Dwelling from the Eligible Purchaser's Solicitor.

7.13 The Developer may within three (3) Business Days of the exchange of contracts for the sale of an Eligible Dwelling to an Eligible Purchaser (but in any event no later than twelve (12) Business Days prior to the anticipated date of completion of such sale), call on Homes England through IMS for the transfer of the Equity Loan Funding equivalent to the Homes England Contribution for such Eligible Dwelling to an interest bearing client account of the Developer's Solicitor and PROVIDED THAT the Developer has confirmed on IMS:

7.13.1 the date of exchange of the Relevant Disposal;

7.13.2 the proposed (or anticipated) completion date of the Relevant Disposal;

7.13.3 the level of the Homes England Contribution;

7.13.4 the identity of the Eligible Dwelling and the Eligible Purchaser; and

7.13.5 (subject always to Clause 3.6) the satisfaction of all of the Conditions Precedent

Homes England shall transfer such Equity Loan Funding no later than such anticipated completion date to be held by the Developer's Solicitors pursuant to its undertaking to Homes England as more particularly described within Clause 7.15.

7.14 Interest at the Prescribed Rate shall accrue on the Equity Loan Funding paid pursuant to this clause from the date of payment to the Developer up to and including the date of completion of the sale of the Eligible Dwelling to the Eligible Purchaser or the date of repayment of the Equity Loan Funding to Homes England (as applicable) and shall, save where otherwise directed by Homes England, be paid to the Developer.

7.15 The Developer shall procure that the Developer's Solicitor provides one undertaking in respect of all Areas to Homes England to hold any monies received from Homes England pursuant to Clause 7.13 to the strict order of Homes England until such time as (subject to Clause 3.6) the Conditions Precedent in respect of the relevant Eligible Dwelling are met and the Developer's Solicitor has received confirmation from the Nominated Help to Buy Agent that Conditions Precedent 2.1.6(a), (b) (c) and (d) have been satisfied in respect of that Eligible Dwelling **provided always** that Homes England shall not be required to transfer any funds to the Developer's Solicitor without receipt of such an undertaking.

- 7.16 Save where expressly agreed in writing in advance by Homes England (in its absolute discretion) the Developer shall in no circumstances be entitled to receive payments of Equity Loan Funding in any Area which in aggregate exceeds the Equity Loan Funding Projected Capacity for that Area.
- 7.17 The Developer acknowledges that prior to exchange of contracts to dispose of an Eligible Dwelling to an Eligible Purchaser
- 7.17.1 Homes England or the Nominated Help to Buy Agent may by notice in writing withdraw the Authority to Proceed or issue a revised Authority to Proceed in which case the initial Authority to Proceed for the Eligible Dwelling shall cease to have effect.
- 7.17.2 The Eligible Purchaser may withdraw from their reservation of the Eligible Dwelling at any time;
- For the avoidance of doubt in the event that either the Developer or the Eligible Purchaser withdraws the reservation of the Eligible Dwelling prior to exchange of contracts the Developer will promptly return the Eligible Purchasers reservation fee in full pursuant to the terms of Clause 7.4.3.
- 7.18 For the avoidance of doubt, in the absence of the written consent of Homes England (in its absolute discretion), the Developer shall return the relevant Equity Loan Funding received (together with all accrued interest at the Prescribed Rate from the date of payment to the Developer until the date of repayment to Homes England) to Homes England where:
- 7.18.1 the Conditions Precedent have not been satisfied by the contractual completion date for the Relevant Disposal; or
- 7.18.2 within two (2) Business Days of the Developer becoming aware that the Relevant Disposal of an Eligible Dwelling to an Eligible Purchaser is no longer proceeding; or
- 7.18.3 where Equity Loan Funding is repayable pursuant to Clause 7.21.
- 7.19 The Developer acknowledges that Homes England will require the Eligible Purchaser's conveyancer to provide the Nominated Help to Buy Agent with evidence of the Eligible Purchaser's mortgage valuation and mortgage offer from an Approved Lender and to comply with other terms relating to the appointment of the Eligible Purchaser's conveyancer before the Eligible Purchaser's conveyancer is authorised to exchange contracts for the acquisition of an Eligible Dwelling.
- 7.20 The Developer shall notify the Nominated Help to Buy Agent forthwith upon it becoming aware that a sale of an Eligible Dwelling to an Eligible Purchaser is no longer proceeding.
- 7.21 The Developer shall notify the Nominated Help to Buy Agent and update the relevant sections of IMS forthwith upon it becoming aware that the proposed (or anticipated) completion date confirmed pursuant to Clause 7.13 is delayed and where Equity Loan Funding has been paid pursuant to Clause 7.13 and such delay is anticipated by the Developer to exceed ten (10) Business Days such Equity Loan Funding shall be returned in

accordance with requirements of Clause 7.18. In such circumstances, provided the revised completion date will comply with the requirements of Clause 7.9, the Developer may reapply for payment of Equity Loan Funding pursuant to Clause 7.13.

7.22 If the Developer fails to comply with Clause 7.13 within three months from the date of completion of the relevant Eligible Dwelling, Homes England reserves the right at its discretion (which shall be final) not to make any payment of the Equity Loan Funding to the Developer

8 **Changes to Forecast Details and Additional Areas**

8.1 Using the information provided by the Developer pursuant to Clause 13 together with any relevant information supplied to Homes England (whether by the Developer, the Nominated Help to Buy Agent or otherwise) Homes England shall, following consultation with the Developer, keep the Forecast Details under review and shall revise the Forecast Details (if required) in accordance with any of the procedures set out in Clauses 8.2 to 8.5.

8.2 **Agreed changes to the Forecast Details**

The parties may from time to time agree changes to the Forecast Details in respect of individual Areas (and in seeking to agree any such changes both parties shall act reasonably and with regard to any published written briefing notes or guidance issued by Homes England relating to the substitution of Eligible Dwellings) and if such changes are agreed they shall be implemented through the amendment by the Developer of the relevant sections on IMS and the electronic confirmation of that amendment by Homes England through IMS.

8.3 **Increasing the Forecast Numbers in existing Areas**

Where the parties agree that an Area is suitable for the Developer to put forward additional Dwellings to be made available to Eligible Purchasers for the provision of Equity Loan Funding and/or changes to the Forecast Number for that Area:

8.3.1 Homes England may agree to increase the Equity Loan Funding Projected Capacity; and/or

8.3.2 the Parties may agree such changes as required to the Forecast Number for that Area.

and the parties shall effect such agreement in accordance with Clause 8.2.

8.4 **Proposals for Additional Areas**

The Developer shall be entitled at Homes England's invitation from time to time to submit proposals for additional Eligible Dwellings to be made available in order for Eligible Purchasers to access Equity Loan Funding in any Additional Areas and where Homes England is satisfied that:

8.4.1 the Developer's proposals in relation to the Additional Area:

(a) comply with the requirements of the Help to Buy Initiative;

- (b) can be developed by the First Longstop Date for the relevant Year;
 - (c) can be disposed of by the Second Longstop Date for the relevant Year; and
 - (d) satisfy any other conditions which Homes England may wish to impose;
- 8.4.2 the Developer's performance in sales and marketing as against its projections in respect of other Areas has been of an acceptable standard; and
- 8.4.3 the Developer has complied with the terms of this Agreement (including any agreed variations to the same)

Homes England shall be entitled (but not obliged) to agree an Equity Loan Funding Projected Capacity and to make available Equity Loan Funding for Eligible Purchasers in relation to the Developer's proposed Eligible Dwellings for such Additional Area. Where Homes England allocates funding for an accepted Additional Area, it shall confirm such acceptance by the provision of such funding through IMS and the Dwellings in such Area shall thereafter be subject to the provisions of this Agreement.

8.5 Homes England led changes to the Forecast Details

- 8.5.1 Homes England may at any time assess progress of reservations and sales for an Area in relation to any Year taking into account:
- (a) the Forecast Number;
 - (b) the number and frequency of sales and/or reservations to date; and
 - (c) the time remaining until the relevant Second Longstop Date for that Year;
- and, if (in Homes England's reasonable opinion) the Developer is unlikely to achieve the Forecast Number of sales in any Area prior to the relevant Second Longstop Date for that Year, Homes England may specify a revised Forecast Number of sales (based on the above factors) and reduce the Equity Loan Funding Projected Capacity accordingly.
- 8.5.2 If the overall demand from purchasers in relation to the Help to Buy Initiative is less than the forecast demand across an Area or a number of Areas, Homes England (acting reasonably) may at any time (subject always to Clause 4.3) confirm a reduction in the Equity Loan Funding Projected Capacity for that Area or those Areas.
- 8.5.3 The parties hereby agree that any changes notified to the Developer by Homes England pursuant to this Clause 8.5 shall be implemented through the amendment by Homes England of the relevant sections on IMS.

9 Help to Buy Agents

- 9.1 The Developer shall co-operate with and provide, as expeditiously as possible, assistance and provide all required information to the Nominated Help to Buy Agent

9.2 Homes England shall use all reasonable endeavours to procure that the Nominated Help to Buy Agent acts expeditiously and provides all reasonable assistance and co-operation to the Developer.

10 **State Aid**

10.1 If Homes England is required pursuant to the Decision of the Commission of the European Communities published on 20 December 2011 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) Homes England will be entitled to recover any such amount from the Developer.

11 **Variations**

Save to the extent expressly stated to the contrary, any addition, variation or amendment to this Agreement shall only be binding if made in writing and signed by a duly authorised representative of each party.

12 **Developer Default**

12.1 On or after the occurrence of any Developer Default, Homes England shall be entitled by notice in writing and with immediate effect, to exercise any or all of the following rights and remedies:

12.1.1 to terminate this Agreement in full or in part;

12.1.2 to suspend all or some further Equity Loan Funding payments (save to the extent Clause 4.3 applies); or

12.1.3 to require repayment within 10 (ten) Business Days of any Equity Loan Funding paid in whole or part in relation to any Area (save to the extent secured on an Eligible Dwelling pursuant to the Equity Mortgage registered against the charges register of the Eligible Purchaser's title to the Eligible Dwelling or to which Clause 4.3 applies);

12.2 In relation to the exercise by Homes England of its rights in Clause 12.1 the Developer shall pay on demand all Homes England's losses incurred as a result of the Developer Default (whether or not this Agreement is terminated) including any costs incurred by Homes England in investigating any Developer Default which has occurred.

13 **Monitoring, reviews and reporting**

13.1 The Developer shall with effect from the date of this Agreement, submit to Homes England:

13.1.1 via IMS (or any other alternative method specified by Homes England from time to time) any changes required from time to time to the Annual Forecast not later than the last working day of each calendar month, during the currency of this Agreement; and

13.1.2 an Annual Forecast no later than ten Business Days following 31 December of the Year prior to the period to which the Annual Forecast relates;

during the term of this Agreement.

13.2 The Developer shall notify Homes England immediately of:

13.2.1 any anticipated delays in an Area in achieving the Forecast Numbers;

13.2.2 reasons for, and actions to mitigate, any underperformance;

13.2.3 any breach of any obligation or warranty under this Agreement or change in warranted information;

13.2.4 any Significant Event;

13.2.5 any matter or event which may entitle Homes England to terminate this Agreement in whole or in part; and

13.2.6 any other issue requested on reasonable notice by Homes England (including without limitation at a previous meeting).

13.3 Homes England may call a meeting with the Developer (to discuss the Annual Forecast, progress as to its submission, any other matter relating to this Agreement or the arrangements between the parties) at any time provided that Homes England:

13.3.1 gives reasonable prior written notice of such meeting; and

13.3.2 includes with the notice (or circulates within ten (10) Business Days of the notice) an agenda for such meeting.

13.4 Homes England and the Developer shall use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this Clause 13 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.

13.5 Subject to the prior approval of the other party (such approval not to be unreasonably withheld) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.

14 **Developer's records and accounting**

14.1 The Developer shall, as and when requested by Homes England whether before or after the date of any payment of the Equity Loan Funding, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement or the Eligible Dwellings a copy of each of:

14.1.1 all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Developer for the purposes of this Agreement; and

14.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Developer's officers, employees, agents or consultants relating to the Eligible Dwellings and which have been supplied to the Developer for the purposes of this Agreement.

14.2 The Developer shall at all times:

- 14.2.1 maintain a full record of particulars of all sale details (including valuations) and receipts received in respect of all Eligible Dwellings sold under Help to Buy;
- 14.2.2 when required to do so by Homes England, provide a summary of any information referred to in Clause 14.2.1 as Homes England may require to enable it to monitor the performance by the Developer of its obligations under this Agreement; and
- 14.2.3 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 Clause.

14.3 Compliance with the above shall require the Developer to keep (and where appropriate shall procure that any subcontractor shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Developer and/or subcontractor and which do not directly relate to any Eligible Dwelling) in accordance with good accountancy practice with respect to all the Eligible Dwellings showing in detail:

- 14.3.1 income (including sales receipts);
- 14.3.2 valuations;
- 14.3.3 the amount of the Homes England Contribution on each sale of an Eligible Dwelling;
- 14.3.4 amount of Equity Loan Funding received (and any repaid to Homes England); and
- 14.3.5 such other items as Homes England may require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;

and the Developer shall have (and procure that to the extent expressly agreed the subcontractors shall have) the books of account evidencing the items listed in this condition available for inspection by Homes England (and any person appointed pursuant to the Dispute Resolution Procedure to determine a dispute or otherwise authorised by Homes England) upon reasonable notice, and shall submit a report of these to Homes England as and when requested.

14.4 On the expiry, or (if earlier) upon termination, of this Agreement, the Developer shall if requested to do so deliver up to Homes England all the data, materials, documents and accounts referred to in this Clause 14 which it has in its possession, custody or control and shall procure the handing over to Homes England such data, materials, documents and accounts referred to in Clause 14.1.2 or as otherwise directed by Homes England.

14.5 The Developer must for a period of 10 (ten) years from the date upon which it receives any Equity Loan Funding retain all of the data, documents, materials and accounts referred to in this Clause 14 and the Developer may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to Homes England pursuant to Clause 14.4.

15 **Information and confidentiality**

15.1 **Confidentiality**

- 15.1.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- 15.1.2 Each party agrees to treat and to use all reasonable endeavours to procure that any relevant Group Company shall treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 15.1.3 The obligations of confidence referred to in Clause 15.1.2 shall not apply to any Confidential Information which:
- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
 - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
 - (d) is independently developed without access to the Confidential Information of the other party.
- 15.1.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- (a) to enable the disclosing party to perform its obligations under this Agreement or any Equity Mortgage; or
 - (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Developer acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such confidential information ; or
 - (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or

- (d) in order to give proper instructions to any professional advisor of that party who also has an obligation to keep any such Confidential Information confidential; or
 - (e) to meet reasonable information requests from Approved Lenders (or the Approved Lenders' professional advisors or insurance advisors) to the extent that such disclosure is necessary to the performance of this Agreement.
- 15.1.5 The Developer shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:-
- (a) is given only to such of its Group Companies, employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
 - (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
 - (c) where it is considered necessary in the opinion of Homes England the Developer shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 15.1.6 Nothing in this Clause 15 shall prevent Homes England:-
- (a) disclosing any Confidential Information for the purpose of:-
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
 - (b) disclosing any Confidential Information obtained from the Developer:-
 - i to any other department, office or agency of the Crown; or
 - ii to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii on a confidential basis to a proposed successor body in connection with any assignment, novation or Disposal of any of its rights, obligations or liabilities under this Agreement,
 - iv to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;

- (c) provided that in disclosing information under Clauses 15.1.6(b)(i) to 15.1.6(b)iv inclusive Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.1.7 Nothing in this Clause 15 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

15.1.8 The obligations in this Clause 15.1 will survive the expiry or termination of this Agreement and each Equity Mortgage for a period of two years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

15.2 **Freedom of Information**

15.2.1 The Developer 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.

15.2.2 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 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.

15.2.3 Subject to Clause 15.2.4 below, the Developer acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:-

- (a) without consulting the Developer or
- (b) following consultation with the Developer and having taken (or not taken, as the case may be) its views into account.

15.2.4 Without in any way limiting Clauses 15.2.2 and 15.2.3, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Developer.

- 15.2.5 The Developer will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its obligations to disclose information under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its Group Companies agents contractors and sub-contractors will), at their own cost:
- (a) transfer any Request for Information received by the Developer or any Group Company (as applicable) to Homes England as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
 - (b) provide all such assistance as may be required from time to time by Homes England to enable Homes England to comply with obligations to disclose information;
- 15.2.6 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.

15.3 **Publication of information before Parliament**

The parties acknowledge that the National Audit Office has the right to publish details of the Agreement in its relevant reports to Parliament.

15.4 **Information on IMS**

- 15.4.1 The Developer shall on or before the date of this Agreement enter into Homes England's standard user licence agreement in relation to the use of IMS.
- 15.4.2 The Developer shall keep the information stored on IMS updated on no less than a weekly basis in respect of the forecasting of the future claims for Equity Loan Funding and shall promptly (and in accordance with Clause 7.13) enter claims for Equity Loan Funding following exchange of contracts in respect of any purchase of an Eligible Dwelling by an Eligible Purchaser.
- 15.4.3 The Developer shall comply with all and any standards and/or procedures prescribed by Homes England in relation to the use of IMS, and shall ensure that all information submitted to IMS is accurate in all material respects (and continues to be accurate).

16 **Open Book**

The Developer shall be responsible for proving the accuracy of any facts or figures referred to in this Agreement and the Developer shall prove (where requested to do so) the accuracy of any such facts or figures on an Open Book basis to the reasonable satisfaction of Homes England.

17 **Value Added Tax**

- 17.1 The Parties understand and agree that the Equity Loan Funding provided by Homes England under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Developer or otherwise.
- 17.2 If, notwithstanding the agreement and understanding of the Parties as set out in Clause 17.1 above, it is determined that the Equity Loan Funding is consideration for a supply for VAT purposes, the Equity Loan Funding shall be treated as inclusive of any VAT.
- 17.3 All sums or other consideration payable to or provided by a Developer to Homes England at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the relevant Developer will pay to Homes England all the VAT payable upon the receipt of a valid VAT invoice.

18 **Dispute resolution**

- 18.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Clause 18.
- 18.1.1 In the event that the Developer or Homes England consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Clause 18.
- 18.1.2 Representatives of the parties shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.
- 18.1.3 Where either no representatives of both parties are available to meet within the period set out in Clause 18.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Developer and Homes England (the **Chief Executives**).
- 18.1.4 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
- 18.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Chief Executives, such Dispute must be dealt with in accordance with Clause 18.2.
- 18.2 In the circumstances contemplated in Clause 18.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

- 18.2.1 to initiate the mediation a party must give notice in writing (**ADR Notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 18.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
- 18.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

19 **No agency**

- 19.1 Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties.
- 19.2 The Developer shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between Homes England and the Developer. Neither the Developer nor any of its employees shall at any time hold itself or themselves out to be an employee of Homes England.

20 **Assignment and sub-contracting**

- 20.1 Homes England will be entitled to transfer or assign all or part of this Agreement.
- 20.2 The Developer will not be entitled to transfer or assign all or part of this Agreement.

21 **Exclusion of third party rights**

Except as otherwise expressly provided no person who is not a party to this Agreement shall be entitled to enforce any terms of this Agreement solely by virtue of the Contracts (Rights of Third Parties) Act 1999.

22 **Entire agreement**

- 22.1 All clauses in this Agreement together with the Schedules and Annexes constitute the entire agreement between the parties and may only be varied or modified in writing by agreement duly executed on behalf of the parties.
- 22.2 The Developer hereby acknowledges that, save as set out or referred to in this Agreement, there are and have been no representations made by or on behalf of Homes England of whatsoever nature on the faith of which the Developer is entering into this Agreement.

23 **Notices**

- 23.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, but not by facsimile or electronic mail) or sent by the Recorded Delivery Service addressed in the case of either party to the other

party's registered office as set out at the beginning of this Agreement or to such other addresses as either party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

23.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

provided that if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm it is to be regarded as received at 9.00am on the following Business Day.

24 **Severability**

If any term, clause or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause or provision shall to that extent be omitted from this Agreement and shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

25 **Cumulative rights and enforcement**

Any rights and remedies provided for in this Agreement whether in favour of Homes England or the Developer are cumulative and in addition to any further rights or remedies which may otherwise be available to those parties.

26 **Waiver**

26.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

26.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.

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

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

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

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

27 **Public relations and publicity**

The Developer shall ensure that Homes England's requirements from time to time in relation to public relations and publicity as notified to the Developer from time to time or otherwise as included in the Regulations are observed and implemented in respect of each Eligible Dwelling.

28 **Data Protection**

28.1 For the purposes of this clause:

Personal Data, Data Processor, Data Subject, Data Controller, Personal Data Breach, Data Protection Officer Processing and Process shall have the meanings ascribed to them in the Data Protection Legislation as amended or re-enacted from time to time;

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Data Controller under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Protection Impact Assessment means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Legislation means

- (a) unless and until the General Data Protection Regulation (EU) 2016/679 (the **GDPR**) is no longer directly applicable in the UK, the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK;
- (b) any successor legislation to the GDPR or the Data Protection Act 2018 (the **DPA**); and
- (c) all applicable Law relating to the processing of personal data and privacy;

Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

Joint Controllers means where two or more Controllers jointly determine the purposes and means of processing;

Law means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access

to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

Regulatory Bodies means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Homes England and **Regulatory Body** shall be construed accordingly;

Sub-processor means any third Party appointed to process Personal Data on behalf of Homes England related to this Agreement.

28.2 This Clause 28 applies where the Developer is Processing Personal Data on behalf of Homes England and shall be of no effect where the Developer is acting as a Data Controller (including as Joint Controllers) under Data Protection Legislation, and for the avoidance of doubt nothing in this Clause 28 shall operate so as to prevent or prohibit the Developer in complying with its own obligations as a Data Controller under the Data Protection Legislation to the extent such obligations arise in respect of the Personal Data, the parties hereby acknowledging that in their respective roles as Data Controllers, each party is independently required to comply with any lawful request to exercise a data subject right under the Data Protection Legislation.

28.3 Homes England and the Developer acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Data Controller and the Developer is the Data Processor. The only processing that the Developer is authorised undertake on behalf of Homes England is detailed in Schedule 5 of this Agreement and may not be determined by the Developer. Nothing in this Clause 28 will prohibit the Developer in complying with its own obligations as a Data Controller under the Data Protection Legislation to the extent such obligations arise in respect of the Personal Data.

28.4 The Developer shall provide all reasonable assistance to Homes England in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of Homes England, include:

28.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

28.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the performance of this Agreement;

28.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

28.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

28.5 The Developer warrants and represents that it has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to process Personal Data for the purposes of performing its obligations under this Agreement.

28.6 The Developer undertakes that to the extent that the Developer and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of Homes England (**Homes England's Personal Data**) for the purpose of this Agreement, it will at all times comply with the provisions of the Data Protection Legislation.

28.7 For the purposes of this Agreement, where the Developer is Processing Homes England's Personal Data on behalf of Homes England, it shall:

28.7.1 at all material times have in place and maintain Protective Measures which have been reviewed and approved by Homes England as appropriate to protect against a Data Loss Event having taken into account:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures

For the avoidance of doubt, this includes the obligation to comply with any records management, operational and/or information security policies operated by Homes England and/or accessing their manual and/or automated information systems;

28.7.2 only process Personal Data in accordance with Schedule 5 unless the Developer is required by Law or any Regulatory Body. Where the Developer is relying on such requirements as the basis for processing Personal Data, the Developer shall promptly notify Homes England of this before performing the Processing unless such requirements prohibit the Developer from so notifying Homes England;

28.7.3 not engage a Sub-processor without:

- (a) prior written authorisation from Homes England and ensuring compliance with any conditions attached to that consent;
- (b) including obligations no less onerous than those set out in this Clause 28 in all contractual arrangements with any Sub-processor engaged by the Developer;
- (c) provide Homes England with such information regarding the Sub-processor as Homes England may reasonably require.

For the avoidance of doubt, the Developer shall remain fully liable for all acts or omissions of any Sub-processor.

28.7.4 allow Homes England (and or its designated auditors) to audit the Developer's compliance with the requirements of this Clause 28 on reasonable notice and/or, at Homes England's request, provide Homes England with evidence of the Developer's compliance with the obligations within this Clause 28.

- 28.8 The Developer undertakes not to disclose or transfer any of Homes England's Personal Data to any third party without the prior written consent of Homes England save that without prejudice to Clause 28.3 the Developer shall be entitled to disclose Homes England's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Developer to perform its obligations under this Agreement, or to the extent required under a court order subject always to compliance with Clause 28.9.
- 28.9 In respect of the Developer Personnel, the Developer shall:
- 28.9.1 take reasonable steps to ensure the reliability and integrity of any Developer Personnel who have access to the Personal Data;
 - 28.9.2 ensure that all Developer Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, have provided a confidentiality undertaking to the Developer or Sub-processor in relation to the same and comply with the obligations set out in this Clause 28;
 - 28.9.3 ensure that none of Developer Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Homes England or as otherwise permitted by this Agreement;
 - 28.9.4 ensure that the Developer Personnel have undertaken adequate training in the law relating to the use, care, protection and handling of Personal Data and are aware of their obligations and those of the Developer under the Data Protection Legislation and this Agreement;
 - 28.9.5 ensure that the Developer Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 5);
- 28.10 The Developer shall:
- 28.10.1 provide a written description of the technical and organisational methods employed by the Developer for processing Personal Data (within the timescales required by Homes England); and
 - 28.10.2 not Process Personal Data outside the European Economic Area without the prior written consent of Homes England and, where Homes England consents to a transfer, to ensure:
 - (a) the Developer has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or the Law Enforcement Directive (Directive (EU) 2016/680) Article 37) as determined by Homes England;
 - (b) the Data Subject has enforceable rights and effective legal remedies in relation to such Personal Data;
 - (c) the Developer complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Homes England in meeting its obligations); and

- (d) it complies with any reasonable instructions notified to it by Homes England in relation to the Processing of the Personal Data.

28.11 The Developer agrees to use all reasonable efforts to assist Homes England to comply with such obligations as are imposed on Homes England by the Data Protection Legislation. For the avoidance of doubt, to the Developer shall:

28.11.1 co-operate with Homes England to ensure and demonstrate that the Developer has appropriate technical and organisational measures in place to assist Homes England to comply with any Data Subject Request;

28.11.2 notify Homes England immediately if it:

(a) receives:

i a Data Subject Request (or purported Data Subject Request);

ii a request to rectify, block or erase any Personal Data;

iii any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

iv any other complaint, communication or request relating to Homes England's obligations under the Data Protection Legislation;

v a request from and third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

(b) if it becomes aware of a Data Loss Event;

and take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England. The Developer's obligation to notify under this Clause shall include the provision of further information to Homes England in phases, as details become available;

28.12 Taking into account the nature of the processing, the Developer shall provide Homes England with full assistance in relation to either the Developer's or Homes England's obligations under Data Protection Legislation and any complaint, communication or request made pursuant to Clause 28.11 (and in so far as possible within the timescales reasonably required by Homes England) including by promptly providing Homes England:

28.12.1 with full details of the complaint, communication or request;

28.12.2 with such assistance as is reasonably requested to enable Homes England to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

28.12.3 at its request, with any Personal Data it holds in relation to a Data Subject

- 28.12.4 with such assistance as requested by Homes England:
- (a) following any Data Loss Event;
 - (b) with respect to any request from the Information Commissioner's Office, or any consultation by Homes England with the Information Commissioner's Office.
- 28.13 The Developer shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation. The Developer shall notify Homes England immediately if it considers that any of Homes England's instructions infringe the Data Protection Legislation.
- 28.14 If the Developer becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to Homes England's Personal Data, or any other Data Loss Event, the Developer shall:
- 28.14.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 28.14.2 notify Homes England of the suspected incident and the findings of the Developer's initial investigation without undue delay after becoming aware of that event, and in any event within 24 hours of becoming so aware. The Developer shall take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England.
 - 28.14.3 fully co-operate with Homes England in the course of any investigation undertaken by Homes England and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and /or notification to any affected Data Subjects; and
 - 28.14.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 28.15 The Developer shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Developer employs fewer than 250 staff, unless Homes England determines that the processing:
- 28.15.1 is not occasional;
 - 28.15.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 28.15.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 28.16 The Developer shall indemnify Homes England against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by Homes England as a result of the Developer's destruction of and/or damage to any of Homes England's

Personal Data processed by the Developer, Developer Personnel, Sub-processor, or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this Clause 28 by the Developer, Developer Personnel, or Sub-processor.

28.17 The Developer shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Developer's Processing of Homes England's Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to Homes England's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto and in any event within the timescales set out in this Agreement.

28.18 The Developer undertakes to act upon the written instructions from Homes England in relation to the secure deletion or return of Homes England's Personal Data at the termination or expiry of this Agreement or such time that the Developer no longer requires access to Homes England's Personal Data for the purposes of performing its obligations under this Agreement, in so far as the Developer is able to take into account its own data retention requirements and, unless the Developer is required by Law to retain the Personal Data.

28.19 Homes England may, at any time on not less than 30 working days' notice, revise this Clause by replacing it with any applicable controller to processor standard conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

28.20 The Developer and Homes England agree to take account of any guidance issued by the Information Commissioner's Office. Homes England may on not less than 30 working days' notice to the Developer amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

29 **Co-operation**

29.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and in particular will (subject to Clause 29.2):

29.1.1 use all reasonable endeavours to avoid unnecessary disputes and claims against the other party;

29.1.2 not interfere with the rights of the other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent the other party (nor its employees, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent either party from exercising its express rights under this Agreement or any other agreement in relation to the Dwellings.

29.2 Nothing in Clause 29.1 shall:

- 29.2.1 interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in connection with the Dwellings in the manner in which it considers to be the most effective and efficient; or
 - 29.2.2 relieve either party from any obligation contained in this Agreement.
- 29.3 Without prejudice to the generality of the foregoing the Developer shall co-operate fully and in a timely manner with any reasonable request from time to time:
- 29.3.1 of any auditor (whether internal or external) of Homes England to provide documents, or to procure the provision of documents, relating to the Dwellings, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or
 - 29.3.2 of Homes England where Homes England is required under any legislation to provide any document relating to the Dwellings to any person.
- 29.4 The Developer will not, and will use all reasonable endeavours to procure that its suppliers and sub-contractors will not, knowingly do or omit to do anything in relation to the Help to Buy Initiative, the Dwellings or in the course of their other activities that may bring the standing of Homes England into disrepute or attract adverse publicity for Homes England.
- 29.5 No Party will publish any statement, orally or in writing, relating to the other Party which might damage that other Party's reputation or that of any of its officers or employees.

30 **Anti-bribery**

- 30.1 The Developer shall:
- 30.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
 - 30.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 30.1.3 comply with Homes England's Ethical, Anti-bribery and Anti-corruption Policies a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**).
 - 30.1.4 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 Clause 30.1.2, and will enforce them where appropriate;
 - 30.1.5 immediately report to Homes England's Head of Risk and Assurance Services 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;

30.1.6 if required by Homes England, produce a written certificate to it signed by an officer of the Developer, confirming compliance with this Clause 30 by the Developer and all persons associated with it under Clause 30.2. The Developer shall provide such supporting evidence of compliance as Homes England may reasonably request.

30.2 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 Developer in this Clause 30 (**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.

30.3 Breach of this Clause 30 shall be deemed to constitute a Developer Default.

30.4 For the purpose of this Clause 30, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 30 a person associated with the Developer includes but is not limited to any subcontractor of the Developer.

31 **Governing law**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Clause 18 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

32 **No fetter on statutory functions**

Notwithstanding anything apparently or impliedly to the contrary in this Agreement or any of the deeds and documents referred to herein, in carrying out its statutory duties or functions the discretion of Homes England shall not be fettered, constrained or otherwise unlawfully affected by the terms of this Agreement or any such other deed or document.

33 **Survival of this agreement**

33.1 Insofar as any of the rights and powers of Homes England provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.

33.2 Insofar as any of the obligations of the Developer provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

This Agreement has been entered into between the parties as a deed on the date stated at the beginning.

THE COMMON SEAL of)
HOMES AND COMMUNITIES)
AGENCY was hereunto affixed)
in the presence of:)

Authorised Signatory

Executed as a deed by affixing)
the common seal of [INSERT NAME OF DEVELOPER])
in the presence of:)

.....
Director

.....
Director/Secretary

OR

Executed as a deed by)
[INSERT NAME OF DEVELOPER])

acting by)

)

..... a Director and)

)

.....a Director/its Secretary)

Director

.....

Director/Secretary

Schedule 1
Forecast Details

AREAS – OUTSIDE LONDON

YEAR 1

North East	
Forecast Number	Equity Loan Funding Projected Capacity
	£

North West	
Forecast Number	Equity Loan Funding Projected Capacity
	£

Yorkshire and The Humber	
Forecast Number	Equity Loan Funding Projected Capacity
	£

East Midlands	
Forecast Number	Equity Loan Funding Projected Capacity
	£

West Midlands	
Forecast Number	Equity Loan Funding Projected Capacity
	£

East of England	
Forecast Number	Equity Loan Funding Projected Capacity
	£

South East	
Forecast Number	Equity Loan Funding Projected Capacity
	£

South West	
Forecast Number	Equity Loan Funding Projected Capacity
	£

AREAS – LONDON

YEAR 1

London	
Forecast Number	Equity Loan Funding Projected Capacity
	£

Schedule 2

Part 1

Areas – Outside London

HCA Operating Area
North East
Local Authority
County Durham
Darlington
Gateshead
Hartlepool
Middlesbrough
Newcastle upon Tyne
North Tyneside
Northumberland
Redcar and Cleveland
South Tyneside
Stockton-on-Tees
Sunderland

HCA Operating Area
North West ,
Local Authority
Allerdale
Barrow-in-Furness
Blackburn with Darwen
Blackpool
Bolton
Burnley
Bury
Carlisle
Cheshire East
Cheshire West and Chester
Chorley
Copeland
Eden
Fylde
Halton
Hyndburn
Knowsley
Lancaster
Liverpool
Manchester
Oldham
Pendle
Preston
Ribble Valley
Rochdale
Rossendale
Salford

HCA Operating Area
North West ,
Local Authority
Sefton
South Lakeland
South Ribble
St. Helens
Stockport
Tameside
Trafford
Warrington
West Lancashire
Wigan
Wirral
Wyre

HCA Operating Area
Yorkshire and the Humber
Local Authority
Barnsley
Bradford
Calderdale
Craven
Doncaster
East Riding of Yorkshire
Hambleton
Harrogate
Kingston upon Hull, City of
Kirklees
Leeds
North East Lincolnshire
North Lincolnshire
Richmondshire
Rotherham
Ryedale
Scarborough
Selby
Sheffield
Wakefield
York

HCA Operating Area
East Midlands
Local Authority
Amber Valley
Ashfield

HCA Operating Area
East Midlands
Local Authority
Bassetlaw
Blaby
Bolsover
Boston
Broxtowe
Charnwood
Chesterfield
Corby
Daventry
Derby
Derbyshire Dales
East Lindsey
East Northamptonshire
Erewash
Gedling
Harborough
High Peak
Hinckley and Bosworth
Kettering
Leicester
Lincoln
Mansfield
Melton
Newark and Sherwood
North East Derbyshire
North Kesteven
North West Leicestershire
Northampton
Nottingham
Oadby and Wigston
Rushcliffe
Rutland
South Derbyshire
South Holland
South Kesteven
South Northamptonshire
Wellingborough
West Lindsey

HCA Operating Area
West Midlands
Local Authority
Birmingham
Bromsgrove
Cannock Chase
Coventry
Dudley
East Staffordshire
Herefordshire, County of
Lichfield
Malvern Hills
Newcastle-under-Lyme
North Warwickshire
Nuneaton and Bedworth
Redditch
Rugby
Sandwell
Shropshire
Solihull
South Staffordshire
Stafford
Staffordshire Moorlands
Stoke-on-Trent
Stratford-on-Avon
Tamworth
Telford and Wrekin
Walsall
Warwick
Wolverhampton
Worcester
Wychavon
Wyre Forest

HCA Operating Area
East of England
Local Authority
Babergh
Basildon
Bedford
Braintree
Breckland
Brentwood
Broadland
Broxbourne
Cambridge
Castle Point
Central Bedfordshire
Chelmsford
Colchester
Dacorum
East Cambridgeshire
East Hertfordshire
East Suffolk

HCA Operating Area
East of England
Local Authority
Epping Forest
Fenland
Great Yarmouth
Harlow
Hertsmere
Huntingdonshire
Ipswich
King's Lynn and West Norfolk
Luton
Maldon
Mid Suffolk
North Hertfordshire
North Norfolk
Norwich
Peterborough
Rochford
South Cambridgeshire
South Norfolk
Southend-on-Sea
St Albans
Stevenage
Tendring
Three Rivers
Thurrock
Uttlesford
Watford
Welwyn Hatfield
West Suffolk

HCA Operating Area
South East
Local Authority
Adur
Arun
Ashford
Basingstoke and Deane
Bracknell Forest
Brighton and Hove
Buckinghamshire
Canterbury
Cherwell
Chichester
Crawley
Dartford
Dover
East Hampshire
Eastbourne
Eastleigh
Elmbridge
Epsom and Ewell
Fareham
Folkestone and Hythe

HCA Operating Area
South East
Local Authority
Gosport
Gravesham
Guildford
Hart
Hastings
Havant
Horsham
Isle of Wight
Lewes
Maidstone
Medway
Mid Sussex
Milton Keynes
Mole Valley
New Forest
Oxford
Portsmouth
Reading
Reigate and Banstead
Rother
Runnymede
Rushmoor
Sevenoaks
Slough
South Oxfordshire
Southampton
Spelthorne
Surrey Heath
Swale
Tandridge
Test Valley
Thanet
Tonbridge and Malling
Tunbridge Wells
Vale of White Horse
Waverley
Wealden
West Berkshire
West Oxfordshire
Winchester
Windsor and Maidenhead
Woking
Wokingham
Worthing

HCA Operating Area
South West
Local Authority
Bath and North East Somerset
Bournemouth, Christchurch and Poole
Bristol, City of

HCA Operating Area
South West
Local Authority
Cheltenham
Cornwall
Cotswold
Dorset
East Devon
Exeter
Forest of Dean
Gloucester
Isles of Scilly
Mendip
Mid Devon
North Devon
North Somerset
Plymouth
Sedgemoor
Somerset West and Taunton
South Gloucestershire
South Hams
South Somerset
Stroud
Swindon
Teignbridge
Tewkesbury
Torbay
Torrige
West Devon
Wiltshire

Schedule 2

Part 2

Areas – London

HCA Operating Area
London
Local Authority
Barking and Dagenham
Barnet
Bexley
Brent
Bromley
Camden
City of London
Croydon
Ealing
Enfield
Greenwich
Hackney
Hammersmith and Fulham
Haringey
Harrow
Havering
Hillingdon
Hounslow
Islington
Kensington and Chelsea
Kingston upon Thames
Lambeth
Lewisham
Merton
Newham
Redbridge
Richmond upon Thames
Southwark
Sutton
Tower Hamlets
Waltham Forest
Wandsworth
Westminster

Schedule 3

Conditions Precedent

PART 1

1 Initial Conditions Precedent

1.1 Developer Documents

1.1.1 Counterparts of this Agreement duly executed by all parties other than Homes England.

1.1.2 In relation to the Developer's Solicitors, a certificate from the Developer's Solicitor:

(a) confirming their client account:

i Bank Name;

ii Bank Branch and Address;

iii Bank account name;

iv Bank account number;

v Bank sort code; and

(b) that they have verified the identity of the Developer in accordance with the Money Laundering Regulations 2017 (as amended or re-enacted);

1.2 Other

1.2.1 Compliance by the Developer with Homes England's Know your customer requirements.

1.2.2 Homes England has received (in form and substance acceptable to it) an undertaking from the Developer's Solicitor confirming that the Equity Loan Funding will be

(a) held as stakeholder to Homes England's order in their client account; and

(b) not released until all the Conditions Precedent are satisfied (which shall include execution by the Eligible Purchaser of the Equity Mortgage documentation and the lease/transfer of the Eligible Dwelling and receipt of confirmation from the Nominated Help to Buy Agent that Conditions Precedent 2.1.6(a), (b), (c) and (d) have been satisfied).

PART 2

2 **Conditions precedent to each call for Equity Loan Funding pursuant to Clause 7.13**

2.1 The obligation of Homes England to make available any Equity Loan Funding is subject to the following conditions precedent:

2.1.1 (in the case of a request to transfer Equity Loan Funding only) a valid request has been made in accordance with Clause 7.13;

2.1.2 no Developer Default has occurred and no dispute resolution procedure is being undertaken pursuant to this Agreement;

2.1.3 Confirmation by the Developer that:

(a) they are in compliance with the Advertising Requirements;

(b) no complaints have been raised by the FCA in relation to the Developer's compliance with the Advertising Requirements;

(c) the dwelling for sale is an Eligible Dwelling; and

(d) all applicable pre-commencement and pre-occupation planning conditions within any and all Planning Permissions and/or Planning Agreements relating to the Eligible Dwelling have been satisfied

2.1.4 Confirmation from the Developer that they either:

(a) hold a Secure Legal Interest in the Eligible Dwelling; or

(b) have entered into a Building Lease with the Freehold Owner who holds a freehold Secure Legal Interest of the Eligible Dwelling:

(i) enabling the Developer to procure compliance with the requirements of this Agreement in respect of the Eligible Dwelling (save that the Developer will not be the party transferring/leasing the Eligible Dwelling (as applicable) to the Eligible Purchaser); and

(ii) the Developer's Solicitors (or if different the Developer's conveyancer acting on behalf of the Developer in the sale of the Eligible Dwelling) have provided Homes England with an undertaking (in Homes England's required form) that they will not complete the sale of the Eligible Dwelling to the Eligible Purchaser unless they are:

(A) holding on file a transfer/lease executed by both the Developer and the Freehold Owner; and

(B) in receipt of the Freehold Owner's (or their solicitor's) irrevocable consent to complete the sale of the Eligible Dwelling to the Eligible Purchaser.

- 2.1.5 Homes England has received such evidence as Homes England may require that all matters represented and warranted by the Developer under the Agreement and all matters covered by the Warranties are true and correct as if made at the time of the call for Equity Loan Funding and would be true and correct immediately after the making of any such payment Equity Loan Funding;
- 2.1.6 Confirmation from the Developer that in respect of each Eligible Dwelling that all of the following applies:
- (a) the relevant Authority to Proceed has been received and that such Authority to Proceed will be current and valid at the date of exchange;
 - (b) receipt by the Nominated Help to Buy Agent of the Solicitor's Form 2 Undertaking (with the attached Certificate of Title completed and signed by the conveyancer acting on behalf of the Eligible Purchaser) in respect of the relevant Eligible Dwelling (subject to Clause 3.6);
 - (c) receipt by the Nominated Help to Buy Agent from the conveyancer acting on behalf of the Eligible Purchaser of a certified copy of either the Eligible Purchaser's final professional valuation (obtained on behalf of an Approved Lender) or (where not available) the Eligible Purchaser's mortgage offer confirming the valuation and valuing the Eligible Dwelling at a sum which is equal to the Full Purchase Price or (at the discretion of Homes England) within a tolerance of that sum determined from time to time by Homes England and notified by the Nominated Help to Buy Agent to the Developer in writing;
 - (d) contracts have been exchanged for the Disposal of the Eligible Dwelling to the Eligible Purchaser in accordance with the relevant Authority to Exchange and the Eligible Purchaser and all relevant parties have unconditionally executed and irrevocably released the lease/transfer related to that Disposal; and
 - (e) execution by the Eligible Purchaser of the Equity Mortgage and a prior charge to an Approved Lender (subject to Clause 3.6).

Schedule 4

Warranties

1 Due incorporation and vires

1.1 The Developer is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct.

1.2 The Developer:

1.2.1 has the power to enter into and to exercise its rights and perform its obligations under this Agreement; and

1.2.2 has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement.

1.3 The Developer is not subject and will not prior to any payment of Equity Loan Funding become subject to any other obligation, compliance with which will or is likely to, have a Material impact on the ability of the Developer to perform its obligations under this Agreement.

2 Enforcement and validity of obligations

2.1 The Developer's obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

2.2 The execution, delivery and performance by the Developer of this Agreement do not:

2.2.1 insofar as it is aware contravene any applicable law or Directive or any judgement, order or decree of any court having jurisdiction over it;

2.2.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or

2.2.3 contravene or conflict with its constitution.

2.3 So far as the Developer is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets in a manner which has affected or could affect its ability to perform its obligations under this Agreement.

2.4 There will not be in existence any other agreements or documents replacing or relating to this Agreement which would affect its interpretation or application.

2.5 All consents required by the Developer in connection with the execution delivery issue validity or enforceability of this Agreement have been obtained and have not been withdrawn.

3 No litigation

To the best of the Developer's knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Developer, pending or threatened against the Developer or any of its assets which will or might have an impact on the ability of the Developer to perform its obligations under this Agreement.

4 Information Provided to Homes England

4.1 All information supplied by or on behalf of the Developer to Homes England or its agents or employees in connection with the Developer's proposal in respect of the provision of Help to Buy by the Developer or in the course of the subsequent negotiations was at the time of submission and as far as the Developer was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects;

4.2 The Developer has informed Homes England of any change that has occurred since the date of submission of which the Developer is aware (or ought to be aware) having made all reasonable and proper enquiries which would render the information referred to in paragraphs 4.1 and/or 4.4 untrue, incomplete or inaccurate in any Material respect; and

4.3 The Developer is not aware of any Material facts or circumstances which have not been disclosed to Homes England and which might, if disclosed would negatively influence the decision of anyone considering whether or not to contract with the Developer.

4.4 All information submitted to Homes England during the course of this Agreement (whether via IMS or otherwise) is as far as the Developer is aware (or ought to be aware) having made all reasonable and proper enquiries complete and accurate in all respects.

5 Developer Defaults

5.1 To the best of the Developer's knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Developer threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no insolvency event has occurred in relation to the Developer.

5.2 In entering into this Agreement the Developer has not committed any Prohibited Act.

5.3 Without prejudice to paragraphs 5.1 and 5.2 above, no Developer Default has occurred or is continuing.

6 Third party rights and intervening events

6.1 No person having any charge or other form of security over the property or any other assets of the Developer has enforced or given notice of its intention to enforce such security.

6.2 The Developer is not aware, after due enquiry, of anything which threatens the success or successful completion of the intention or purpose of this Agreement.

7 Land Ownership

In relation to each Eligible Dwelling identified by the Developer for the future receipt of Equity Loan Funding the Developer either:

(a) has (or will prior to any drawdown of Equity Loan Funding in respect of that Eligible Dwelling) have a Secure Legal Interest in such Eligible Dwelling; or

(b) will be able to satisfy Conditions Precedent 2.1.4(b) in respect of the Eligible Dwelling.

8 Consumer Code for Home Builders

The Developer has adopted and complied with (and shall continue to adopt and comply with) the Consumer Code for Home Builders in respect of each Eligible Dwelling.

9 Eligible Dwellings

All Dwellings in respect of which the Developer claims the Homes England Contribution meet the criteria to be classified as Eligible Dwellings.

10 Eligible Purchasers

All purchasers of Dwellings in respect of which the Developer claims the Homes England Contribution meet the criteria to be classified as Eligible Purchasers.

11 Building a Safer Future Charter

The Developer has become a registered signatory to the Building a Safer Future Charter if the Eligible Dwelling forms part of a building that is above either 18 metres or 6 floors in height (whichever is the lower).

12 Estate Rent Charge Enforcement

12.1 The transfer deed of each Eligible Dwelling which is subject to an Estate Rent Charge contains a covenant on the part of the Developer (or such other third party who has the benefit of the Estate Rent Charge):

12.1.1 Not to enforce its powers under Section 121 Law of Property Act 1925 or prescribe any such other express terms of enforcement within the transfer deed enabling forfeiture, the granting of a lease or repossession of an Eligible Dwelling; and

12.1.2 Not to assign/sell or transfer the Estate Rent Charge unless such assignee or transferee has entered into a deed of covenant with the Eligible Purchaser to comply with the covenant expressed within Paragraph 12.1.1.

Schedule 5

Processing, Personal Data and Data Subjects

- 1 The Developer shall comply with any further written instructions from Homes England with respect to Processing.
- 2 Any such further instructions shall be incorporated into this Schedule

Description	Details
Subject matter of the processing	All processing undertaken (if any) in connection with the Agreement.
Duration of the Processing	The term of the Agreement
Nature and purposes of the Processing	Any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means, for purposes arising in connection with the Agreement).
Type of Personal Data	Names, addresses, dates of birth, NI numbers, telephone numbers, email addresses, pay, images and biometric data, and any other personal data processed in connection with the Agreement.
Categories of Data Subject	Applicants for Help to Buy and persons the Developer has entered into, or proposes to enter into, legal arrangements with, staff (including volunteers, agents, and temporary workers), suppliers, students/pupils, members of the public.
Plan for destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>All copies of the following forms upon the achievement of purchaser legal completion for each plot sold under the Help to Buy:</p> <ul style="list-style-type: none"> • Property Information Form (PIF) • Authority to Proceed (ATP) • Authority to Exchange (ATE)

	<ul style="list-style-type: none">• Confirmation to Developer (CTD) <p>Any other correspondence or information, in hard or electronic copy relating to the Help to Buy assistance provided by Homes England for the purchase of Eligible Dwelling.</p>
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Schedule 6

First Time Buyer

A First Time Buyer is an individual who

- 1 Is resident in the United Kingdom for tax purposes or, if not so resident, either performs duties which, by virtue of section 28 of the Income Tax (Earnings and Pensions) Act 2003 (Crown employees serving overseas), are treated as being performed in the United Kingdom, or is married to, or in a civil partnership with, a person who performs such duties.
- 2 Does not own, and never has owned or entered into a Home Purchase Plan (or equivalent arrangement) in relation to any interest in residential land, whether in the United Kingdom or elsewhere, which:
 - 2.2 is:
 - 2.2.1 in England or Wales:
 - (a) freehold;
 - (b) leasehold, where the lease was originally granted for a term certain exceeding 21 years; or
 - (c) commonhold; or
 - 2.2.2 in Scotland, registered or recorded, or would be capable of being registered or recorded, as a right of absolute ownership in the Land Register of Scotland or General Register of Sasines in Scotland, as applicable; or
 - 2.2.3 in Northern Ireland:
 - (a) freehold; or
 - (b) leasehold, where the lease was originally granted for a term certain exceeding 21 years; or
 - 2.2.4 an equivalent interest in residential land to the interests in land listed in paragraphs 2.1.1(a) to 2.1.1(c) above:
 - (a) under the laws of any jurisdiction outside the United Kingdom; and
 - (b) comprises a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use; and
 - (c) which was acquired as a purchaser by way of sole or joint ownership; or
 - 2.2.5 entitles the individual to possess or occupy that land.

- 3 Intends to occupy the Eligible Dwelling as their only or main residence and will, following the acquisition of the Eligible Dwelling, occupy the Eligible Dwelling as their only or main residence.

Schedule 7

Maximum Limits

Price Cap For Properties Eligible For Help To Buy From April 2021 To March 2023 (Listed By Operating Area))

Region	Price Cap	Maximum Loan*
	£	£
North East	186,100.00	37,220.00
North West	224,400.00	44,880.00
Yorkshire and the Humber	228,100.00	45,620.00
East Midlands	261,900.00	52,380.00
West Midlands	255,600.00	51,120.00
East of England	407,400.00	81,480.00
London	600,000.00	240,000.00
South East	437,600.00	87,520.00
South West	349,000.00	69,800.00

* 20% of Price Cap Outside London/40% of Price Cap in London