



Homes
England

Date: 30 October 2020

Our Ref: RFI3085

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████
By Email Only

Windsor House
Homes England – 6th Floor
50 Victoria Street
London
SW1H 0TL

Dear ██████████

RE: Request for Information – RFI3085

Thank you for your request for information, which was processed under the Freedom of Information Act 2000 (FOIA). You requested the following information:

I would like to make a Freedom of Information request for the tender response submitted in relation to the tender for the administration of a portfolio of equity loan mortgages on behalf of lenders by Target Servicing Limited, as well as the contract entered into by the department with them. This tender was run by the Homes and Communities Agency, and as you now run the contract, I believe you will now hold the information.

I do not require any financial information, though I would request disclosure of any assumptions made by Target Servicing, particularly those made around the redemption process and the use of borrowers' solicitors to undertake work at the Land Registry on the department's behalf.

Response

We can confirm that we do hold the requested information. We will address each part of your request in turn.

Tender Response by Target Servicing Limited

Section 44 – Disclosure prohibited by law

The service provided by Target Servicing is currently being re-procured. The Public Contracts Regulations 2015 applies to the re-procurement exercise. We consider that revealing the information requested would put Homes England in breach of Regulation 18 of the Public Contracts Regulations 2015. Regulation 18 provides that “Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner”. Homes England is a contracting authority. This is because if the information were released the information would be likely to put Target Servicing at a commercial disadvantage in the current procurement process. Release of the tender will reveal Target Servicing’s current commercial and delivery approach. Protecting the commerciality of information provided to Homes England from potential partners is essential in encouraging third parties to submit full and accurate information in tenders. Release of the information would result in Target Servicing being placed at a commercial disadvantage in relation to other potential bidders.

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Section 44 (1)(a) FOIA exempts information if its disclosure is prohibited by an enactment, and as stated above, we consider that disclosure would cause Homes England to breach Regulation 18 of the Public Contracts Regulations 2015. Regulation 44 is an absolute exemption which means it is not subject to the public interest test.

Having determined that section 44 is applicable, we do not need to consider other exemptions. However, for completeness, even if section 44 had not been applicable, we would have refused disclosure on the grounds of the following exemptions:

Section 43 - Commercial interests

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The tender response engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice the successful operation of the existing contract and the relationship between the parties. It would also be likely to prejudice effective competition and value for money for procured services.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money.
- Homes England acknowledges that there is an interest in the procurement and tender process regarding both successful and unsuccessful tenders.

Arguments in favour of withholding:

- The contract between the parties is ongoing until December 2020. Whilst Homes England and Target Servicing Limited are still in contract following the tender and the obligations of that contract ongoing, it would be detrimental to release the information requested. There is a high risk that disclosing the information would be likely to prejudice the commercial interests of the third party. The operational and commercial procedures of the third party could be exploited which could result in the contractual obligations being affected. This would not be in the public interest as public funds could be at risk if a contractor is unable to fulfil their requirements;
- To disclose information of the successful tender would be likely to affect our ongoing and future relationship with the third party. There is a high risk that this would damage the performance of the contract if the relationship between Homes England and a supplier were prejudiced. This would not be in the public interest as Homes England may be unable to fulfil our requirements as set out in our strategic plan;



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- Homes England believe that if the information were released there would be a high risk that future tenders of a similar nature could be distorted. If the wider public has access to the information it could be used to exploit the procurement process for profit or other gain. This would not be in the public interest as public funds could be allocated in a way that would not represent good value for money; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

Contract entered into between Homes and Communities Agency and Target Servicing Limited

Please find attached Annex A, a copy of the initial contract entered into between the Homes and Communities Agency and Target Servicing. Homes England was launched by the Secretary of State on 11 January 2018 and is the trading name of Homes and Communities Agency (the legal entity).

We have withheld some information contained in Annex A under the following exemptions:

Section 40 – Personal information

We have redacted information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

Section 43 - Commercial interests

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.

The contract engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice the effective operation of the contract and the relationship with the third party.



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Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money.
- Homes England acknowledges that there is a public interest in the arrangements for services contracted to third parties.

Arguments in favour of withholding:

- Releasing information that relates to pricing of services under the contract would be likely to prejudice the ability of Homes England to procure services that represent good value for public money. Release could result in third parties distorting prices in future procurements and would be likely to affect impartiality and competition in a competitive market. This would not be in the public interest as it would negatively impact the public purse;
- Releasing the information regarding Target's Disaster Recovery and Security Requirements would not be in the public interest. This information is the service provider's internal policy and release would be likely to place Target at a commercial and operational disadvantage, as competitors could use this information to undermine these aspects of the services provided. This would not be in the public interest as it could result in Target being unable to fulfil their obligations under the contract. Furthermore, as the contract is currently being re-tendered the information would offer competitors an unfair commercial advantage and undermine the competitiveness of Target's proposals. To release information relating to one party in a competitive market would distort the quality of submissions received. This would not be in the public interest as Homes England may not receive accurate information from potential third parties resulting in poor value for public money;
- Disclosure would adversely affect the relationship between Homes England and current and potential partners. There would be significant reputational, commercial and financial loss to Homes England and our partners as third parties could use the information to distort the market for their own gain, which would affect future relationships; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>



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Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. To comply with this duty we are able to advise that the initial contract entered into was amended by subsequent deeds of variation and an extension.

Right to Appeal

If you are not happy with the information that has been provided or the way in which your request has been handled you may request an internal review by writing to;

The Information Governance Team
Homes England – 6th Floor
Windsor House
50 Victoria Street
London
SW1H 0TL

Or by email to infogov@homesengland.gov.uk

You may also complain to the Information Commissioner however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

The Information Governance Team

For Homes England

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dated

2016

Homes and Communities Agency

and

Target Servicing Limited

Deed of appointment of a Mortgage Administrator

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Agreement

dated

Parties

- (1) **Homes and Communities Agency** a body corporate under Section 1 of the Housing and Regeneration Act 2008 of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the **Agency**); and
- (2) **Target Servicing Limited** (Company registration number: 05618062) whose registered office is Imperial House, Newport, NP10 8UH (the **Mortgage Administrator**).

Introduction

- (A) The Agency is empowered under Sections 2, 3 and 5 of the Housing and Regeneration Act 2008 to improve and facilitate the supply of housing in England.
- (B) In accordance with the European Union public sector procurement principles as implemented in the United Kingdom, the Agency has held a competitive tender process to find a service provider to provide a range of services for the First Time Buyers Initiative, HomeBuy Direct, London Wide Initiative, FirstBuy, Help to Buy Equity Loan and other shared equity housing products of the Agency.
- (C) On 13 November 2015 the Agency published a notice in the Official Journal of the European Union in relation to the tender of the Agency's requirements for these services. The Agency issued a pre-qualification questionnaire (**PQQ**) to respondents to its notice, then subsequently assessed and selected a short list of candidates.
- (D) Following such assessment and selection, the Agency issued an Invitation to Tender (**ITT**) to potential service providers (including the Mortgage Administrator) and subsequently evaluated responses to the ITT.
- (E) On the basis of the Mortgage Administrator's responses and subsequent discussions, the parties have agreed to the following terms for the provision and receipt of the Services.

Agreed terms

1 Definitions and Interpretations

- 1.1 For the purposes of this Agreement, unless the context requires otherwise, the following words and phrases shall have the following meanings:

Account means an interest bearing account designated as the "Homes and Communities Agency and Developers' Receivables Account" being the account with sort code **S40(2)** **[REDACTED]** held at the Account Bank;

Account Bank means **[REDACTED]** at which the Account is held pursuant to the terms of the Account Charge;

Account Charge means the security charge created on or about the date of this Agreement in the form annexed at Schedule 5;

Account Date means 31 March in each year;

Affordable Housing Capital Funding Guide means the Agency's Affordable Housing Capital Funding Guide as updated, revised or replaced from time to time;

Agency Account means the account nominated by the Agency in writing from time to time as the account to be notified to the Owner's solicitor for transfer of all partial and full Repayments under an Equity Mortgage (other than a Developer Mortgage);

Agency 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 Mortgage Administrator by or on behalf of the Agency; or
 - ii which the Mortgage Administrator is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Agency is the Data Controller;

Agency's Financial Memorandum means the financial memorandum or guidance relating to the Agency from time to time in force;

Agency's IT and Communication Procedures means the information technology and communication procedures of the Agency from time to time in force;

Agency Mortgage means an Equity Mortgage to which the Agency (or the Greater London Authority) is a lender party or any Equity Mortgage identified by the Agency as an Agency Mortgage;

Agency Property means all property of the Agency including without limitation, all Records, keys, security passes, credit cards, equipment, documents, papers, magnetic discs, tapes or other software storage media, film, videos and photographs which belong to the Agency or relate to its business or affairs issued to or otherwise in the Mortgage Administrator's custody;

Agency System means the Agency's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Agency or the Mortgage Administrator in connection with this Agreement which is owned by or licensed to the Agency by a third party and which interfaces with the Mortgage Administrator System or which is necessary for the Agency to receive the Services;

Agreement means this Agreement together with the Schedules annexed hereto all as may be amended by the parties in accordance with the terms hereof;

Applicable Laws means any and every law (including common law), statute, by-law (if in implementation of a law of national application), EU directive, rule of court, delegated or subordinated legislation, regulations, policy statement, circular or order with which a party is obliged to comply, whether now or hereafter in effect which affects or impinges upon any of the matters referred to in this Agreement or requiring to be done in connection with the Services (including for the avoidance of doubt circulars and regulations issued by the

Agency which the Mortgage Administrator is obliged to comply with in relation to the Services);

Applicable Standards means any generally recognised industry or service standard code of practice or British Standard or equivalent European Union Standard (which is applicable in the United Kingdom) which relates to matters of a type similar to the obligations set out in the Specification or to goods, equipment or materials required in the compliance with the Specification;

Auditors has the meaning set out in clause 11.1;

Audits has the meaning set out in clause 11.1;

Authorised Representative means as the case may be the person appointed by the Agency or the Mortgage Administrator respectively to manage all aspects of the Agreement and who is authorised to make day to day decisions in respect of the operational performance of the Agreement;

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means the power of a person (or persons acting together) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) whether by means of:

- (a) in the case of a company or registered society:
 - i being the beneficial owner of more than 50% of the issued share capital of or of the voting rights in that company or society; or
 - ii having the right to appoint or remove a majority of the directors; or
 - iii otherwise controlling the votes at board meetings of that company by virtue of any powers conferred by:
 - A the articles of association or rules (as applicable);
 - B any shareholders' agreement; or
 - C any other document regulating the affairs of that company or society;
- (b) in the case of a partnership:
 - i being the beneficial owner of more than fifty per centum (50%) of the capital of that partnership; or
 - ii having the right to control the composition of or the votes to the majority of the management of that partnership by virtue of any powers conferred by:
 - A the partnership agreement; or
 - B any other document regulating the affairs of that partnership;

- (c) in the case of a limited liability partnership (**LLP**):
- i being the beneficial owner of more than fifty per centum (50%) of the capital of that LLP; or
 - ii having the right to control the composition of or the votes to the majority of the management of that LLP by virtue of any powers conferred by:
 - A the members' agreement; or

any other document regulating the affairs of that LLP;

Code of Practice means the Lord Chancellor's Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA and any re-enactments and amendments;

Commencement Date means the date of this Agreement;

Confidential Information means all confidential designs, drawings, data, specifications, manufacturing processes, testing procedures and all other technical, business and similar information relating to the Mortgage Administrator's or Agency's business and affairs, its customers, employees and suppliers or otherwise relating to the Services including all readable data, logic, logic designs, flowcharts, source or object codes, listings, test data, test routines, diagnostic programs, software programs or other material;

Contract Review Meeting has the meaning set out in clause 7.1.3;

Contract Year means each 12 month period during the Term commencing on the Commencement Date and each anniversary of the Commencement Date;

Date Compliant means that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Mortgage Administrator System;

Default means:

- (a) any failure by the Mortgage Administrator to meet 6 (six) Key Performance Standards (as recorded in any Performance Report pursuant to Clause 7.2 or as amended in such report by the Agency) within any three (3) month period;
- (b) any failure to meet any of Key Performance Standards 1, 4, 7,8, 13, 15, 19, 26 and/or 33 within any Month;
- (c) any persistent failure of the Mortgage Administrator to comply with the terms of this Agreement;
- (d) any complaint from a Developer (which is not subsequently shown to be unfounded) that a failure or failures by the Mortgage Administrator to provide the Services in accordance with this Agreement has materially and adversely impacted on such Developer;

Developer means:

- (a) an organisation who has entered into an agreement with the Agency for the provision accommodation funded by any of the following: FTBI, London Wide Initiative, HomeBuy Direct, FirstBuy, the Help to Buy Equity Loan Scheme, or any other shared equity housing product funded or promoted by the Agency (confirmed by the Agency to be subject to this Agreement); and/or
- (b) any organisation who has acquired or taken a transfer of any existing Developer Mortgages.

Developer Account means the account nominated by the Agency in writing from time to time as the account to be notified to the Owner's solicitor for transfer of all partial and full Repayments under a Developer Mortgage;

Developer Mortgage means an Equity Mortgage entered into by a Developer (or one of its group companies) pursuant to either HomeBuy Direct, FirstBuy or any other shared equity housing product funded or promoted by the Agency which is confirmed by the Agency to be subject to this Agreement and which requires the Developer to enter into an Equity Mortgage with the buyer;

Disaster Recovery Plan means the disaster recovery plan annexed hereto at Schedule 6 as such plan may be amended by the agreement of the parties from time to time;

Dispute Resolution Procedure means the procedure set out in clause 23;

DPA means the Data Protection Act 1998;

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 the EIR;

Equity Mortgage means a current equity mortgage entered into by Owners in the form required by the Agency in relation to accommodation funded by either FTBI, HomeBuy Direct, FirstBuy, London Wide Initiative the Help to Buy Equity Loan Scheme or any other shared equity housing product funded or promoted the Agency (and confirmed by the Agency to be subject to this Agreement);;

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

Fee means any periodic payment due under each Equity Mortgage (which shall for the avoidance of doubt exclude Repayments);

FirstBuy means the government low cost home ownership (shared equity) initiative of the same name as described in the FirstBuy prospectus published by the Agency on 5 April 2011

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 the FOIA;

FTBI means a shared equity scheme funded by the Agency (and/or its predecessor English Partnerships) under the First Time Buyer's Initiative Scheme which commenced in 2006;

Good Industry Practice means the exercise of that degree of skill prudence and diligence, which could reasonably and ordinarily be expected from a skilled and experienced contractor seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and standards and engaged in a similar type of undertaking and under the same or similar circumstances and conditions as applies under this Agreement and to a standard no less than that required by the Agency and/or the Regulator under any standard, code or practice, circular or otherwise;

Greater London Authority or **GLA** means the Greater London Authority of City Hall, the Queen's Walk, More London, London SE1 2AA;

Group Company means any company which is:

- (a) a subsidiary or holding company of the Mortgage Administrator; or
- (b) a subsidiary of the Mortgage Administrator'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 an Agent appointed by the Agency for the provision of services in relation to the purchase of accommodation funded by home ownership products (including purchases funded by Equity Mortgages) following the Agency procurement commenced on 21 October 2013;

Help to Buy Equity Loan and **Help to Buy Equity Loan Scheme** means the government home ownership initiative of the same name as described in the Help to Buy Equity Loan Participation Guidance initially published by the Agency on 25 March 2013 as may be updated by the Agency from time to time;

HomeBuy Direct means the government low cost home ownership initiative of the same name as described in the HomeBuy Direct prospectus published by the Agency's predecessor the Housing Corporation on 1 October 2008;

ICT Environment means the Agency System and the Mortgage Administrator System;

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

Information means (i) in relation to the FOIA, the meaning given under section 84 of the FOIA and which is held by the Agency at the time of receipt of an RFI; and (ii) in relation to the EIR, the meaning given under the definition of "environmental information" in section 2 of the EIR and which is held by the Agency at the time of receipt of an RFI;

Information Commissioner has the meaning set out in Section 6 of the Data Protection Act 1998;

Insolvency Event means the occurrence of any of the following in relation to the Mortgage Administrator:

- (a) it is unable or admits 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 the Agency;
 - ii a composition, compromise, assignment or arrangement with any creditor;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency), receiver, administrative receiver, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any assets of the Mortgage Administrator;
 - v any analogous procedure or step is taken in any jurisdiction; or

any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Mortgage Administrator;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not and including any applications for registration thereof) 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;

ITT means the Invitation to Tender issued to potential service providers by the Agency on 19 January 2016;

Key Performance Standards means the performance standards listed in the Performance Report;

Lender means either the Agency (including any body who is the lender party to an Agency Mortgage, including the GLA) or the Developer in their capacity as the lender party under the relevant Equity Mortgage;

London Wide Initiative means a programme run by the Agency in collaboration with the Greater London Authority and the department of Communities and Local Government pursuant to which accommodation was made available for purchase by key workers within London providing a percentage of the purchase price with the balance of the purchase price secured by a mortgage on the property such mortgage to be repayable on disposal;

Loss or Damage means any damage or destruction caused to property of, or otherwise suffered by, the Agency (including any loss of profits or loss of use resulting from such damage or destruction) and any other loss, direct or indirect, charge, cost, expense, liability or increased liability howsoever arising suffered or incurred by the Agency;

Malicious Software means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

Material Default means a breach by the Mortgage Administrator of any of its obligations under, or incorporated by reference into, this Agreement, which is in the reasonable opinion of the Agency, material;

Mobilisation Period means the first three (3) months immediately following the Commencement Date;

Month means a calendar month;

Mortgage Administrator Equipment means the hardware, computer and telecoms devices and equipment supplied by the Mortgage Administrator or its sub-contractors (but not hired, leased or loaned from the Agency) for the provision of the Services;

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

Mortgage Administrator System means the information and communications technology system used by the Mortgage Administrator in performing the Services including the Mortgage Administrator Equipment and related cabling (but excluding the Agency System);

Mortgage Administrator's Fees means the fees payable to Mortgage Administrator by the Agency under the Agreement and calculated in accordance with the provisions of Schedule 2;

New Provider has the meaning set out in clause 16.1;

Open Book means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts,

correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Outgoing Provider means Metropolitan (Housing Options Plus);

Owner means a property owner who has entered into and currently is the borrower under an Equity Mortgage pursuant to any of the following schemes - FTBI, HomeBuy Direct, the London Wide Initiative, FirstBuy, the Help to Buy Equity Loan Scheme or any other shared equity housing product funded or promoted by the Agency (and confirmed by the Agency to be subject to this Agreement);

Performance Monitoring means the procedure for the monitoring compliance with the Specification described in clause 7.2;

Performance Report means the report (in the form set out in Schedule 4 or such other form as may be prescribed by the Agency) prepared by the Mortgage Administrator every month in accordance with clause 7.2 as part of the Performance Monitoring;

Process/Processed/Processing has the meaning ascribed to the term in Section 1, Part 1 of the DPA;

Quarter means a three month period ending on 31 March, 30 June, 30 September and 31 December;

Records means all deeds, records, plans, drawings, specifications, reports, calculations and technical documentation together with related correspondence, files, electronically stored data and other papers relating to the Agency and its activities;

Regulator means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any other body with responsibility for carrying on substantially the same regulatory or supervisory functions (including any statutory successor);

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 the Agency and "Regulatory Body" shall be construed accordingly;

Relevant System has the meaning set out in clause 25.1;

Repayments means any sum paid to the Mortgage Administrator in partial or full repayment of any amount secured under the Equity Mortgages and any interest or default interest payments pursuant to the terms of the Equity Mortgages;

Request for Information/RFI shall have the meaning set out in the FOIA or any request for information under the EIR which may relate to the Services, this Agreement or any activities or business of the Agency;

Required Action has the meaning set out in clause 14.1.2(a);

Security Plan means the Mortgage Administrator's security plan prepared pursuant to paragraph 2 of Schedule 7 (Security Requirements and Plan);

Security Policy means the Agency's security policy referred to in Schedule 7 (Security Requirements and Plan) and set out in Schedule 8 (Security Policy);

Services means any and all of the services to be provided by the Mortgage Administrator in accordance with this Agreement, including but not limited to those set out in the Specification, any service, function, responsibility not specified in the Agreement as the Mortgage Administrator's responsibility but reasonably and necessarily required for the proper performance of the obligations under this Agreement and, any reasonable extension or variation of those Services and any other Services that the Agency may from time to time request);

Specification means the specification of the Services as set out in Schedule 3 as amended from time to time by agreement between the Mortgage Administrator and the Agency;

Staff means all or any employees of the Mortgage Administrator or any of its sub-contractors or agents or temporary staff who are employed or appointed wholly or mainly and assigned in connection with the operation of this Agreement;

Staff Vetting Procedures means the series of checks made by the Mortgage Administrator on all Mortgage Administrator Personnel;

Standard Fee S43(2)

Term means either the Initial Term (as defined in Clause 3 or any extension by the Agency pursuant to Clause 3.2);

Transaction Fee means the fees detailed in Schedule 2, Annex 1;

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

VAT means value added tax and/or any tax of a similar nature which may be substituted for it or charged or levied against or in addition to it;

VAT Invoice means an invoice which satisfies the requirements of a tax invoice as required under Paragraph 2(1) of schedule II to the Value Added Tax Act 1994 and displays a valid Agency purchase order number;

Warning Notice means a notice served pursuant to clause 7.3; and

Working Days means any day other than a Saturday or Sunday or English public holiday.

1.2 Words importing the singular meaning shall include the plural and vice versa and reference to any gender shall include all other genders.

1.3 All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which had been amended, extended, consolidated, or replaced by the same and shall include any orders, regulations or other delegated or subordinate legislation made under the relevant statute.

- 1.4 The headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- 1.5 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity.
- 1.6 Except where the context otherwise requires, references to clauses are references to clauses of this Agreement. A reference to a Section or a part of the Schedule or to a paragraph in a Part of the Schedule is, unless the context otherwise requires, a reference to a Section or a Part of the Schedule or to a paragraph of the Part of the Schedule to the Agreement in which the reference appears.
- 1.7 References to any agreement or document shall be deemed to include (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned from time to time (in each case in accordance with the terms of the relevant agreement or document or this Agreement).
- 1.8 Any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any permitted successor to that person or any person which has taken over the functions or responsibilities of that person.
- 1.9 In the case of any ambiguity or conflict the provisions in the main body of this Agreement shall take precedence over the provisions of any Part of the Schedule.

2 Purpose

- 2.1 The purpose of this Agreement is to govern the day-to-day working relationship between the Mortgage Administrator and the Agency. It also details agreed performance standards to be met by the Mortgage Administrator.
- 2.2 The Agreement is intended to set up a mortgage administration service in relation to current and future Equity Mortgages. The role of the Mortgage Administrator is to engage with Owners on all matters relating to the Equity Mortgages, including but not limited to:
- (a) databases;
 - (b) enquiry and customer handling;
 - (c) Fee collection and administration;
 - (d) Repayment collection and administration; and
 - (e) provision of a website;

3 Term

- 3.1 This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Agreement shall continue in force until the date falling S43(2) S43(2) after the Commencement Date (the **Initial Term**).

- 3.2 The Agency (at its sole discretion) may extend the Initial Term by a further period or periods not exceeding in total a further S43(2) by giving the Mortgage Administrator reasonable (in the Agency's opinion) written notice prior to the expiry of the Initial Term or any extension to the term. Any such extension shall be for a minimum period of S43(2) and the overall term of this Agreement shall not in any event exceed S43(2). The Mortgage Administrator agrees that nothing in this Agreement shall oblige the Agency to extend the Agreement following the expiry of either the Initial Term or any individual extension period. The Mortgage Administrator further agrees that upon service of any such extension notice, the Agreement shall continue and both the Agency and the Mortgage Administrator shall continue to be bound by its terms for the period of any such extension (subject to any earlier termination in accordance with the terms of this Agreement).
- 3.3 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:
- 3.3.1 the end of the Initial Term; or
- 3.3.2 if the Agency elects to extend the Initial Term, the end of any extension period provided further notice of extension has not been served pursuant to Clause 3.2.

4 **Appointment**

- 4.1 The Agency hereby appoints the Mortgage Administrator to provide the Services to the Agency from the Commencement Date in accordance with the terms and conditions of this Agreement and the Mortgage Administrator hereby accepts the appointment.
- 4.2 During the Term, the Mortgage Administrator shall not provide Services to any third party in conflict with the business of the Agency without the prior written approval of the Agency.
- 4.3 The scope of the Services may be reasonably extended by the Agency by addition to the Specification set out in Schedule 3 or varied at any time by the Agency to the extent that the Agency considers such extension or variation to be necessary or appropriate and in either case by notice in writing served upon the Mortgage Administrator and upon service of any such notice:
- 4.3.1 the Parties shall agree any appropriate and reasonable adjustment to the Fees to reflect the extension of or variation to the Services; and
- 4.3.2 in the absence of agreement or in the event of dispute concerning such appropriate and reasonable adjustment to the Fees the matter shall be referred to the Dispute Resolution Procedure
- provided that** any negotiation or dispute in relation to any adjustment to the Fees shall not prevent or delay the Mortgage Administrator from carrying out the extension or variation to the Services required by the Agency.
- 4.4 Subject to the provisions of Clause 4.3, all additions, amendments and/or variations to this Agreement must be annexed to this Agreement and be in writing and shall only be binding if signed or initialled by the duly authorised representatives of the Agency and of the Mortgage Administrator.

5 **Obligations of the Mortgage Administrator**

5.1 The Mortgage Administrator shall:

5.1.1 comply with and shall provide the Services in accordance with:

- (a) all Applicable Laws and Applicable Standards including, but not limited to, the Financial Services and Markets Act 2000 and the Consumer Credit Act 1974 together with all applicable consumer credit legislations and regulations to the extent applicable to the Mortgage Administrator's role and the provision of the Services;
- (b) the Specification;
- (c) the Key Performance Standards;
- (d) the applicable requirements of the Affordable Housing Capital Funding Guide
- (e) Good Industry Practice; and
- (f) all policies, regulations, procedures and guidelines which may from time to time be issued by the Agency and notified to the Mortgage Administrator including, without limitation, the Agency's Financial Memorandum and so far as is reasonably practicable Agency's IT and Communication Procedures;

5.1.2 ensure that the Services are supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence; and

5.1.3 discharge its obligations under this Agreement with all due skill, care and diligence and to the standard reasonably to be expected of an experienced contractor undertaking services the same or similar to the Services.

5.2 The Mortgage Administrator shall have proper regard to the Agency's statutory objects, any Act of Parliament applicable to the Agency and any other obligations imposed upon the Agency in or by any contract, agreement or arrangement of which the Mortgage Administrator has notice and shall provide the Services in such manner and at such times so as to ensure that no act, omission or default of the Mortgage Administrator in relation thereto shall constitute, cause or contribute to any breach by the Agency of any such obligations.

5.3 The Mortgage Administrator shall comply with the reasonable instructions from time to time issued by the Agency in relation to the provision of the Services. The Mortgage Administrator shall identify any deficiencies in the instructions or information received by it from the Agency (of which it is or becomes aware) and shall notify the Agency's Authorised Representative (or such other officer as the Agency may from time to time direct) of the same in order to obtain such further instruction or information as it may require in order to provide the Services to which the instruction relates.

- 5.4 In the event any instruction, prescribed document or procedure issued or implemented by the Agency in relation to the Services shall impact on the Mortgage Administrator's ability to comply with clause 5.1, the Mortgage Administrator shall specifically raise this with the Agency and suggest any changes that may be required in respect of such instruction, procedure or document to enable the Mortgage Administrator to remain compliant with clause 5.1.
- 5.5 The Mortgage Administrator shall at all times exercise due care and propriety when dealing with third parties in connection with the Agreement and shall ensure that no commitments are entered into without the Agency's written consent.
- 5.6 The Mortgage Administrator acknowledges and accepts that the Agency may appoint more than one Mortgage Administrator in respect of the Services and the Agency gives no guarantee or warranty as to the amount of work, if any, and the consequent fee income, if any, which the Mortgage Administrator may expect under the Agreement. The Mortgage Administrator shall have no claim at law or otherwise against the Agency if the Agency elects not to continue to instruct the Mortgage Administrator to carry out all or any of the Services, or if the Agency appoints any other person to undertake work or services that the Mortgage Administrator may be qualified to perform.
- 5.7 The Mortgage Administrator shall at all times consult fully with the Agency and keep the Agency properly informed of all matters arising in relation to the Services. In addition, as and when requested by the Agency so to do, the Mortgage Administrator shall liaise with, and provide all such information as the Agency may reasonably require and which is within the Mortgage Administrator's possession or control to any other person notified to the Mortgage Administrator by the Agency.
- 5.8 The Mortgage Administrator shall give an early warning by notifying the Agency as soon as it becomes aware of any matter which could:
- 5.8.1 delay the performance of the Services;
 - 5.8.2 give rise to any regulatory breach which would trigger the requirement to notify the Financial Conduct Authority;
 - 5.8.3 delay the provision of the Performance Report or any report required by the Agency under or pursuant to this Agreement; or
 - 5.8.4 impair the usefulness of the Services to the Agency or affect the work of the Agency.
- 5.9 The Mortgage Administrator shall execute and deliver all such instruments and other documents and shall take all such actions as the Agency may from time to time reasonably require in order to give full effect to the provisions of this Agreement.

6 **Account Charge and Repayments**

- 6.1 The Mortgage Administrator warrants, undertakes and represents on the date hereof and every day thereafter for the duration of this Agreement that:

- 6.1.1 the Account shall be held and operated as an interest earning, receivables account solely for the benefit of the Agency acting as trustee for itself and the Developers;
- 6.1.2 all amounts standing to the credit of the Account from time to time (and the debt represented thereby) shall be for the benefit of the Agency acting as trustee for itself and the Developers;
- 6.1.3 it has on or before the date of this Agreement made (and has not amended or revoked) appropriate arrangements with the Account Bank to ensure that no monies can be transferred from the Account except with the prior written consent of the Agency's Authorised Representative;
- 6.1.4 it has entered into the Account Charge and ensured that such Account Charge is properly registered at Companies House;
- 6.1.5 it is in full compliance with the terms of the Account Charge and the form of bank mandate substantially as set out within schedule 2 to the Account Charge.
- 6.1.6 (unless directed by the Agency's Authorised Representative in writing in advance) any Fees shall be paid into the Account and reported to the Agency on a Monthly basis in accordance with clause 6.6;
- 6.1.7 any additional fees properly payable by and collected from any Owner pursuant to any Equity Mortgage shall be paid into the Account and (save as provided by this Agreement or as agreed in writing with the Agency) the Mortgage Administrator shall not retain any fee paid by any Owner in respect of or in connection with the Services and/or any Equity Mortgage;
- 6.1.8 it shall comply with:
- (a) all applicable Legislation including, inter alia, the relevant provisions in the Consumer Credit Act 1974 and the Financial Services and Markets Acts 2000; and
 - (b) all applicable requirements of the Financial Conduct Authority and not do or omit to do anything which impacts or might reasonably be expected to impact on its registration with the Financial Conduct Authority; and
- 6.1.9 it shall not create or permit to subsist any encumbrances over the Account (other than the Account Charge).
- 6.2 The Mortgage Administrator acknowledges and agrees that the Agency is relying on the terms of these undertakings, warranties and representations set out in clause 6.1 and that they are cumulative and none shall be given a limited construction by reference to any other.
- 6.3 The Mortgage Administrator acknowledges and shall procure that any Repayments to be made under the Equity Mortgages shall be made directly to the relevant Developer or the Agency, as the case may be.

- 6.4 The Mortgage Administrator shall ensure that all payments out of the Account are effected by BACS transfer within three (3) Working Days of a direction or instruction in writing by the Agency's Authorised Representative
- 6.5 Without prejudice to clause 10, the Mortgage Administrator shall:
- 6.5.1 operate the Account on an Open Book basis;
 - 6.5.2 allow the Agency full access to financial information relating to the Account and the Equity Mortgages; and
 - 6.5.3 record on the Account's ledger for each payment into or out of the Account and any accrual within the Account:
 - (a) the amount of such payment or accrual;
 - (b) the date such payment or accrual is credited to or debited from the Account;
 - (c) in the case of any payment, the identity of the payer / beneficiary and the address which is or was encumbered by the relevant Equity Mortgage;
 - (d) whether the amount relates to Fees or interest accruing on the Account;
 - (e) whether the payment or accrual relates to HomeBuy Direct, FTBI, London Wide Initiative, FirstBuy, Help to Buy or other shared equity housing product of the Agency;
 - (f) the balance standing to the credit of the Account at such time; and
 - (g) any other information required in accordance with accountancy best practice in relation to trust accounts; and
 - 6.5.4 account to the Agency for all interest which may accrue on the amounts in the Account from time to time on a daily basis.
- 6.6 The Mortgage Administrator shall prepare:
- 6.6.1 management accounts and reports showing all credits and debits for such Quarter together with any other information reasonably requested by the Agency on a Monthly basis or upon the reasonable request of the Agency; and
 - 6.6.2 annual audited accounts for each year ending on the Account Date setting out the value of the Equity Mortgages and may utilise sample valuation statement and regional housing information in ascertaining such value,
- and shall supply such accounts within 10 (ten) Working Days of the end of the relevant Month (in respect of the management accounts) and within 120 (one hundred and twenty) Working Days of the Account Date (in respect of the annual audited accounts).
- 6.7 The Account shall be closed on the termination or expiry of this Agreement and forthwith upon the closing of the Account, the Mortgage Administrator shall transfer the whole

amount standing to the credit of the Account to the Agency in such manner as the Agency directs together with all the financial information (on an Open Book basis) relating to the period since the previous Account Date.

- 6.8 Where the Mortgage Administrator receives any Repayment, Fees or other monies in relation to the Services or any Equity Mortgage following the termination or expiry of this Agreement, it shall hold such Repayment, Fees or other monies on trust for the benefit and account of the Agency as trustee for itself and the Developers and shall pay the same (together with any interest which may accrue thereon) to the Agency or as the Agency directs within three (3) Working Days of receipt.

7 **Performance and Reporting**

7.1 **Assistance and monitoring reviews**

7.1.1 The Mortgage Administrator shall provide all necessary assistance to enable the Agency to monitor the Mortgage Administrator's performance of its obligations under this Agreement.

7.1.2 In addition to Performance Monitoring the Mortgage Administrator shall provide promptly in response to a request from the Agency, in confidence, appropriate information which could reasonably be considered to facilitate the monitoring of the Mortgage Administrator's performance under and compliance with this Agreement together with such reasonable information as may be required by the Agency.

7.1.3 The Mortgage Administrator will procure that its Authorised Representative and such other key personnel as are requested by the Agency attend such contract review meetings as the Agency may reasonably require. The meetings will operate as a forum to review compliance with the Specification and will involve an assessment of such matters as the Agency and/or the Mortgage Administrator consider appropriate (the **Contract Review Meetings**).

7.1.4 Subject always to clause 7.1.3, the parties hereby agree that a Contract Review Meeting shall be held at least on a monthly basis in order to review the ongoing compliance with the Specification by the Mortgage Administrator.

7.2 **Performance Monitoring**

7.2.1 Performance Monitoring shall consist of self-assessment by the Mortgage Administrator as to compliance with the Key Performance Standards. As part of the Performance Report the Mortgage Administrator shall also be responsible for completing monitoring returns for the Agency in such form and together with such information as may reasonably be required by the Agency. The Mortgage Administrator shall complete the Performance Report in accordance with the provisions of this clause 7.2 and the guidance notes annexed to the Performance Report.

7.2.2 Within ten (10) Working Days of the end of each Month, the Mortgage Administrator shall complete a Performance Report and shall assess its compliance with the Specification against the Key Performance Standards during the preceding month.

- 7.2.3 Each Performance Report shall be signed off by the Mortgage Administrator's Authorised Representative as being correct to the best of his knowledge and belief.
- 7.2.4 Subject to clause 11:
- (a) The Agency may at any time carry out its own assessment of the Mortgage Administrator's compliance with the Key Performance Standards and the Mortgage Administrator will cooperate with such assessment.
 - (b) The Agency will provide reasonable notice in advance of any such assessment where the Agency (acting reasonably) deems such notice to be appropriate and will notify the Mortgage Administrator of the outcome of any assessment conducted pursuant to this clause.
- 7.2.5 If in the Agency's reasonable opinion an assessment conducted pursuant to clause 7.2.4 indicates that one or more Performance Reports have been incorrectly completed the Agency shall, without prejudice to any other right or remedy of the Agency, be entitled to amend the relevant Performance Report in accordance with the outcome of such assessment.

7.3 Warning Notices

- 7.3.1 In the event a Default occurs, the Mortgage Administrator will promptly notify the Agency and be required to report to the Agency within three (3) weeks on the nature and frequency of the Default and to identify the potential causes and solutions to reduce or remove the future occurrence of Defaults. For the avoidance of doubt the Agency can make suggestions and recommendations but has no power to require the Mortgage Administrator to carry out any action or implement any changes to working practices to minimise future Defaults.
- 7.3.2 If the Agency (acting reasonably) is not satisfied with the Mortgage Administrator's report submitted pursuant to Clause 7.3.1 or, if at any time, a further Default occurs then the Agency shall be entitled to serve a Warning Notice on the Mortgage Administrator. For the avoidance of doubt, a Warning Notice shall only be served once in respect of any individual instance of a Default.
- 7.3.3 Any such notice shall state on its face that it is a Warning Notice, the incident(s) or complaint(s) to which it relates and the circumstances giving rise to the issue of the Warning Notice and shall be signed by or on behalf of the Agency. In the event that any Warning Notice is subsequently revoked, such notice shall be treated as not having been issued for the purposes of clauses 14 and/or 15.

8 Authorised representatives and contacts

- 8.1 Not later than the date hereof:
- 8.1.1 the Agency shall produce to the Mortgage Administrator details of its Authorised Representative and other nominated staff who will deal with the Mortgage Administrator for the purposes of day-to-day operation of this Agreement; and

8.1.2 the Mortgage Administrator shall produce to the Agency details of its Authorised Representative and other nominated staff who will deal with the Agency for the purposes of day-to-day operation of this Agreement.

8.2 Each party shall notify the other in advance of any appointment of a replacement for the Authorised Representative and the key personnel whose details are provided pursuant to clause 8.1.

9 **Freedom of Information and Confidentiality**

9.1 **Freedom of Information**

9.1.1 The Mortgage Administrator acknowledges that the Agency is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.

9.1.2 The Agency 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 Mortgage Administrator respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency.

9.1.3 Subject to Clause 9.1.4 below, the Mortgage Administrator acknowledges that the Agency may be obliged under the FOIA or the EIR to disclose Information:

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

9.1.4 Without in any way limiting Clauses 9.1.2 and 9.1.3, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Mortgage Administrator.

9.1.5 The Mortgage Administrator will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure requirements under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:

- (a) transfer any Request for Information received by the Mortgage Administrator to the Agency as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

- (b) provide all such assistance as may be required from time to time by the Agency to enable the Agency to comply with its obligations to disclose Information;

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

9.2 Confidentiality

9.2.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.

9.2.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency or the Services arising or coming to its attention in the course of providing the Services to the Agency 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.

9.2.3 The obligations of confidence referred to in Clause 9.2.2 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.

9.2.4 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
- (b) by any Applicable Laws or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA, the EIR or the Code of Practice on Access to Government Information and the Mortgage Administrator acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the

Agency 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 adviser of that party who also has an obligation to keep any such Confidential Information confidential.

9.2.5 The Mortgage Administrator shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:

- (a) is given only to such of its 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 the Agency'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 the Agency the Mortgage Administrator shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

9.2.6 Nothing in this Clause 9.2 shall prevent the Agency:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of the Agency'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 the Agency has used its resources;
- (b) disclosing any Confidential Information obtained from the Mortgage Administrator:
 - 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 the Agency 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 9.2.6(b)(i), 9.2.6(b)(ii), 9.2.6(b)(iii) or 9.2.6(b)(iv) the Agency 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.

9.2.7 Nothing in this Clause 9.2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this 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.

10 **Records and accounts**

10.1 The Mortgage Administrator shall, as and when requested by the Agency, make available on an Open Book basis and in a timely manner to the Agency where required in connection with this Agreement or the Services a copy of each of:

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

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

10.2 The Mortgage Administrator shall at all times:

10.2.1 maintain a full record of particulars of all the income received and expenditure incurred by the Mortgage Administrator in respect each Equity Mortgage;

10.2.2 when required to do so by the Agency, provide a summary of any of the income and expenditure referred to in clause 10.2.1 as the Agency may require to enable it to monitor the performance by the Mortgage Administrator of its obligations under this Agreement; and

10.2.3 provide such facilities as the Agency may require for its representatives to visit any place where the records are held and examine the records maintained under this condition.

10.3 Compliance with the above shall require the Mortgage Administrator to keep books of account in accordance with best accountancy practice with respect to the Services showing in detail:

10.3.1 full particulars of the costs of performing the Services;

10.3.2 a summary of the costs referred to in clause 10.2, including details of any funds held by Mortgage Administrator specifically to cover such costs;

- 10.3.3 administrative overheads where directly attributed or where apportioned on a pro rata basis;
- 10.3.4 full particulars of funds held in the Account on behalf of the Agency and the Developer respectively in relation to any shared equity product covered by the Services;
- 10.3.5 a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- 10.3.6 such other records as the Agency may reasonably require having regard to the cost to Mortgage Administrator of maintaining and providing such records.

and the Mortgage Administrator shall have the books of account evidencing the items listed in this condition available for inspection by the Agency (and any person appointed pursuant to the Dispute Resolution Procedure to determine a dispute or otherwise authorised by the Agency) upon reasonable notice, and shall submit a report of these to the Agency as and when requested.

- 10.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Mortgage Administrator shall if requested to do so deliver up to the Agency (or as the Agency directs) all the data, materials, documents and accounts referred to in this clause 10 which it has in its possession, custody or control and shall procure the handing over to the Agency such data, materials, documents and accounts referred to in clause 10.1.2 or as otherwise directed by the Agency.
- 10.5 The Mortgage Administrator must for a period of 10 (ten) years from the from expiry or termination of this Agreement (howsoever caused) or such period as is agreed in writing between the Parties from time to time retain all of the data, documents, materials and accounts referred to in this clause 10 and the Mortgage Administrator may retain such data, documents, materials and accounts in electronic form only.

11 Audits

- 11.1 The Agency, its duly authorised agents and identified representatives and staff and agents of the National Audit Office, the department of Communities and Local Government, the European Court of Auditors and the European Commission and any other duly authorised agents or representatives of the Agency (the **Auditors**) may conduct audits (**Audits**) of the Mortgage Administrator as and when reasonably required for the following purposes in connection with this Agreement:
 - 11.1.1 to verify the accuracy of the Mortgage Administrator's Fees and/or the costs of all suppliers of the Services;
 - 11.1.2 to review the integrity, confidentiality and security of the Agency data;
 - 11.1.3 to review the Mortgage Administrator's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with this Agreement and any Applicable Laws;
 - 11.1.4 to review the Mortgage Administrator's compliance with its obligations under this Agreement;

- 11.1.5 to review any books of account and all transaction records and documents kept by the Mortgage Administrator in connection with the provision of the Services; and
- 11.1.6 to verify the accuracy and completeness of any information delivered or required by this Agreement.
- 11.2 The Mortgage Administrator shall provide such access and facilities as the Auditors may reasonably require to visit any place where the records maintained under this clause 11 are held and to examine such records, and shall permit such records to be examined and copied by the Auditors.
- 11.3 The Mortgage Administrator shall permit the Auditors and their agents, representatives and employees to interview its employees to obtain appropriate information and oral explanations of documents and information **provided that** the Auditors shall where it is reasonable to do so take account of the Mortgage Administrator's reasonable requirements concerning the conduct of any such interviews.
- 11.4 The Agency shall use its reasonable endeavours to seek co-ordination between the Auditors so as to limit the administrative burden placed on the Mortgage Administrator.
- 11.5 The Agency shall use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Mortgage Administrator or delay the provision of the Services.
- 11.6 Save in the circumstances detailed in clause 11.7, the Agency shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an Audit.
- 11.7 The Agency shall be permitted (using appropriately authorised personnel) immediate access to the records set out in clause 10.1, the Mortgage Administrator's personnel and any premises (or part of any premises) where the Mortgage Administrator provides the Services to carry out investigations and audits in the following circumstances:
- 11.7.1 suspected fraud;
- 11.7.2 where the Agency has reasonable grounds to suspect that the Mortgage Administrator has committed a breach of this Agreement or a fraudulent act or where an audit is required by a Regulatory Body; and
- 11.7.3 circumstances have arisen that may permit the Agency to terminate all or part of this Agreement.
- 11.8 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 11, unless the Audit identifies fraud or a material default by Mortgage Administrator in which case Mortgage Administrator shall reimburse the Agency for all the Agency's reasonable costs incurred in the course of or in relation to the Audit.
- 11.9 If an Audit identifies that:

- 11.9.1 the Mortgage Administrator has failed to perform its obligations under this Agreement in any material manner, the parties shall agree and implement a remedial plan. If the Mortgage Administrator's failure relates to a failure to provide any information to the Agency about the Mortgage Administrator's Fees, proposed fees or the Mortgage Administrator's costs, then the remedial plan shall include a requirement for the provision of all such information;
- 11.9.2 the Agency has overpaid any Mortgage Administrator's Fees, the Mortgage Administrator shall pay to the Agency the amount overpaid within thirty (30) Working Days of the Agency confirming the outcome of the Audit to the Mortgage Administrator. The Agency may deduct the relevant amount from the Mortgage Administrator's Fees if the Mortgage Administrator fails to make this payment; and
- 11.9.3 the Agency has underpaid any Mortgage Administrator's Fees, the Agency shall pay to the Mortgage Administrator the amount of the under-payment less the cost of audit incurred by the Agency if this was due to a default by the Mortgage Administrator in relation to invoicing within thirty (30) Working Days of the Agency confirming the outcome of the Audit to the Mortgage Administrator.
- 11.10 The provisions of this clause 11 shall survive the expiry or termination of this Agreement for a period of twelve (12) months.

12 Insurance

- 12.1 The Mortgage Administrator shall take out and maintain policies of insurance as are set out in Schedule 1 and shall otherwise comply with the provisions of Schedule 1.
- 12.2 The Mortgage Administrator agrees to maintain such insurance at all times until 12 years after expiry of the Term (or, if later, 12 years after the date upon which the Mortgage Administrator completes the provision of Services pursuant to an instruction from the Agency), **provided that** such insurance continues to be available at commercially reasonable rates and upon commercially reasonable terms which it would not be imprudent for the Mortgage Administrator to accept having regard (inter alia) to the premium charged, the terms proposed and the duties undertaken by the Mortgage Administrator in relation to any task or works in respect of which the Mortgage Administrator is instructed pursuant hereto.
- 12.3 The Mortgage Administrator shall, if and when required by the Agency, produce to it a copy of the relevant insurance policies taken out pursuant to clause 12.1 together with documentary proof that such insurance is being maintained.
- 12.4 If the Mortgage Administrator defaults in its obligations to insure or continue to insure as set out in this clause 12, the Mortgage Administrator shall pay or allow to the Agency on demand any sum of money reasonably expended by the Agency to effect insurance against any risk or amount in respect of which the default shall have occurred and the Agency may deduct such sum (or part thereof) from any sums due or to become due to Mortgage Administrator under this Agreement.
- 12.5 The Mortgage Administrator warrants to the Agency that prior to the execution of this Agreement it has (if required by the terms of its insurance) made full disclosure to its insurers of the existence and contents of this Agreement, and as may otherwise be

required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and they have not advised the Mortgage Administrator that the cover required under this Agreement is, or may be, declined.

12.6 Any insurance required to be taken out by the Mortgage Administrator under this Agreement shall not include any condition which may adversely affect the rights of the Agency to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930. The Mortgage Administrator shall not compromise, settle or waive any claim which it may have under any insurance policy taken out in accordance with this Agreement, in respect of any liability which the Mortgage Administrator may incur under this Agreement, which may in any way prejudice the ability of the Agency to recover the full amount of any claim the Agency may be lawfully entitled to.

12.7 For the avoidance of doubt, it is agreed that nothing in this clause 12 shall relieve the Mortgage Administrator from any of his obligations and liabilities under the Agreement.

13 **Indemnity**

13.1 The Mortgage Administrator shall indemnify and hold harmless the Agency against any liability which the Agency may incur whatsoever including any claims, demands, costs and/or expenses sustained, incurred or payable by the Agency to the extent that the same arises by reason of any breach of this Agreement or any tortious act or omission by or on behalf of the Mortgage Administrator in the performance, purported performance or non-performance of the Mortgage Administrator's obligations under and/or in connection with this Agreement.

13.2 Where the Agency wishes to make a claim under this indemnity or otherwise under this Agreement against the Mortgage Administrator, the Agent shall give notice of the relevant claim as soon as reasonably possible.

13.3 The Mortgage Administrator may at its own expense and with the prior written approval of the Agency have conduct of the claim in relation to a third party including its settlement provided that it:

13.3.1 admits the Agency's entitlement to be indemnified;

13.3.2 keeps the Agency fully apprised and up-to-date;

13.3.3 pursues the claim diligently and in good faith;

13.3.4 protects and preserves the good reputation of the Agency; and

13.3.5 gives the Agency reasonable security for any cost or liability arising out of the conduct of the claim.

13.4 Where the Agency retains control of any claim in relation to a third party or requires the Mortgage Administrator to hand over conduct of any claim in relation to a third party due to any failure to comply with clause 13.3, the Agency shall:

13.4.1 take all reasonable steps to mitigate any loss or expense covered by this indemnity; and

- 13.4.2 keep the Mortgage Administrator apprised and up-to-date on the conduct of the claim.

14 Step-in

14.1 Right to step-in

- 14.1.1 If the Agency reasonably believes that it needs to take action in connection with the Services:

- (a) because a serious risk exists to the health or safety of persons or property or to the environment;
- (b) to discharge a statutory duty;
- (c) where the Mortgage Administrator has received a Warning Notice;
- (d) where the Mortgage Administrator has committed a Material Default but the Agency has not terminated this Agreement;
- (e) where the Agency believes that there are reasonable grounds for believing that fraudulent activity or malpractice has taken place by the Mortgage Administrator or any employee, representative or agent of the Mortgage Administrator pending an investigation into the same,

then the Agency shall be entitled to take action in accordance with the remainder of this clause 14.

- 14.1.2 If clause 14.1.1 applies and the Agency wishes to take action, the Agency shall notify the Mortgage Administrator in writing of the following:

- (a) the action it wishes to take or procure and any consequential additional action it reasonably believes necessary (the **Required Action**),
- (b) the reason for such action,
- (c) the date such action is to commence,
- (d) the time period which it believes will be necessary for such action, and
- (e) to the extent practicable, the effect on the Mortgage Administrator and its obligations under this Agreement to provide the Services during the period the Required Action is being taken.

- 14.1.3 Following service of the notice under clause 14.1.2, the Agency shall take the Required Action or shall procure that the Required Action is taken and the Mortgage Administrator shall give all reasonable assistance and co-operation in relation thereto.

14.2 Impact on the Fee

- 14.2.1 Where the Agency takes the Required Action, then for so long as and to the extent that the Required Action is taken and this, in the reasonable opinion of

the Agency, prevents the Mortgage Administrator from providing any part of the Services:

- (a) the Mortgage Administrator shall be relieved of its obligations to provide such part of the Services; and
- (b) the Mortgage Administrator shall be entitled to full payment of the Fee as if it had been satisfying all its obligations in full and to the requisite standard for such period **less** an amount equal to the Agency's reasonably and properly incurred costs in undertaking or procuring the Required Action (plus an additional ten (10) per cent towards the cost of the Agency's administration and overheads).

15 Termination of the Agreement

15.1 The Agency may at any time by notice to the Mortgage Administrator terminate this Agreement forthwith from the date of service of such notice if:

15.1.1 a Material Default has occurred and such Material Default:

- (a) is capable of remedy but the Mortgage Administrator shall have failed to remedy the Material Default within a reasonable period specified by the Agency in a notice to the Mortgage Administrator specifying the Material Default and requiring its remedy; or
- (b) is not capable of remedy.

15.1.2 the Mortgage Administrator is in receipt of two valid Warning Notices under clause 7.3 **provided that** neither of the Warning Notices:

- (a) has been subsequently revoked or determined to be invalid; or
- (b) is the subject of a current dispute pursuant to the Dispute Resolution Procedure;

15.1.3 an Insolvency Event occurs;

15.1.4 a breach of clause 19.1 occurs;

15.1.5 the Mortgage Administrator transfers, assigns or sub-contracts this Agreement in contravention of clause 26;

15.1.6 there is a default under the Account Charge;

15.1.7 a breach of clause 12 occurs; or

15.1.8 a Change in Control takes place in relation to the Mortgage Administrator.

16 Consequences of Termination

16.1 During the six (6) months preceding the expiry of this Agreement or after the Agency has given notice of termination of this Agreement the Mortgage Administrator shall at its own expense and use its best endeavours to provide such information as may reasonably be

required by any alternative provider or the Agency to assist the transfer of the obligations under this Agreement to an alternative provider or providers (a New Provider); and

16.2 The Agency and the Mortgage Administrator acknowledge that the Transfer Regulations may apply on the termination of this Agreement and the parties will co-operate at all times in that event. Notwithstanding the generality of the foregoing within twenty-eight (28) days of being so requested by the Agency the Mortgage Administrator will (at its own expense) provide such information if any as may be required to meet the requirements of the Transfer Regulations (if applicable), and any relevant guidance issued by or applicable to the Agency including but not limited to:

- (a) all material facts and matters relating to or concerning the employment of any of the Staff or former Staff including but not limited to their respective ages, length of service, notice periods, all terms and conditions of employment, benefits, policies or other agreements or arrangements or understandings in respect of each of them and any variation thereto agreed with or imposed upon any of the Staff or former Staff within a period of six months preceding the date of termination or expiry;
- (b) all material facts and matters relating to all or any collective agreements, arrangements or other understanding which the Mortgage Administrator or its agents has with any trade union, staff association or other body representing any of the Staff;
- (c) full details of any representations or statements (whether oral, written or otherwise) made by the Mortgage Administrator or the Agents to any of the Staff or former Staff (or their unions or other representatives) in any way connected with or concerning employment with a New Provider including where applicable the Agency;
- (d) all material facts and matters and written records relating to or concerning all or any obligations arising from the Working Time Directive (93/104) including providing to the Agency all and any records relating to the hours worked by every member of Staff.

16.3 The Agency shall provide the Mortgage Administrator with any information that it receives from any New Provider that the Mortgage Administrator requires to comply with its obligations under the Transfer Regulations.

16.4 On termination or expiry of this Agreement the Mortgage Administrator shall indemnify and keep indemnified the Agency against any claim liability expense or demand made by and on behalf of any member of Staff or former member of Staff or group of Staff or group of any former members of Staff which may be incurred by the Agency or any New Provider as a result of anything done or omitted to be done in breach of its obligations in relation to the employment of such Staff or former member of Staff by the Mortgage Administrator.

16.5 The Mortgage Administrator shall indemnify and hold harmless the Agency against all claims, liabilities, costs and demands (including all expenses associated therewith howsoever arising) arising out of the inaccuracy of any information provided pursuant to Clauses 16.1 and 16.2 above or arising out of such information being incomplete.

16.6 During the six (6) months preceding the termination of this Agreement or after the Agency has given notice of termination, the Mortgage Administrator hereby undertakes not to make any amendments to the number of Staff employed in relation to complying with the Specification or the terms and conditions of employed Staff save for:

16.6.1 any reasonable salary increase;

16.6.2 any changes already agreed or indicated prior to the Agency's request referred to at Clause 16.2 above (**provided that** such changes have been notified to the Agency at the time of the Agency's request pursuant to Clause 16.2 above).

For the avoidance of doubt, such changes shall include the relocation or assignment of new duties to any of the Staff, the engagement or dismissal or transfer of Staff carrying out such work under the terms of this Agreement or any amendment to terms and conditions of employment save in the case of dismissal where the Mortgage Administrator shall be reasonably and fairly entitled to dismiss any employee for reasons of gross misconduct or gross negligence.

16.7 In the event that the Transfer Regulations apply on the termination or expiry of this Agreement the Agency shall indemnify and keep indemnified the Mortgage Administrator against any claim, liability, expense or demand made by and on behalf of any member of the transferring Staff incurred by the Mortgage Administrator and arising out of:

16.7.1 Regulation 13 of the Transfer Regulations or any subsequent legislation dealing with informing and consulting the transferring Staff save where any such failure is due to an act or omission on the part of the Mortgage Administrator;

16.7.2 Any resignation of any member of the transferring Staff arising from any change or proposed change in their terms and conditions of employment by the Agency, save for any economic technical or organisational reason.

16.8 In the event that the Transfer Regulations apply on the termination or expiry of this Agreement the Agency will take reasonable steps to liaise with the New Provider so that the New Provider provides the Mortgage Administrator with sufficient information to enable it to discharge its consultation obligations under Regulation 13 of the Transfer Regulations.

16.9 In the event of any claim or allegation arising out of or in connection with this Clause 16, the Agency and the Mortgage Administrator shall upon written request by the other party, give such assistance or information relevant to such a claim or allegation as may reasonably be requested. Such assistance and/or information shall be given promptly.

17 **Exit Management**

17.1 Without prejudice to clause 16.1, forthwith upon the termination or expiry of this Agreement, the Mortgage Administrator shall make all information and assistance available to the Agency, as well as to any New Provider, so as to maintain the continuity of and quality of the Services in accordance with this Agreement while alternative arrangements are put in place and so as to achieve to the extent reasonably possible a smooth transfer of the Services to the Mortgage Administrator or to the New Provider provided that nothing in this clause shall oblige the Mortgage Administrator to breach any Applicable Laws.

- 17.2 Upon termination or expiry of this Agreement, the Mortgage Administrator shall have no further right to perform the Mortgage Administrator's role under this Agreement.
- 17.3 The Agency may elect to acquire, in which case the Mortgage Administrator shall insofar as reasonably possible sell, or procure the sale of, any equipment or materials exclusively used in providing the Services (and not used by the Mortgage Administrator for any of its other activities) at their market value at a price agreed by the parties or determined under the Dispute Resolution Procedure.
- 17.4 The Mortgage Administrator shall assign to the Agency those consents and licences (including without limitation any software licences) obtained by the Mortgage Administrator solely in connection with the provision of the Services and capable of assignment.
- 17.5 The Mortgage Administrator shall deliver to the Agency all software, records, documentation and other data, information and materials which are owned by the Agency and (provided such action shall not breach any Applicable Laws) shall make copies available to the Mortgage Administrator to the extent that any such software, records, documentation and other data are either subject to rights in favour of the Agency or relate to the provision of the Services by the Mortgage Administrator.
- 17.6 All costs incurred by the Mortgage Administrator in complying with this clause shall be the responsibility of the Mortgage Administrator.

18 **Fees and Payment**

- 18.1 In consideration of the Mortgage Administrator carrying out its obligations, including the provision of Services under the Agreement, the Agency shall pay the Mortgage Administrator's Fees in accordance with the payment profile and the invoicing procedure in Schedule 2.
- 18.2 For the avoidance of doubt and except where otherwise provided in the Agreement or otherwise agreed in writing between the parties, the amount payable to the Mortgage Administrator for the provision of the Services shall be inclusive of all costs of staff and materials and all other expenses whatsoever and howsoever incurred by the Mortgage Administrator in discharging its obligations under this Agreement and no other charges or amounts shall be paid for the performance of the Mortgage Administrator's obligations under this Agreement.
- 18.3 All payments under this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums (or any part thereof) are consideration for VAT purposes.

19 **Corruption**

- 19.1 The Mortgage Administrator undertakes that neither it nor its employees, servants, advisers or agents (with or without its knowledge) shall:
- 19.1.1 receive or agree to receive from any person, or offer or agree to give to, or procure for, any person, any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or the execution of this Agreement or any other contract to which the Agency is a party;

19.1.2 committing any offence under the Bribery Act 2010 in relation to the Agreement or any other contract to which the Agency is party; and/or

19.1.3 defraud, conspire to defraud or attempt to defraud the Agency.

19.2 In the event of a breach of clause 19.1, the Agency shall be entitled to recover from the Mortgage Administrator the amount or value of any gift or consideration received, or paid or procured by the Mortgage Administrator, its employees, representatives or on its behalf.

19.3 The Mortgage Administrator shall not conspire with any person to do any of the acts mentioned in this clause 19.

20 **Anti-Money Laundering**

20.1 The Mortgage Administrator will comply with any anti-money laundering legislation relevant to its business or the Services including but not limited to the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007.

20.2 In the event that the Mortgage Administrator remits monies to the Agency, the Mortgage Administrator will endeavour to ensure that monies are transferred from an account held with a UK or EU authorised credit institution. In any event, the Mortgage Administrator will satisfy itself as to the source of the funds being remitted, and, in particular, that it does not suspect the funds to represent the proceeds of crime.

20.3 The Mortgage Administrator will respond to any request from the Agency as to the source of any monies received by the Agency and will assist the Agency in any investigations as to potential money laundering, whether on request from the Agency or any relevant law enforcement agency.

20.4 The Mortgage Administrator will indemnify the Agency in respect of any loss to the Agency resulting, directly or indirectly, from the Mortgage Administrator's failure to comply with this clause 20.

21 **Authority and Relationship**

21.1 The Mortgage Administrator shall have no authority to act on the Agency's behalf in relation to any matters outside the scope of authority or outside the scope of Services set out in this Agreement, including but not limited to the following matters, without obtaining the prior written consent of the Agency:

21.1.1 the making of any alteration to or omission from the design of a project or services approved or agreed by the Agency;

21.1.2 save in an emergency the issuing of any instruction, giving of any approval or doing of any other thing which would or might increase the cost of a project or services which would or might delay completion of such project or services;

21.1.3 instructing any legal advisers to advise on any claim or proceedings made against the Mortgage Administrator by a recipient of the Services; or

21.1.4 entering into any agreement, or agreeing any amendment to the terms of any contract which the Agency enters into in connection with a project or the waiver,

abandonment or settlement of any right, remedy or claim which the Agency may have against any party.

21.2 Without prejudice to the foregoing, neither the Mortgage Administrator nor its personnel shall in any circumstances hold itself or themselves out:

21.2.1 as being the servant or agent of the Agency otherwise than in circumstances expressly permitted by this Agreement; or

21.2.2 as being authorised to enter into any contract on behalf of the Agency or in any other way to bind the Agency to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly permitted by this Agreement.

22 **Status and Tax Liabilities**

22.1 The Mortgage Administrator shall be responsible for making appropriate PAYE deductions for tax and National Insurance contributions from the remuneration the Mortgage Administrator pays to its employees.

22.2 The Mortgage Administrator agrees to indemnify and keep indemnified the Agency in respect of any claims that may be made by the relevant authorities against the Agency in respect of income tax or National Insurance or similar contributions relating to the Services.

23 **Dispute resolution**

23.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this Condition 23.

23.1.1 In the event that the Mortgage Administrator or the Agency 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 Condition 23.

23.1.2 Representatives of the parties shall meet within five (5) Working Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.

23.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 23.1.2 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 Mortgage Administrator and the Agency (the **Chief Executives**).

23.1.4 The Chief Executives shall meet within ten (10) Working Days (or such other longer period not exceeding twenty (20) Working 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.

23.1.5 If the Dispute remains unresolved after ten (10) Working Days following referral to the Chief Executives, such Dispute must be dealt with in accordance with Condition 23.2.

23.2 In the circumstances contemplated in Condition 23.1.5, 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:

23.2.1 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.

23.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and

23.2.3 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.

24 **Intellectual property rights**

24.1 All legal and equitable interest in any physical or electronic documents and the media upon which the same is recorded and any other materials (including without limitation software) in whatever form and all Intellectual Property Rights therein created by the Mortgage Administrator or its employees and sub-contractors and agents in performance of the Agreement shall vest in the Agency.

24.2 By way of confirmation and perfection of legal title, the Mortgage Administrator agrees to assign, or procure the assignment, to the Agency for the sum of £1 all Intellectual Property Rights created or developed pursuant to this Agreement including any created or developed by sub-contractors commissioned to carry out the Services or any part thereof and shall take such steps and provide such assistance as the Agency may reasonably require in defence or protection of the Intellectual Property Rights. In the event that the Mortgage Administrator is unable to assign or procure the assignment of all such Intellectual Property Rights the Mortgage Administrator hereby grants the Agency a perpetual, royalty free, irrevocable licence to use such Intellectual Property Rights for the purpose of delivering the Services or enabling a third party to deliver the Services to the Agency.

24.3 At the expiry or earlier termination of this Agreement, the Mortgage Administrator shall forthwith at its expense:

24.3.1 transfer to the Agency or whomsoever the Agency shall direct all documents, material and other information (in whatever form) in the possession of the Mortgage Administrator which are reasonably required by the Agency or which contain information and/or data of any sort collected by or on behalf of the Mortgage Administrator (including for the avoidance of doubt any information and documentation referred to in the Specification) as a result of the fulfilment of its obligations pursuant to this Agreement and the compliance with the

Specification (for the purposes of this Clause 24, such information and/or data comprises the **Data**); and

24.3.2 do all things necessary, and enter into such documentation as the Agency may reasonably require, to assign all and any intellectual property rights (including without limitation copyright and database rights) in the Data, or in any database within the Mortgage Administrator's control and containing the Data,

but for the avoidance of doubt nothing in this clause 24 shall require the Mortgage Administrator to transfer any business process, technique or methodology developed by it and used as part of its normal business practice.

24.4 The Mortgage Administrator shall indemnify the Agency in respect of any Loss or Damage the Agency may incur in the event that any Intellectual Property Rights assigned by this clause 24 are found to be invalid or impaired in any way or in the event of any claim by any third party that the exercise of the rights assigned by this clause 24 infringes the rights of such third party.

24.5 The Mortgage Administrator shall sign up to the Agency's standard IMS user agreement in such form as the Agency may require from time to time.

25 **Business Continuity**

25.1 The Mortgage Administrator shall for the duration of this Agreement ensure that any computer system, database or any other system in or on which any data is held or which is utilised, including in relation to general business processes, to deliver the Services (together, **Relevant Systems**) will be covered by business continuity arrangements (including but without limitation off site storage and data backup arrangements) in accordance with current best practice business standards, and in any case of a standard sufficient to allow the Agency access to any Relevant System as soon as reasonably practicable following the occurrence of any event interrupting the business of the Mortgage Administrator.

25.2 Without prejudice to the generality of clause 25.1:

25.2.1 the parties shall comply with the provisions of the Disaster Recovery Plan and the Mortgage Administrator shall ensure that it is able to implement the Disaster Recovery Plan at any time in accordance with its terms;

25.2.2 the Mortgage Administrator shall test the Disaster Recovery Plan on a regular basis (and in any event not less than once in every Agreement Year. Subject to clause 25.2.3, the Agency may require the Mortgage Administrator to conduct additional tests of the Disaster Recovery Plan where the Agency considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Disaster Recovery Plan.

25.2.3 if the Agency requires an additional test of the Disaster Recovery Plan it shall give the Mortgage Administrator written notice and the Mortgage Administrator shall conduct the test in accordance with the Agency's requirements and the relevant provisions of the Disaster Recovery Plan. The Mortgage Administrator's reasonable costs of the additional test shall be borne by the

Agency unless the Disaster Recovery Plan fails the additional test in which case the Mortgage Administrator's costs of that failed test shall be borne by the Mortgage Administrator.

- 25.2.4 following each test in accordance with this clause 25.2, the Mortgage Administrator shall send to the Agency a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Agency considers to be necessary as a result of such tests.
- 25.2.5 the Mortgage Administrator shall undertake regular risk assessments in relation to the provision of the Services (not less than once every 6 (six) months) and shall provide the results of, and any recommendations in relation to, those risk assessments to the Agency promptly in writing following each review.
- 25.2.6 the Disaster Recovery Plan will be formally reviewed and amended by the Agency on a regular basis and no less than once each Agreement year.
- 25.2.7 in the event of an emergency or a disaster affecting the Services, the Mortgage Administrator shall:
- (a) immediately notify the Agency of the disaster and its anticipated impact on the Services;
 - (b) implement the Disaster Recovery Plan; and
 - (c) consult with the Agency to ensure minimum disruption to the Services.
- 25.2.8 the parties shall comply with the provisions of the Disaster Recovery Plan and the Mortgage Administrator shall ensure that it is able to implement the Disaster Recovery Plan at any time in accordance with its terms.
- 25.2.9 The Agency shall on request be permitted access to the Mortgage Administrator's property and premises to check the Mortgage Administrator's Disaster Recovery Plan and any back-up and recovery procedures.

26 **Assignment and sub-contracting**

- 26.1 The Mortgage Administrator shall not be entitled to assign this Agreement without the prior written consent of the Agency (such consent not to be unreasonably withheld or delayed in the case of a Group Company) and shall promptly give written notice of any assignment to the Agency.
- 26.2 The Mortgage Administrator shall not be permitted to employ subcontractors for the execution of any of the Mortgage Administrator's obligations hereunder without the Agency's prior written consent (which shall not be unreasonably withheld or delayed in the case of a Group Company where the Mortgage Administrator provides reasonably evidence that such subcontractors are capable of providing services effectively on terms which enable the Mortgage Administrator to comply with the provisions of this Agreement).
- 26.3 The Mortgage Administrator shall not be relieved of any of its obligations under this Agreement by any permitted subcontracting and shall at all times remain primarily liable

for the acts and omissions of such subcontractors. If so requested, the Mortgage Administrator will promptly supply the Agency with a copy of any subcontracts.

27 **Human rights**

The Mortgage Administrator and the Agency shall at all times comply with the requirements of the Human Rights Act 1998 (the 1998 Act) to the extent applicable to the party in question and with any subsequent amendment or re-enactment thereof and all secondary legislation made under the 1998 Act or any subsequent amendment thereto or re-enactment thereof.

28 **Conflicts**

The Mortgage Administrator shall not, without the prior written consent of the Agency, accept any commission, gift, benefit or other inducement (in money or in kind) from any supplier or potential supplier of goods and/or service to the Mortgage Administrator or any of its sub-contractors directly or indirectly in connection with the subject matter of this Agreement. Where, notwithstanding the foregoing, a conflict of interest does arise, the Mortgage Administrator shall forthwith bring such conflict to the attention of the Agency and the parties shall discuss how best to proceed in the circumstances, taking account of the best interests of the Agency, the residents and the Leaseholders.

29 **Notices**

29.1 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, sent by facsimile, 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 or to any fax numbers as either party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

29.2.2 if delivered by the Recorded Delivery Service, 3 Working Days after delivery including the date of postage;

29.2.3 if delivered by facsimile transmission, upon production by the sender's equipment of a transmission report indicating that the fax was sent to the fax number of the recipient in full without error **provided that** a confirmation copy is delivered by hand within 48 hours of delivery of the facsimile transmission;

29.2.4 If delivered by email where no notification of transmission failure is received, within 2 hours of sending if sent on a Working Day between the hours of 9am and 4pm and by 12 noon on the next following Working Day if sent at any other time or day,

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

30 **Waiver**

No failure or delay by any party at any time in exercising or enforcing a right, remedy or provision of this Agreement shall operate as a waiver thereof nor in any way affect the validity of this Agreement or part thereof nor shall any single or partial exercise or enforcement of any right, remedy or provision preclude any other or further exercise thereof or the exercise of any other right, remedy or provision.

31 **Concurrent remedies**

31.1 No right or remedy herein conferred upon or reserved to either party by this Agreement is exclusive of any other right or remedy provided herein or by law or equity and each such right or remedy shall be cumulative of every other right or remedy and may be enforced concurrently therewith or from time to time and shall be without prejudice to any pre-existing liabilities or obligations of the other party under this Agreement.

31.2 No delay or omission on the part of the Agency in exercising any right, power or remedy provided by law or under this Agreement or any other documents referred to in it shall prejudice the rights, powers or remedies of any party contained in this Agreement or operate as a waiver of any of the same.

31.3 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy.

32 **Entire agreement**

32.1 This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes all previous agreements and understandings (if any) between the parties with respect thereto.

32.2 Each of the parties acknowledges that it is not relying on any statements, warranties or representations given or made by any of them in relation to the subject matter hereof, save those expressly set out in this Agreement and other documents referred to above, and that it shall have no rights or remedies with respect to such subject matter otherwise than under this Agreement (and the documents executed at the same time as it or referred to in it) save to the extent that they arise out of the fraud or fraudulent misrepresentation of any party.

33 **Severance**

If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

34 **No partnership etc**

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make the Mortgage Administrator the agent of the Agency or authorise the Mortgage Administrator (a) to incur any expenses on behalf of the

Agency, (b) to enter into any engagement or make any representation or warranty on behalf of the Agency or (c) to commit or bind the Agency in any way whatsoever without in each case obtaining the Agency's prior written consent.

35 **Announcements**

The parties shall not make any announcements or press releases in relation to this Agreement or the subject matter hereof except as may be agreed by the parties (acting reasonably).

36 **Survival of this contract**

36.1 Insofar as any of the rights and powers of the Agency 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.

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

37 **Good faith and third parties**

37.1 Each party shall act reasonably and in good faith towards the other in relation to this Agreement and will use reasonable endeavours to mitigate such costs, expenses, losses, liabilities and claims as it is entitled to recover from the other party.

37.2 It is not intended that any person shall be entitled to enforce any provisions of this Agreement who would not have been so entitled but for the enactment of the Contracts (Rights of Third Parties) Act 1999.

38 **Co-operation**

38.1 The Agency and the Mortgage Administrator shall act as stated in this Agreement and in a spirit of mutual trust and co-operation.

38.2 Without prejudice to any other term of this Agreement, the Mortgage Administrator shall during the Mobilisation Period and where necessary thereafter co-operate with the Outgoing Provider so as:

38.2.1 to maintain the continuity of and quality of the Services in accordance with this Agreement; and

38.2.2 to achieve to the extent reasonably possible a smooth transfer of the Services to the Mortgage Administrator

provided that nothing in this clause shall oblige the Mortgage Administrator to breach any Applicable Laws.

38.3 The Mortgage Administrator shall in the performance of the Services, and in order to achieve a smooth handover of information in respect of any Owner, at all times act reasonably and co-operate with the Help to Buy Agent.

39 **Law**

39.1 This Agreement shall be governed by and construed in accordance with the laws of England.

39.2 Save to the extent that this Agreement otherwise provides, each party irrevocably agrees to submit to the exclusive jurisdiction of the Courts of England over any claim or matter arising under or in connection with this Agreement.

40 **Data Protection**

40.1 For the purposes of this Clause 40 **Personal Data, Data Processor, Data Subject, Data Controller** and **Process** shall have the meanings ascribed to them in the Data Protection Act 1998 (the **DPA**) as amended or re-enacted from time to time.

40.2 The Mortgage Administrator warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Agreement.

40.3 The Mortgage Administrator undertakes that to the extent that the Mortgage Administrator and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of the Agency (the **Agency's Personal Data**) for the purpose of providing the Services, it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Mortgage Administrator agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:

40.3.1 the Mortgage Administrator shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the Agency's Personal Data and any person it authorises to have access to any of the Agency's Personal Data will respect and maintain the confidentiality and security of the Agency's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when providing the Services on the Agency's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

40.3.2 the Mortgage Administrator shall only process Personal Data for and on behalf of the Agency for the purpose of performing the Services in accordance with this Agreement, or as is required by any Applicable Laws or any Regulatory Body, and where necessary only on written instructions from the Agency to ensure compliance with the DPA;

40.3.3 the Mortgage Administrator shall allow the Agency to audit the Mortgage Administrator's compliance with the requirements of this Clause 40 on reasonable notice and/or, at the Agency's request, provide the Agency with

evidence of the Mortgage Administrator's compliance with the obligations within this Clause 40.

40.4 The Mortgage Administrator undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to Clause 40.3 the Mortgage Administrator shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Mortgage Administrator to carry out the Services, or to the extent required under a court order.

40.5 The Mortgage Administrator shall:

40.5.1 take reasonable steps to ensure the reliability of any Mortgage Administrator Personnel who have access to the Personal Data;

40.5.2 ensure that all Mortgage Administrator Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 40;

40.5.3 ensure that none of the Mortgage Administrator Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agency;

40.5.4 provide a written description of the technical and organisational methods employed by the Mortgage Administrator for processing Personal Data (within the timescales required by the Agency); and

40.5.5 not process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:

(a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and

(b) any reasonable instructions notified to it by the Agency.

40.6 The Mortgage Administrator agrees to use all reasonable efforts to assist the Agency to comply with such obligations as are imposed on the Agency by the DPA. For the avoidance of doubt, this includes the obligation to:

40.6.1 provide to the Agency such access as may be reasonably required from time to time to all Personal Data stored or processed in the provision of the Services under this Agreement in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;

40.6.2 provide the Agency with reasonable assistance in complying with any Request for Information served on the Agency under section 7 of the DPA;

40.6.3 notify the Agency (within five Working Days) about the receipt of any such request received by the Mortgage Administrator under section 7 of the DPA or complaint or request relating to the Agency's obligations under the DPA and not

disclose or release any information (including the Agency's Personal Data) in response to such a request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;

40.6.4 provide the Agency with full co-operation and assistance in relation to any complaint of request made, including by:

- (a) providing the Agency with full details of the complaint or request;
- (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;
- (c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
- (d) providing the Agency with any information requested by the Agency;

40.7 The Mortgage Administrator shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.

40.8 The Mortgage Administrator shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Mortgage Administrator's destruction of and/or damage to any of the Agency's Personal Data processed by the Mortgage Administrator, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Clause 40 by the Mortgage Administrator, its employees, agents or sub-contractors.

40.9 The Mortgage Administrator shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Mortgage Administrator's processing of the Agency's Personal Data and will deal with all enquiries from the Agency 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 the Agency'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.

40.10 The Mortgage Administrator undertakes to include obligations no less onerous than those set out in this Clause 40, in all contractual arrangements with agents engaged by the Mortgage Administrator to provide the Services to the Agency.

41 **Staffing Security**

41.1 The Mortgage Administrator shall develop and implement its own Staff Vetting Procedures details of which shall be made available to the Agency within two (2) Working Days of receipt of a request . The Mortgage Administrator shall comply with all Applicable Laws and Applicable Standards in formulating its Staff Vetting Procedures and shall have regard to any reasonable comments made by the Agency.

41.2 The Mortgage Administrator shall comply with the Staff Vetting Procedures in respect of all Mortgage Administrator Personnel employed or engaged in the provision of the Services. The Mortgage Administrator confirms that all Mortgage Administrator Personnel employed or engaged by the Mortgage Administrator at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

41.3 The Mortgage Administrator shall provide training on a continuing basis for all Mortgage Administrator Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

42 **Warranties**

The Mortgage Administrator warrants, represents and undertakes for the duration of the Term that:

42.1 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Staff Vetting Procedures and the Security Policy;

42.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Mortgage Administrator's obligations under this Agreement;

42.3 in performing its obligations under this Agreement, all software used by or on behalf of the Mortgage Administrator will:

42.3.1 be currently supported versions of that software; and

42.3.2 perform in all material respects in accordance with its specification;

42.4 as at the Commencement Date all statements and representations in the Mortgage Administrator's written response to the ITT are to the best of its knowledge, information and belief, true and accurate and that it will advise the Agency of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;

42.5 the Mortgage Administrator System and assets used in the performance of the Services:

42.5.1 will be free of all encumbrances and defects; and

42.5.2 will be Date Compliant;

42.6 it shall at all times comply with Applicable Laws in carrying out its obligations under this Agreement.

43 **Security Requirements**

43.1 The Mortgage Administrator shall comply, and shall procure the compliance of the Mortgage Administrator Personnel, with the Security Policy and the Security Plan and the Mortgage Administrator shall ensure that the Security Plan produced by the Mortgage Administrator fully complies with the Security Policy.

43.2 The Agency shall notify the Mortgage Administrator of any changes or proposed changes to the Security Policy.

44 **Malicious Software**

44.1 The Mortgage Administrator shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

44.2 Notwithstanding Clause 44.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Agency Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

44.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 44.2 shall be borne by the parties as follows:

44.3.1 by the Mortgage Administrator where the Malicious Software originates from the Mortgage Administrator's software or the Agency Data (whilst the Agency Data was under the control of the Mortgage Administrator); and

44.3.2 by the Agency if the Malicious Software originates from the Agency's software or the Agency Data (whilst the Agency Data was under the control of the Agency).

45 **Anti-Bribery**

45.1 The Mortgage Administrator shall:

45.1.1 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**);

45.1.2 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;

45.1.3 comply with the Agency'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 the Agency or the relevant industry body may update from time to time (**Relevant Policies**).

45.1.4 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 45.1.2, and will enforce them where appropriate;

45.1.5 immediately report to the Agency's Head of Risk and Assurance Services any request or demand for any undue financial or other advantage of any kind received by the Mortgage Administrator in connection with the performance of this agreement;

- 45.1.6 if required by the Agency, produce a written certificate to it signed by an officer of the Mortgage Administrator, confirming compliance with this clause 45 by the Mortgage Administrator and all persons associated with it under clause 45.2. The Mortgage Administrator shall provide such supporting evidence of compliance as the Agency may reasonably request.
- 45.2 The Mortgage Administrator shall ensure that any person associated with the Mortgage Administrator 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 Mortgage Administrator in this clause 45 (**Relevant Terms**). The Mortgage Administrator shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Agency for any breach by such persons of any of the Relevant Terms.
- 45.3 Breach of this clause 45 shall be deemed a Material Default.
- 45.4 For the purpose of this clause 45, 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 45 a person associated with the Mortgage Administrator includes but is not limited to any subcontractor of the Mortgage Administrator.
- 46 **Equalities**
- 46.1 The Mortgage Administrator will comply in all material respects with all relevant Legislation relating to equality and relevant employment matters.
- 46.2 The Mortgage Administrator confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by the Authority.
- 46.3 The Mortgage Administrator shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part.

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

TARGET SERVICING LIMITED by

.....(Signature)

.....(Full name)

Director

In the presence of the following witness:

..... (Signature of witness)

..... (Full name of witness)

..... (Address of witness)

.....

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

Authorised signatory

Schedule 1

Insurance

In accordance with clause 12 of this Agreement, the Mortgage Administrator shall take out and maintain the following insurances upon the following terms and conditions:

Insurance for a sum of not less than:-

- £5m (five million pounds) public liability insurance
- £5m (five million pounds) employee liability insurance
- £5m (five million pounds) professional indemnity insurance
- £2m (two million pounds) fidelity guarantee insurance

in respect of each and every claim.

Schedule 2

Mortgage Administrator's Fees

1 Standard Fee

1.2 The Standard Fee is payable on to the Mortgage Administrator by the Agency for the performance of the Specification and for compliance with the terms of this Agreement excluding any items for which individual Transaction Fees have been agreed.

1.3 The applicable annual Standard Fee is payable in four equal instalments on a quarterly basis following receipt of an invoice in accordance with the procedure set out in Paragraph 4.

2 Transaction Fees

2.1 The parties have agreed individual Transaction Fees for the specific items listed in the table set out in Schedule 2, Annex 1 (the **Fees Table**).

2.2 Transaction Fees shall only be payable in each instance upon full completion of the relevant transaction in accordance with the terms of the Specification.

2.3 Transaction Fees are payable by the relevant Owner in relation to the specific activities listed in the Fees Table and should be collected upon or in advance of completion of the relevant service.

3 Invoicing Procedure

3.1 Within 14 (fourteen) Working Days of the end of each Quarter, the Mortgage Administrator shall submit an invoice for the Standard Fee payable for such Quarter.

3.2 The Agency shall pay the Standard Fee to the Mortgage Administrator within ten (10) Working Days of the latter of receipt of a valid VAT Invoice issued by the Mortgage Administrator in respect of the Standard Fee for the relevant Quarter.

4 General payment provisions

4.1 Additional information

Within 7 (seven) Working Days of receipt of any invoice issued under this Schedule 2, the Agency shall be entitled to request any additional information reasonably required in support of any such invoice and the Mortgage Administrator shall provide such additional information to the Agency within 7 (seven) Working Days of such request.

4.2 Set off

The Mortgage Administrator shall not be entitled to retain or set off any amount due to the Agency by it but the Agency may retain or set off any amount owed to it by the Mortgage Administrator under this Agreement which has fallen due and payable against any amount due to the Mortgage Administrator under this Agreement.

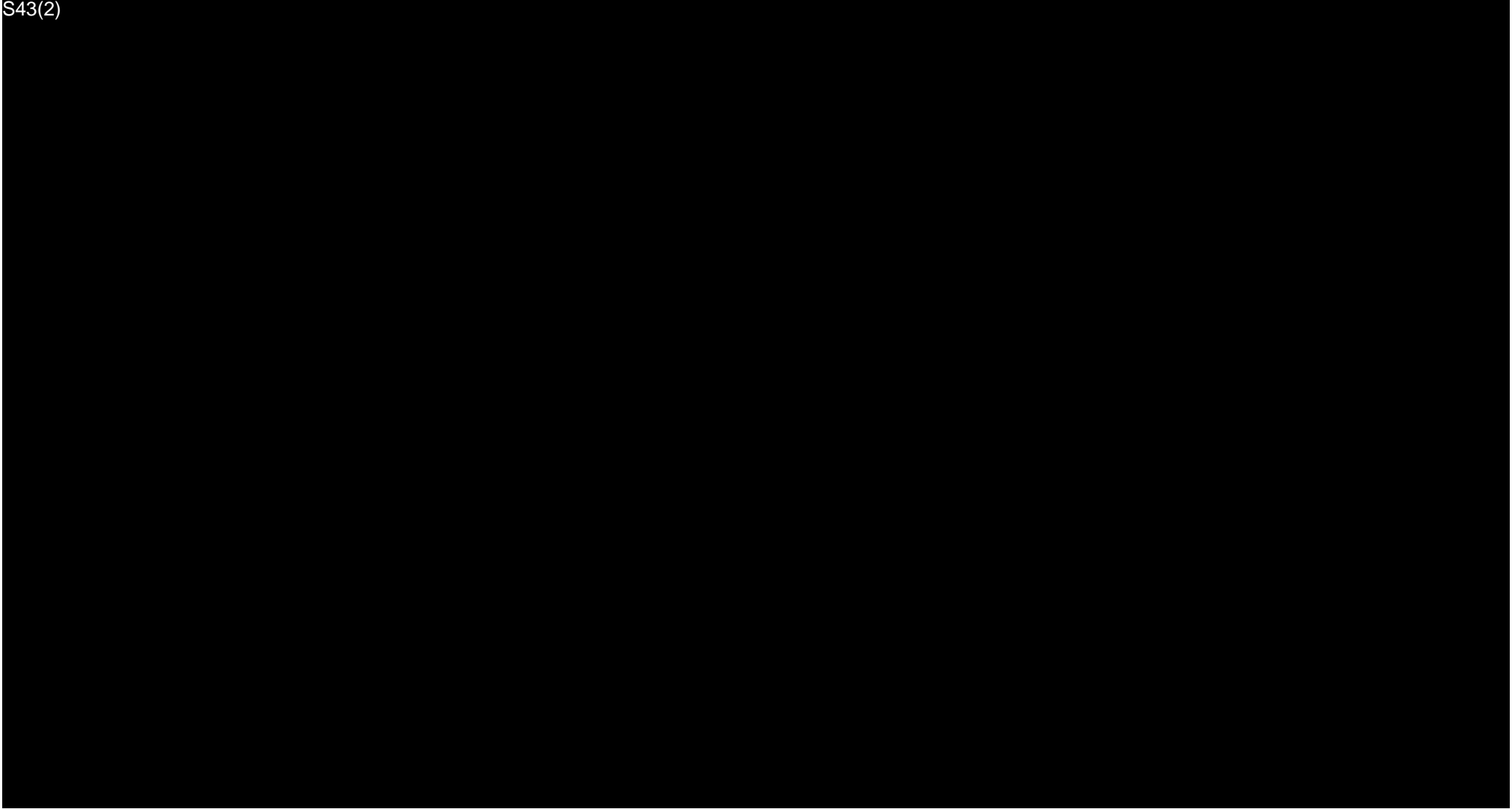
4.3 **Disputes**

- 4.3.1 If the Agency disputes any part of any invoiced amount claimed by the Mortgage Administrator, the Agency shall notify the Mortgage Administrator as soon as reasonably practicable of that part of the invoiced amount (insofar as at that time the Agency is reasonably able to quantify it) which the Agency (acting in good faith) disputes (a Disputed Amount) and shall submit to the Mortgage Administrator such supporting information as the Agency may have.
- 4.3.2 The Agent may withhold payment of any Disputed Amount pending agreement or determination of such dispute in accordance with and subject to the provisions of clause 23 but shall pay any undisputed amount in accordance with this Schedule 2.

Schedule 2 – Annex 1

Transaction Fees

S43(2)



Schedule 3

Specification

1 Core Service i) Mortgage Administration Owner enquiry handling

1.1 The appointed Mortgage Administrator will act as a single point of advice and guidance for Owners and Lenders with an equity interest in homes funded via an Agency or Greater London Authority (GLA), or other Government funded Equity Mortgage product. In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:

1.1.1 Operate a dedicated Owner telephone enquiry line, Mon- Fri, 9am – 5pm;

1.1.2 Operate a dedicated Owner enquiry email box with e-mail responses delivered Mon-Fri 9.00am – 5pm;

1.1.3 Offer information and guidance to Owners and their solicitors/conveyancers as appropriate;

1.1.4 Resolve enquires by advising Owners and their advisors, directing them on to relevant transaction processes or signposting to services as relevant.

2 Core Service ii) Website

2.1 The appointed Mortgage Administrator will operate and maintain a national Mortgage Administrator website as a single point of loan information for Owners and Lenders with a legal interest in homes funded by the Agency's (or relevant GLA or other Government body) Equity Mortgage product. In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:

2.1.1 Operate as a dedicated website under an Agency owned-domain and 'Help to Buy' branding or other specified Agency or Government branding;

2.1.2 Provide and operate an online "portal" for participating Developer Lenders and other Lenders;

2.1.3 Provide up to date content on current and past Equity Mortgage and latest Owner services Provide on-line guidance, enquiry-handling and redemption application processing facilities covering all Equity Mortgages;

2.1.4 Provide links to the Agency and partner sites and other relevant services as directed by the Agency; and

2.1.5 Be available to Owners on a continuous basis with planned site maintenance limited to the overnight period and risks of outage mitigated by suitable business continuity plans.

3 Core Service iii) Customer Database

3.1 The appointed Mortgage Administrator will maintain a comprehensive, accurate and secure electronic database of homes funded via the Agency's Equity Mortgage products, the respective Equity Mortgage interests (of the Agency, GLA and Lenders and other

Government Lenders, where applicable) and interest and redemption collection data. The database must include records of all additions (new Equity Mortgages) and redemptions (full and part).

3.2 In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:

3.2.1 Process new Owner and property records within 5 days of receiving an electronic return and documents from the relevant Help to Buy Agent (the Help to Buy Agent processes the new transaction that leads to an addition to the portfolio);

3.2.2 Process new Owner and property records within 5 days of receiving an electronic return from the Agency (planned to replace the electronic return from the Help to Buy Agent in due course);

3.2.3 Provide accurate data collection, validation and reporting infrastructure and assurance to the Agency;

3.2.4 Provide monthly monitoring reports to the Agency (in the form specified by the Agency from time to time) on the Equity Mortgage portfolio, Owners, locations, entitlements, fee collection, debt and other matters relevant to its interests;

3.2.5 Provide monthly updates of such data as may be required by the Agency from the Mortgage Administrator's database in a format suitable and appropriate for uploading to the Agency's own data systems for Agency analysis;

3.2.6 Process and reconcile such reports as may be specified by the Agency in order to reconcile Mortgage Administrator, Agency and Help to Buy Agent data in order to resolve discrepancies and ensure data accuracy;

3.2.7 Process and reconcile reports/data between Mortgage Administrator and Agency-provided data including reconciliation of repayment data provided under clause 5.2.7 with changes in the customer database (arising from Equity Mortgage additions and redemptions) to derive the current net position;

3.2.8 Amend data held by the Mortgage Administrator in order to maintain accuracy including but not limited to Owner and Lender name changes and other data changes; and

3.2.9 Make "wholesale" changes to part or parts of the database to reflect significant data changes e.g. transfers of loans portfolios from original Lenders to new Lenders.

4 **Core Service iv) Interest Collection**

4.1 The appointed Mortgage Administrator will be expected to promptly collect loan interest due from Owners of homes funded by the Agency Equity Mortgage products in accordance with relevant Equity Mortgage product terms.

4.2 In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:

- 4.2.1 Issue accurate and timely annual statements, other letters and interest demands after 12 months of sale and annually thereafter - compliant with all legislation applying to the regulated and un-regulated parts of the portfolio;
- 4.2.2 Administer monthly or annual collection of interest when it becomes payable in accordance with the terms of the relevant Equity Mortgage (this varies by product) - compliant with all legislation applying to the regulated and un-regulated portfolio;
- 4.2.3 Set-up accurate monthly debit repayment arrangements with Owners where applicable or ensure direct debit arrangements reflect Owner changes;
- 4.2.4 Issue monthly interest reports to Agency and Developer Lenders (and other Lenders as applicable) with an equity interest; (including reconciliation of cash received/ interest accrued) in a format which meets the Agency's requirements i.e. for uploading into Agency systems for analysis;
- 4.2.5 Collect interest and accurately apportion receipts into Agency and Developer Lenders and other Lender accounts.
- 4.2.6 Set-up and operate of credit control services to operate on the following basis: Issuing arrears letters and undertaking such current arrears procedures as may be prescribed by Agency - compliant with all legislation applying to the regulated and un-regulated portfolio and to advise the Agency of any conflict between their procedures and the applicable legislation (provided always it is the Mortgage Administrator's responsibility to ensure that such documents and procedures adhere to all relevant consumer credit, FCA mortgage regulation and other legislative and regulatory requirements); and
- 4.2.7 Advise Agency on collection rate performance and, with agreement of Agency, as applicable varying procedures to improve collection rates - compliant with all legislation applying to the regulated and un-regulated portfolio.
- 4.2.8 The service outlined in paragraph 4.2.6 must comply with the Agency's and, where applicable, the Regulator's current guidelines for dealing with debtors. The Mortgage Administrator should minimise the bad debt position for the Agency (and the Developer Lender or other Lender where relevant) but having due regard for possible hardship and sustainability of Owners. In these cases (subject to the agreement of the Agency and the relevant Lender) the Mortgage Administrator will seek agreement with the Owner on repayment.
- 4.2.9 The Mortgage Administrator shall propose a debt recovery agent for approval by the Agency prior to using such agent for the purposes of providing the Services (the **Approved DRA**). Any change in the identity of the Approved DRA shall be subject to the prior approval of the Agency.
- 4.2.10 Where the Mortgage Administrator has complied with the terms of this Agreement but has failed to recover payments properly due and payable to the Agency and/or the Developer, the Mortgage Administrator shall:

- (a) hand over proceedings to the Developer Lender (in the case of a Developer's Mortgage) or the Agency (in the case of an Agency Mortgage) if so required;

or with the prior approval of the Agency or the Developer as appropriate:

- (b) refer the matter to the Approved DRA;
- (c) negotiate with the Owner for monthly repayment of arrears; or
- (d) capitalise and recover such arrears as an additional debt secured by the Mortgage upon future sale of the relevant property,

provided that the Mortgage Administrator shall at all times act reasonably and in accordance with all standards, codes of practice and guidance issued by or on behalf of the Agency or, where applicable, the Regulator in respect of recovery and non-payment **provided further that** where this Paragraph 4.2.10 applies the Agency acknowledges that the Developer Lender or other applicable Lender may choose to take independent action in relation to recovering arrears under the relevant Developer or other Lender Mortgage. Where the Developer provides written notification of its intention to take such independent action, the Mortgage Administrator shall be relieved from the obligation to recover any payments in relation to that Developer Mortgage (unless notified to the contrary by the Agency)

4.2.11 Where the Mortgage Administrator utilises the services of the Approved DRA:

- (a) any amounts properly recovered by the DRA shall be paid into the Account and shall be returned to the Agency and/or the Developer as appropriate by BACS at the direction of the Agency;
- (b) the Mortgage Administrator shall account for any costs properly incurred and invoiced by the Approved DRA as a deduction from the Repayment in favour of the Agency in the case of an Agency Mortgage (or the Developer in the case of a Developer Mortgage) within the financial records of the Account; and
- (c) the Mortgage Administrator shall provide full details of the amounts received from the DRA within two (2) Working Days of receipt.

5 Core Service v) Redemptions and Repayment Collection

5.1 The appointed Mortgage Administrator will be expected to administer all partial or full Equity Mortgage redemptions on homes funded by the Agency's Equity Mortgage products (i.e. redemption of the Agency's Equity Mortgage and the matching Developer Equity Mortgage, where applicable) and collect repayments.

5.2 In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:

- 5.2.1 Issue instructions and documentation to Owners' solicitor 5 days after a full or partial redemption request;

- 5.2.2 Confirm repayment and necessary modification to mortgages with Owners solicitor (subject to mortgage valuation);
 - 5.2.3 Issue relevant and accurate legal forms (in the current Agency's required format) to the Owners solicitor subject to a solicitor undertaking to repay;
 - 5.2.4 Provide accurate transaction processing and record keeping;
 - 5.2.5 Promptly collect repayments and accurately apportioning receipts into the Agency's and Developer accounts and ensuring that redemptions are reflected consistently in the Owner database and interest reports in the month that they occur;
 - 5.2.6 Liaise with the Agency and Lenders to obtain sign-off of legal papers; and
 - 5.2.7 Provide timely and accurate repayment data to the Agency (in a format to be prescribed by the Agency).
- 5.3 The Mortgage Administrator will be required to adhere to agreed process guidance as may be updated by the Agency from time to time at its absolute discretion with the Mortgage Administrator undertaking that such procedures are compliant with all legislation applying to the regulated and un-regulated portfolio and to advise the Agency of any conflict between the agreed procedures and the applicable legislation (provided always it is the Mortgage Administrator's responsibility to ensure that such documents and procedures adhere to all relevant consumer credit, FCA mortgage regulation and other legislative and regulatory requirements): the agreed procedures comprising:
- 5.3.1 Redemption Process;
 - 5.3.2 Staircasing Process;
 - 5.3.3 Valuation Process;
 - 5.3.4 Remittance & DS1 Process;
 - 5.3.5 Repossession/ Bankruptcy Process; and
 - 5.3.6 Re-mortgaging Process.

6 **Core Service vi) Other Post Sales Administration**

- 6.1 The appointed Mortgage Administrator will be expected to perform other defined transaction services and arrears collection on behalf of the Agency (and Lenders and GLA where relevant).
- 6.2 In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:
 - 6.2.1 Administer subletting and home improvement consents, temporary charge postponements, change of name, lease extension and other prescribed transactions (Transaction Fees as set out in Schedule 2 will be payable by the Owner in respect of such Services); and

6.2.2 Undertake additional arrears actions required subject to agreement with the Agency i.e. referral to a Debt Recovery Agency (to be specified by the Agency), or, the Mortgage Administrator leads on debt recovery actions from Equity Mortgage Owners.

6.3 The Mortgage Administrator will be required to adhere to the following process guidance as issued by the Agency and as may be updated by the Agency from time to time at its absolute discretion:

6.3.1 Change of Owners Process;

6.3.2 Home Improvement Process; and

6.3.3 Subletting Process.

7 **Core Service vii) Service Administration**

7.1 The appointed Mortgage Administrator will also be expected to maintain an effective service on behalf of the Agency and its stakeholders. In order to deliver this aspect of the service the Mortgage Administrator is required, at minimum, to:

7.1.1 Provide regular monitoring returns to Agency as required including providing monthly updates of data from the Mortgage Administrator's database in a format determined by the Agency for uploading to Agency's own data systems for analysis, the timely reporting of key data reconciliations (as agreed with the Agency) and the clearance of data issues raised by the Agency for investigation;

7.1.2 Manage and oversee the transfer data from the Outgoing Provider, including a full audit trail, to confirm the completeness and accuracy of the records managed from the point of transfer;

7.1.3 Respond promptly to ad-hoc Agency information and data requests;

7.1.4 Maintain effective Owner and Developer Lender (and other Lender) relationships;

7.1.5 Operate a formal managed complaints procedure;

7.1.6 Adhere to data protection requirements (including all applicable legislative and regulatory requirements);

7.1.7 Adhere to all relevant consumer credit and FCA requirements in relation to the regulated aspects of the portfolio and all applicable regulatory and legislative requirements; and

7.1.8 Work with the network of Help to Buy Agents to ensure data validity and safe transfer of data.

The Agency reserves the right to amend this Service Specification and supporting process guidance, or introduce new process guidance at its absolute discretion, subject to written advance notification to the Mortgage Administrator.

Schedule 4

Performance Report

Reporting period:

From:

To:

Core Service i: Post Sales Enquiry Handling		
No	Key Performance Standard	Pass/Fail
1	Operating an Owner telephone enquiry line, emails enquiry system, and post handling - available at all times Monday to Friday between 9am and 5pm	Pass/Fail
2	Accurate and up to date guidance regarding process and policy offered to Owners in relation to the Equity Mortgage products in line with Paragraph 1.1.4 of the Specification	Pass/Fail
3	All enquires received, resolved either by signposting or by commencement of the transaction process in accordance with the Specification within 3 Working Days.	Pass/Fail
Core Service ii: Website		
No	Key Performance Standard	Pass/Fail
4	Dedicated website available under an Agency owned domain and Help to Buy branding or other specified Agency or government branding.	Pass/Fail
5	Provision of up-to-date and accurate information about all mortgage administration services provided by the Mortgage Administrator and any other relevant information requested by the Agency acting reasonably. Updates to any such information uploaded on the website within 2 Working Days of receipt from the Agency.	Pass/Fail
6	Such website to be available for Owners on a continuous basis besides any "down-time" which shall be limited to the overnight period between 20.00 to 8.00 for 95% of planned maintenance tasks	Pass/Fail
7	Providing and operating an online "portal" for participating Developer Lenders. Such portal to be available for Lenders on a continuous basis besides any "down-time" which shall be limited to the overnight period between 20.00 to 8.00 for 95% of planned maintenance tasks	Pass/Fail

Core Area iii : Customer database		
No	Key Performance Standard	Pass/Fail
8	In line with Paragraph 3.1 of the Specification the Mortgage Administrator has at all times maintained a comprehensive and secure electronic database of properties funded by the Agency's Equity Mortgage products including new additions and all full and part redemptions	Pass/Fail
9	Processing new Owner and property records within 5 days of receiving an electronic return and documents from the relevant Help to Buy Agent	Pass/Fail
10	Processing new Owner and property records within 5 days of receiving an electronic return from the Agency	Pass/Fail
11	In line with Paragraph 3.2.2 of the Specification the Mortgage Administrator has provided an accurate data collection service and carried out monthly validation of the Mortgage Administrator reporting	Pass/Fail
12	All reports made available to the Agency pursuant to Paragraph 3.2.3 and 3.2.4 of the specification. Current timeframes - transaction report, KPS report, fee report and valuation report submitted within 10 Working Days of the previous month end. Summary report and reports in electronic format to be made available to the agency by the final Working Day of the relevant Reporting Period.	Pass/Fail
13	Upload Developer Lender (or other Lender) fee reports and other agreed reports to the Lender online Portal in the final week of the month for reports up to month end of the preceding month.	Pass/Fail
14	In line with Paragraph 3.2.5 of the Specification the Mortgage Administrator has provided reconciliation reports to the Help to Buy Agent network to resolve data discrepancies arising during the Reporting Period	Pass/Fail
15	In line with Paragraph 3.2.6 of the Specification and as part of the monthly Contract Review Meetings, the Mortgage Administrator has carried out reconciliation reports between the Mortgage Administrator and Agency provided data to identify and, where in the PSAs control, help close data lags. To include reporting of net and gross differences between data sources, ageing of differences and clearance over time.	Pass/Fail
16	As a result of discrepancies identified through reconciliation or other validation process, make amendments to data (agreed with Agency) on the Owner database within 5 days of the need for correction being identified.	Pass/Fail
17	After receiving instruction from Agency of a transfer of loans to a new Lender, make amendments to database to reflect new Lender names within 5 days of the request	Pass/Fail

Core Service iv: Loan Fee Collection

No	Key Performance Standard	Pass/Fail
18	Annual Interest statements, Interest liability letter and Interest demand to be calculated prepared and mailed to all Owners no more than thirty (30) days after the twelve (12) month anniversary of first purchase.	Pass/Fail
19	Mortgage Administrator has administered monthly or annual collection of interest when payable during the Reporting Period (Specification 4.1)	Pass/Fail
20	Mortgage Administrator has set up accurate monthly direct debit accounts for all new Owners (and any who change their bank accounts) during the Reporting Period.	Pass/Fail
21	Collection of interest has been undertaken in line with Paragraph 4.2.6 of the Specification for the sums due in the Reporting Period.	Pass/Fail
22	Monthly update provided in line with Paragraphs 4.2.8 and 3.2.3 of the Specification	Pass/Fail
Core Service v: Redemptions and Repayment Collection		
No.	Key Performance Standard	Pass/Fail
23	Instruction documents issued to the Owner and, if applicable, solicitor and Lender within five (5) working days of receiving a request from Owner to make full or part loan redemption	Pass/Fail
	No. of requests made for full/partial redemptions in month	
	No. actioned within 5 working days	
24	On receipt of valuation, the Mortgage Administrator has followed the redemption/staircasing process and administered transactions in line with agreed Agency time frames	Pass/Fail
25	The Mortgage Administrator has administered all transactions using the agreed legal undertaking and issued legal forms in line with 5.2.3 of the specification	Pass/Fail
26	All repayments and any associated payments (whether in whole or part redemption) during the Reporting Period have been paid by the Owner's solicitor directly into the Agency Account or the Developer Account other Lender account as applicable.	Pass/Fail
27	Mortgage Administrator has complied with the Remittance and DS1 Process and liaised with the Agency and Developer Lender or other Lender to obtain sign off of legal paperwork in an accurate and timely manner during the Reporting Period.	Pass/Fail

28	Mortgage Administrator has fully complied with the agreed processes complying with the Specification and regulatory requirements during the Reporting period	Pass/Fail
Core Service vi: Other Post Sales Administration		
No.	Key Performance Standard	Pass/Fail
29	Mortgage Administrator has carried out the accurate administration in line with Paragraph 6.2.1 and 6.3 of the Specification and the agreed processes	Pass/Fail
30	Where applicable, Mortgage Administrator has carried out additional arrears actions if required or instructed to do so by the Agency in line with 6.2.2 of the specification	Pass/Fail
Core Service vii: Mortgage Administrator Service Administration		
No.	Key Performance Standard	Pass/Fail
31	Mortgage Administrator has responded to all ad-hoc enquiries from the Agency within three (3) Working Days for the month reporting	Pass/Fail
32	No breach of any of the requirements set out in in Paragraph 7.1.6 of the Specification during the reporting month.	Pass/Fail
33	Inform the Agency immediately any breach of the Specification requires the Mortgage Administrator to contact the FCA.	Pass/Fail

GUIDANCE NOTES FOR THE COMPLETION OF THE PERFORMANCE REPORT:

The above return should be completed by the Mortgage Administrator and submitted to the Agency at HelptoBuy@Agency.gsi.gov.uk within 10 Working Days of the end of the reporting period. MA should provide supporting explanatory information in relation to any "Fails".

IF THE KEY PERFORMANCE STANDARD IS NOT RELEVANT OR THE MATTER TO BE MEASURED BY THE KEY PERFORMANCE STANDARD HAS NOT OCCURRED IN THE RELEVANT MONTH, THE MORTGAGE ADMINISTRATOR WILL BE DEEMED TO HAVE PASSED THAT KEY PERFORMANCE STANDARD FOR THAT MONTH

Default scoring will take place monthly.

Where the Mortgage Administrator fails to meet a Key Performance Standard as a direct result of:

- i an unforeseen or unusual event outside of the Mortgage Administrator's control; or
 - ii an act or omission of the Agency
- the Agency will treat this as a pass for the month reporting

Schedule 5

Form of Account Charge

Account Charge

dated [] 2016

Parties

- (1) **Target Servicing Limited** (Company registration number: 05618062) whose registered office is Imperial House, Newport, NP10 8UH (the **Chargor**); and
- (2) **Homes and Communities Agency** acting through its offices at Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (the **Agency**).

Introduction

- (A) The Agency has appointed the Chargor as its agent for the administration of the Schemes, and the collection of any monies due and thereunder, in accordance with the terms of the Appointment.
- (B) It is a condition precedent to the entry into the Appointment by the Agency and the Chargor that the Chargor enters into this deed.
- (C) It is intended by the parties to this document that it will take effect as a deed despite the fact that a party may only execute this document under hand.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this deed unless the context otherwise requires:

Account means the account called the **Homes and Communities Agency's and Developers' Receivables Account** being the account with sort code S43(2) and account number S43(2) held with the Account Bank;

Account Bank means [] or such other bank at which the Account is held pursuant to the terms of this deed;

Acceptable Bank means a bank regulated by the Financial Conduct Authority (or an equivalent regulator in the European Union) which has a Requisite Rating;

Appointment means the agreement to be entered into by the Agency and the Chargor as agent dated on or about the date of this deed;

Balance means all the monies standing to the credit of the Account from time to time;

Business Day means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

Charged Assets means all the assets, rights, property and undertaking of the Chargor from time to time charged, assigned or agreed to be assigned to, the Agency by the Chargor under this deed;

Collateral Rights means all rights, powers and remedies of the Agency provided by or pursuant to this deed or by law;

Disruption Event means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Appointment (or otherwise in order for the transactions contemplated by the Appointment to be carried out) which disruption is not caused by, and is beyond the control of, any of the parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a party preventing that, or any other party:
 - i from performing its payment obligations under the Appointment; or
 - ii from communicating with other parties in accordance with the terms of the Appointment;

and which (in either such case) is not caused by, and is beyond the control of, the party whose operations are disrupted;

Event of Default means an event specified as such in clause 9 (Events of default);

Fitch means Fitch Ratings Limited or any successor to its ratings business;

Material Adverse Effect means a material adverse effect on:

- (a) the ability of the Chargor to perform its payment obligations under this deed;
- (b) the validity or enforceability of this deed; or
- (c) any right or remedy of the Agency under this deed;

Moody's means Moody's Investors Services Limited or any successor to its ratings business;

Potential Event of Default means any event or circumstance which, if it were to continue after the giving of notice, the expiry of any grace period, the making of any determination or the fulfilment of any other condition or combination thereof would become an Event of Default;

Receiver means a receiver or receiver and manager of the whole or any part of the Charged Assets;

Regulator means the Homes and Communities Agency acting through the Regulation Committee established by it pursuant to Part 2 of the Housing and Regeneration Act 2008 or any other body with responsibility for carrying on substantially the same regulatory or supervisory functions (including any statutory successor);

Relevant Currency means in relation to each of the Chargor's Liabilities the currency in which it is from time to time denominated;

Requisite Rating means a person with long term unsecured debt instruments in issue which are neither subordinated nor guaranteed and which have a rating of at least one of the following:

- (a) AA- or better by Fitch;
- (b) Aa3 or better by Moody's; or
- (c) AA- or better by S&P.

Reservations means:

- (a) the principle that equitable remedies are remedies which may be granted or refused at the discretion of the court and damages may be regarded as an adequate remedy;
- (b) the limitation on enforcement as a result of laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws affecting the rights of creditors generally;
- (c) the statutory time-barring of claims;
- (d) defences of set off or counterclaim;
- (e) rules against penalties and similar principles;
- (f) the fact that security which is described as fixed security may in fact be floating security;
- (g) the possibility that an undertaking to assume liability for, or indemnify a person against, non-payment of stamp duty may be void;
- (h) the fact that a court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another person in respect of costs of an unsuccessful litigation brought against that person or may not award by way of costs all of the expenditure incurred by a successful litigant in proceedings brought before that court or that a court may stay proceedings if concurrent proceedings based on the same grounds and between the same parties have previously been brought before another court; and
- (i) steps for perfection not required by the terms of this deed to be taken;

S&P means Standard and Poor's Rating Services, a Division of the McGraw Hill Companies, Inc. or any successor to its ratings business;

Schemes means Homebuy Direct, FTBI, London Wide Initiative, FirstBuy, the Help to Buy Equity Loan Scheme and any other shared equity products funded or promoted by the Agency (confirmed by the Agency to the Mortgage Administrator as being subject to the Appointment) and **Scheme** means any one of them as the context so requires;

Secured Liabilities means all the money and liabilities now or hereafter due owing or incurred to the Agency by the Chargor under the terms of the Appointment (including, without limitation, under any amendments, supplements or restatements of the Appointment) in any manner whatsoever, in any currency or currencies (whether present or future, actual or contingent) and whether owed by the Chargor as principal or surety or incurred solely or jointly with another, together with all interest accruing thereon and **Secured Liability** means any one of these obligations;

Security means the security constituted by or pursuant to this deed;

Security Interest means any mortgage, pledge, lien, charge, security assignment, right of set off, hypothecation or security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect; and

Tax includes any form of taxation, levy, duty, charge, contribution or impost of whatever nature (including any applicable fine, penalty, surcharge or interest) imposed by any government authority, body or official (whether central, local, state or federal) anywhere in the world competent to impose any of them.

1.2 Interpretation

In this deed references to:

- 1.2.1 the **Chargor** or the **Agency** where the context admits include a reference to its respective successors, assigns and/or transferees;
- 1.2.2 words importing one gender will be treated as importing any gender, words importing individuals will be treated as importing corporations and vice versa, words importing the singular will be treated as importing the plural and vice versa and words importing the whole will be treated as including a reference to any part, except where the context specifically requires otherwise;
- 1.2.3 this deed or to a provision of this deed, or any other document are references to it as amended, restated, supplemented or novated from time to time;
- 1.2.4 the words "include" or "including" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) will not be given a restrictive meaning by reason of the fact that they are preceded or followed by words indicating a particular class of acts, matters or things;
- 1.2.5 a **person** includes any person, firm, company, body corporate, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;

1.2.6 a **regulation** includes any regulation, rule, official directive, code of practice, request or guideline (whether or not having the force of law but if not having the force of law being of a kind that it is customary for the relevant person (or persons of its status or type carrying on a similar business) to comply with) of any governmental body, intergovernmental or supranational body, agency, department or regulatory or self-regulatory organisation or similar body; and

1.2.7 a **provision of law** is a reference to that provision as amended, re-enacted or replaced; in particular references to the statutory provisions of the Housing Act shall refer to the relevant provisions under the Housing Act 1996 as amended or replaced by the Housing and Regeneration Act 2008 (when in force).

1.3 **Appointment**

Words and expressions defined in the Appointment will have the same meanings when used in this deed, unless the context otherwise requires. In the case of inconsistency definitions set out in the Appointment will prevail.

1.4 **Headings**

The clause, paragraph and schedule headings and the table of contents are inserted for ease of reference only and will not affect construction.

1.5 **Third party rights**

A person who is not a party to this deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

2 **Payment of Secured Liabilities**

2.1 **Covenant to pay**

The Chargor covenants with the Agency that it will, on demand, discharge all of the obligations which it may at any time have to the Agency in respect of the Secured Liabilities as and when they fall due for payment under the terms of the Appointment.

2.2 **Interest on demand**

If the Chargor fails to pay any sum on the due date for payment of that sum the Chargor will pay interest on such sum (before and after any judgement) from the date of demand until the date of payment calculated on a daily basis at the rate 2% per annum above the base rate of the Account Bank from time to time and compounded (if unpaid) at such intervals as the Agency may determine. Such interest will be calculated on the basis of a 365 day year.

3 **Security**

3.1 **Fixed Charge**

The Chargor hereby charges in favour of the Agency with full title guarantee for the payment and discharge of the Secured Liabilities by way of first fixed charge all the Chargor's right, title and interest from time to time in the Account, the Balance and the

debts represented thereby together with all entitlements to interest and other rights and benefits accruing to or arising in connection therewith.

3.2 **Assignment**

To the extent not, from time to time, effectively charged pursuant to clause 3.1, the Chargor assigns to the Agency with full title guarantee as a continuing security for the payment and discharges of the Secured Liabilities all its right, title, benefit and interest whatsoever, present or future, in to and under (but none of the Chargor's obligations or liabilities in respect of) the Account and/or the Balance.

3.3 **Floating Charge**

3.3.1 The Chargor, with full title guarantee, charges to the Agency by way of a floating charge as a continuing security for the payment and discharge of the Secured Liabilities the Account and the Balance, both present and future, to the extent that the same is not, from time to time, effectively charged by way of fixed charge or assignment pursuant to clauses 3.1 and 3.2 or otherwise pursuant to this deed.

3.3.2 The floating charge set out in clause 3.3.1 is a Qualifying Floating Charge for the purposes of paragraph 14 of Schedule B1 to the Insolvency Act 1986.

4 **Further assurance**

4.1 **Further assurance: general**

The Chargor will, at its own expense, promptly do all such acts or execute all such documents (including assignments, transfers, charges, notices and instructions) as the Agency may specify (and in such form as the Agency may require in favour of the Agency or its nominee(s)):

4.1.1 to perfect or protect the security created or intended to be created in respect of the Charged Assets (which may include the execution by the Chargor of a fixed charge or assignment over all or any of the assets constituting, or intended to constitute, Charged Assets) or for the exercise of the Collateral Rights;

4.1.2 to facilitate the realisation of the Charged Assets; and/or

4.1.3 to obtain all necessary consents to procure the registration of this deed at Companies House or the Financial Conduct Authority (as the case may be).

4.2 **Consents**

4.2.1 The Chargor will use all reasonable endeavours to obtain (in form and content satisfactory to the Agency) as soon as possible any consents necessary to enable the relevant assets of the Chargor purported to be so charged or assigned to be the subject of an effective fixed charge or assignment pursuant to clause 3 and, immediately upon obtaining any such consent, the asset concerned shall become subject to such security and the Chargor shall promptly deliver a copy of each consent to the Agency.

4.3 **Preservation of rights**

Neither the obligations of the Chargor contained in this deed nor the rights, powers and remedies conferred in respect of the Chargor upon the Agency by the Appointment or by law shall be discharged, impaired or otherwise affected by:

- 4.3.1 the winding-up, dissolution, administration or reorganisation of the Chargor or any other person or any change in its status, function, control or ownership;
- 4.3.2 any of the obligations of the Chargor or any other person under the Appointment or under any other security relating to the Appointment being or becoming illegal, invalid, unenforceable or ineffective in any respect;
- 4.3.3 time or other indulgence being granted or agreed to be granted to the Chargor or any other person in respect of its obligations under the Appointment or this deed;
- 4.3.4 any amendment to, or any variation, waiver or release of any obligation of the Chargor or any other person under the Appointment or this deed;
- 4.3.5 any failure to take, or fully to take, any security contemplated by the Appointment or otherwise agreed to be taken in respect of the Chargor's or any other person's obligations under the Appointment;
- 4.3.6 any failure to realise or fully to realise the value of, or any release, discharge, exchange or substitution of, any security taken or agreed to be taken in respect of the Chargor's or any other person's obligations under the Appointment; or
- 4.3.7 any other act, event or omission which, but for this clause 4.3, might operate to discharge, impair or otherwise affect any of the obligations of the Chargor or any other person or any of the rights, powers or remedies conferred upon the Agency by the Appointment or by law.

5 **Negative pledge and disposal restrictions**

5.1 **Negative pledge**

The Chargor will not, without the prior written consent of the Agency, create, or permit to arise, or continue (in favour of any person other than the Agency) any Security Interest over the Charged Assets now or in the future, or agree or attempt to do so, or increase or extend any liability of the Chargor secured on any of the Charged Assets.

5.2 **Disposal of fixed charge assets**

The Chargor will not, without the prior written consent of the Agency (whether by a single transaction or number of related or unrelated transactions, and whether at the same time or over a period of time) sell, transfer, assign or otherwise dispose of the Charged Assets charged or assigned by clause 3 or any interests therein or the right to receive or to be paid the proceeds arising from their disposal or agree or attempt to do so.

6 **Representations and warranties**

6.1 **Duration and to whom made**

The representations and warranties made by the Chargor in this clause 6 will remain in force for (and will be deemed repeated on each day falling during) the period for which the Secured Liabilities are outstanding and are given to the Agency.

6.2 **Status**

6.2.1 It is a company duly incorporated and validly existing under the laws of England.

6.2.2 It has the power to own its assets and carry on its business as it is being conducted.

6.3 **Powers and authority**

It has the power to enter into and perform, and has taken all necessary action to authorise the entry into and performance of, this deed and the transactions contemplated by this deed.

6.4 **Legal validity**

Subject to the Reservations, this deed is its legally binding, valid and enforceable obligation.

6.5 **Non-conflict**

The entry into and performance by it of, and the transactions contemplated by, this deed do not conflict with, in any material respect:

6.5.1 any law or regulation applicable to it;

6.5.2 its constitutional documents; or

6.5.3 any document which is binding upon it or any of its assets.

6.6 **No default**

No event is outstanding which constitutes a default under any document which is binding on it or any of its assets to an extent or in a manner which has or is reasonably likely to have a Material Adverse Effect.

6.7 **Authorisations**

All authorisations required by it in connection with the entry into, performance, validity and enforceability of, and the transactions contemplated by, this deed have been obtained or effected (as appropriate) and are in full force and effect.

6.8 **Litigation**

No litigation, arbitration or administrative proceedings are current or, to its knowledge, pending or threatened, which have or, if adversely determined, are reasonably likely to have a Material Adverse Effect.

6.9 **Matters represented**

Except as disclosed in writing to the Agency on or prior to the date of this deed:

6.9.1 the Chargor is the legal and beneficial owner of the Charged Assets;

6.9.2 there are no agreements, stipulations, reservations, conditions, interests, rights or other matters whatsoever affecting the Charged Assets which materially adversely affect or are likely to materially adversely affect the value of the Charged Assets or the ability of the Chargor to perform its obligations owed to the Agency; and

6.9.3 the Chargor has received no notice of any adverse claims by any person in respect of the ownership of the Charged Assets or any interest therein, nor has any acknowledgement been given to any person in respect thereof which has not been disclosed to the Agency.

6.10 **Security created**

Subject to registration at Companies House or the Financial Conduct Authority (as the case may be), this deed creates those Security Interests it purports to create, ranking as set out above and is not liable to be avoided or otherwise set aside on the liquidation or administration of the Chargor or otherwise.

7 **General undertakings**

7.1 **Not to jeopardise the Security**

The Chargor will not do or allow to be done anything which could reasonably be expected materially to decrease the value of the Security to the Agency.

7.2 **Information and access**

The Chargor will at the request of the Agency, promptly provide the Agency with such information as the Agency may reasonably require about the Charged Assets and the Chargor's compliance with the terms of this deed and the Chargor will permit the Agency, its representatives and professional advisers free access at all reasonable times and on reasonable notice to inspect and take copies and extracts from such books, accounts and records of the Chargor as relate to the Charged Assets.

7.3 **Law**

The Chargor will comply with all applicable laws and regulations affecting the Charged Assets.

7.4 **Notification of breach**

The Chargor will notify the Agency of any breach of any of the provisions of this deed promptly upon becoming aware of its occurrence.

7.5 Authorisations

The Chargor will promptly obtain, maintain and comply with the terms of any authorisation required under any law or regulation to enable it to perform its obligations under, or for the validity or enforceability of, this deed.

7.6 Compliance with laws

The Chargor will comply in all respects with all laws to which it is subject where failure to do so has or is reasonably likely to have a Material Adverse Effect.

8 The Account

8.1 Account

8.1.1 The Chargor will open and maintain the Account with an Acceptable Bank, and shall ensure that:

- (a) the Agency has sole signing rights in relation to the Account; and
- (b) the Account is at all times held at an Acceptable Bank.

8.1.2 The Chargor must promptly notify the Agency upon it becoming aware that the Account Bank has ceased to be an Acceptable Bank.

8.1.3 If the Account Bank ceases to be an Acceptable Bank the Chargor must:

- (a) move the Account to another bank which is an Acceptable Bank; and
- (b) grant Security Interests over the Account on the same, or substantially the same, terms as set out in this deed,

each within 30 days of the earlier of:

- i the Chargor becoming aware that the Account Bank has ceased to be an Acceptable Bank; or
- ii a written request by the Agency.

8.1.4 The Chargor must:

- (a) immediately serve a notice of assignment, substantially in the form of Part 1 of the Schedule (Form of Letter for Account Bank), on the Account Bank; and
- (b) use all reasonable endeavours to ensure that the Account Bank acknowledges the notice, substantially in the form of Part 2 of the Schedule (Form of Letter for Account Bank).

8.2 **Withdrawal**

The Chargor will not withdraw all or any monies (including interest) standing to the credit of the Account without the Agency's prior written consent.

8.3 **Statements**

The Chargor will provide to the Agency from time to time at the request of the Agency full statements and particulars of the Account and advise the Agency prior to any change to it.

9 **Events of default**

9.1 **Events of default**

Each of the events set out in this Clause 9 is an Event of Default.

9.2 **Non-payment**

The Chargor fails to pay any sum due under the Appointment or this deed on the due date for payment thereof at the place at which it is expressed to be payable provided that:

9.2.1 if the Agency is satisfied that such failure to pay any amount due is due solely to an administrative error or a technical delay in the transmission of funds; or

9.2.2 is due to a Disruption Event,

and such amount is paid within three Business Days of its due date this shall not constitute an Event of Default.

9.3 **Breach of this deed**

The Chargor does not comply with any term of this deed unless the non-compliance:

9.3.1 is capable of remedy; and

9.3.2 is remedied within 10 Business Days of the earlier of the Agency giving notice and/or the Chargor becoming aware of the non-compliance.

9.4 **Breach of other obligations**

The Chargor fails to perform or observe any obligation, condition or provision binding on it under the Appointment or this deed (other than those referred to in clauses 9.2 (Non-Payment) or 9.13 (Breach of Key Obligations) and, except where such failure is not, in the opinion of the Agency, capable of remedy (when no such notice shall be required) such failure continues for 10 Business Days after the earlier of the Agency giving notice and/or the Chargor becoming aware of the non-compliance.

9.5 **Misrepresentation**

A representation made or repeated by the Chargor in this deed is incorrect or misleading in any material respect when made or deemed to be repeated, unless the circumstances giving rise to the misrepresentation:

- 9.5.1 are capable of remedy; and
- 9.5.2 are remedied within 10 Business Days of the earlier of the Agency giving notice and/or the Chargor becoming aware of the non-compliance.

9.6 Termination of the Appointment

The Agency exercises any of its rights under the Appointment to terminate the Appointment as a whole or any or all of the Schemes.

9.7 Insolvency proceedings

9.7.1 Except as provided below, any of the following occurs in respect of the Chargor:

- (a) it is unable or admits 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 the Agency;
 - ii a composition, compromise, assignment or arrangement with any creditor;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by the Agency), receiver, administrative receiver, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any assets of the Chargor;
 - v any analogous procedure or step is taken in any jurisdiction.

9.7.2 Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Chargor.

9.7.3 Clause 9.7.1 does not apply to:

- (a) a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within 10 Business Days; or

- (b) a solvent reorganisation of the Chargor undertaken with the prior written consent of the Agency.

9.8 **Creditors' process**

Any attachment, sequestration, distress, execution or analogous event affects any assets of the Chargor, and is not discharged within 10 Business Days.

9.9 **Cessation of business**

The Chargor ceases, or threatens to cease, to carry on business.

9.10 **Effectiveness of this deed or the Appointment**

9.10.1 It is or becomes unlawful for the Chargor to perform any of its obligations under this deed or the Appointment.

9.10.2 This deed or the Appointment is not effective in accordance with its terms or is alleged by the Chargor to be ineffective in accordance with its terms for any reason.

9.10.3 The Chargor repudiates this deed or the Appointment or evidences an intention to repudiate this deed or the Appointment.

9.11 **Change in Control**

A Change in Control (as defined in the Appointment) occurs in respect of the Chargor.

9.12 **Change of Status**

The Chargor changes its corporate status without the prior written consent of the Agency.

9.13 **Breach of Key Obligations**

There is a failure by the Chargor to perform or observe any provision of clauses 12, 19.1 and/or 26 of the Appointment.

9.14 **Material adverse change**

Any event or series of events occurs which, in the opinion of the Agency, has or is reasonably likely to have a Material Adverse Effect.

10 **Power to remedy**

In the case of a default by the Chargor in observing or performing any of the covenants or stipulations affecting the Charged Assets, the Chargor will permit the Agency or its agents to do such things or pay all such costs, charges and expenses as the Agency may consider are necessary or desirable to prevent or remedy any breach of covenant or stipulation or to comply with or object to any notice served on the Chargor in respect of the Charged Assets. The Chargor will indemnify and keep the Agency indemnified against all losses, costs, charges and expenses reasonably incurred in connection with the exercise of the powers contained in this clause 10.

11 **Enforcement of Security**

11.1 **Enforcement**

After the occurrence of an Event of Default which is continuing unremedied and/or unwaived the security created by or pursuant to this deed will immediately become enforceable, and the Agency may, without notice to the Chargor or prior authorisation from any court, in its absolute discretion:

11.1.1 enforce all or any part of the security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold or dispose of all or any part of the Charged Assets; and/or

11.1.2 whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by the Law of Property Act 1925 (as varied or extended by this deed) on mortgagees and by this deed on any Receiver or otherwise conferred by law on mortgagees or Receivers.

11.2 **Possession**

If the Agency, any Receiver or any delegate of any such person takes possession of the Charged Assets, it or he may at any time relinquish such possession.

11.3 **No liability as mortgagee in possession**

The Agency will not be liable to account as a mortgagee in possession in respect of all or any part of the Charged Assets or be liable for any loss upon realisation or for any neglect, default or omission in connection with the Charged Assets to which a mortgagee in possession might otherwise be liable.

11.4 **Power of Sale**

The power of sale under this deed may be exercised notwithstanding that the Agency or the Receiver may have previously waived or refrained from exercising that power; and no demand or notice of sale made or given under this deed will be waived by the acceptance of any payment on account of the Secured Liabilities, or by any negotiations between the Agency and the Chargor or any other party who is acting as agent for the Chargor or on behalf of it.

11.5 **Receiver's liability**

All the provisions of clause 11.3 will apply, mutatis mutandis, in respect of the liability of any Receiver and delegate of the Receiver or the Agency or any officer, employee or agent of the Agency, any Receiver or any delegate.

12 **Extension and variation of the Law of Property Act 1925**

12.1 **Extension of powers**

The power of sale or other disposal conferred on the Agency and on any Receiver by this deed will operate as a variation and extension of the statutory power of sale under Section 101 of the Law of Property Act 1925 and such power will arise (and the Secured Liabilities will be deemed due and payable for that purpose) on execution of this deed.

12.2 **Restrictions**

The restrictions contained in Sections 93 and 103 of the Law of Property Act 1925 will not apply to this deed or to the exercise by the Agency of its right to consolidate all or any of the security created by or pursuant to this deed with any other security in existence at any time or to its power of sale, which powers may be exercised by the Agency without notice to the Chargor.

12.3 **Application**

Section 109(8) of the Law of Property Act 1925 will not apply, and all monies received by the Agency or any Receiver in the exercise of any powers conferred by this deed will be applied in the following order:

12.3.1 in the payment of:

- (a) all costs, charges, liabilities and expenses incurred by the Agency or any Receiver in the exercise of those powers or incidental to any Receiver's appointment, together with interest at the applicable rate set out in clause 2.2 (both before and after judgement) from the date those amounts became due until the date they are irrevocably paid in full; and
- (b) any Receiver's remuneration;

12.3.2 in or towards discharge of all liabilities having priority to the Secured Liabilities;

12.3.3 in or towards the satisfaction of the Secured Liabilities in such order as the Agency determines; and

12.3.4 in the payment of any surplus to the Chargor or other person entitled to it.

12.4 The Chargor will have no rights in respect of the application by the Agency of any sums received, recovered or realised by the Agency under this deed.

13 **Appointment of Receiver**

13.1 **Appointment and removal**

At any time after the security created by or pursuant to this deed becomes enforceable, the Agency may by deed or otherwise (acting through an authorised officer of the Agency), without prior notice to the Chargor:

13.1.1 appoint one or more persons to be a Receiver of the whole or any part of the Charged Assets;

13.1.2 remove (so far as it is lawfully able) any Receiver so appointed; and

13.1.3 appoint another person(s) as an additional or replacement Receiver(s).

13.2 **Capacity of Receivers**

Each person appointed to be a Receiver under this deed will be:

- 13.2.1 entitled to act individually or together with any other person appointed or substituted as Receiver;
- 13.2.2 for all purposes will be deemed to be the agent of the Chargor which will be solely responsible for his acts, defaults and liabilities and for the payment of his remuneration and no Receiver will at any time act as agent for the Agency; and
- 13.2.3 entitled to remuneration for his services at a rate to be fixed by the Agency from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925).

13.3 **Statutory powers of appointment**

The powers of appointment of a Receiver will be in addition to all statutory and other powers of appointment of the Agency under the Law of Property Act 1925 (as extended by this deed) or otherwise and such powers will remain exercisable from time to time by the Agency in respect of any part of the Charged Assets.

14 **Powers of Receiver**

14.1 **Powers**

Any receivers appointed by the Agency will (in addition to all powers conferred on him by law) have the following powers exercisable upon such terms and conditions as he thinks fit:

- 14.1.1 to take possession of and generally to manage the Charged Assets;
- 14.1.2 to enter into, carry into effect, complete, deliver, perform, repudiate, rescind or vary any deed, contract, transaction or arrangement in relation to the Charged Assets to which the Chargor is or is to be a party;
- 14.1.3 to carry into effect and complete any transaction in relation to the Charged Assets by executing deeds or documents in the name of or on behalf of the Chargor;
- 14.1.4 to engage, rely on the advice of and discharge advisers, consultants, officers, managers, agents and others;
- 14.1.5 to bring, continue or defend any claim, dispute, action or legal proceedings and enter into any arrangement or compromise in relation to the Charged Assets;
- 14.1.6 to redeem any security and to borrow or raise any money and secure the payment of any money in priority to the Chargor's Liabilities for the purposes of the exercise of his powers and/or defraying any costs or liabilities incurred by him in such exercise;
- 14.1.7 to make any elections for value added tax purposes in relation to the Charged Assets; and
- 14.1.8 to do any other acts which he may consider to be incidental or conducive to any of his powers or to the realisation of the Charged Assets.

15 **Protection of purchasers**

15.1 **Consideration**

The receipt by the Agency or any Receiver will be conclusive discharge to a purchaser and, in making any sale or disposal of any of the Charged Assets or making any acquisition, the Agency or any Receiver may do so for such consideration, in such manner and on such terms as it thinks fit.

15.2 **Protection of purchaser**

No purchaser or other person dealing with the Agency or any Receiver will be bound to inquire whether the right of the Agency or such Receiver to exercise any of its powers has arisen or become exercisable or be concerned with any property or regularity on the part of the Agency or such Receiver in such dealings.

16 **Power of attorney**

16.1 **Appointment and powers**

The Chargor by way of security irrevocably appoints the Agency and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which:

16.1.1 the Chargor ought to have done under or pursuant to this deed (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Assets); and/or

16.1.2 enable the Agency and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this deed or by law (including the exercise of any right of a legal or beneficial owner of the Charged Assets).

16.2 **Ratification**

The Chargor will ratify and confirm all things lawfully done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

17 **Effectiveness of Security**

17.1 **Continuing security**

The security created by or pursuant to this deed will remain in full force and effect as a continuing security for the Secured Liabilities unless and until discharged by the Agency.

17.2 **Cumulative rights**

The security created by or pursuant to this deed and the Collateral Rights will be cumulative, in addition to and independent of every other security (if any) which the Agency may at any time hold for the Secured Liabilities or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Agency over the whole or any part of the Charged Assets will merge into the security constituted by this deed.

17.3 No prejudice

Neither the security or the Collateral Rights will be prejudiced by any time or indulgence granted to the Chargor or any other person or by any other thing which might otherwise prejudice the security or any Collateral Right.

17.4 Remedies and waivers

No failure on the part of the Agency to exercise, or any delay on its part in exercising, any Collateral Right will operate as a waiver thereof, nor will any single or partial exercise of any Collateral Right preclude any further or other exercise of that or any other Collateral Right.

17.5 No liability

None of the Agency, its nominee(s) or any Receiver will be liable by reason of:

17.5.1 taking any action permitted by this deed; or

17.5.2 any neglect or default in connection with the Charged Assets; or

17.5.3 taking possession of or realising all or any part of the Charged Assets,

except in the case of negligence or wilful default or fraud upon its part.

17.6 Partial invalidity

If, at any time, any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this deed nor of such provision under the laws of any other jurisdiction will in any way be affected or impaired thereby and, if any part of the security intended to be created by or pursuant to this deed is invalid, unenforceable or ineffective for any reason, that will not affect or impair any other part of the security.

17.7 Other security

The Agency will not be obliged to resort to any guarantees, indemnities, Security Interests or other means of payment now or hereafter held by or available to it before enforcing this deed and no action taken or omitted by the Agency in connection with any such guarantees, indemnities, Security Interest or other means of payment will discharge, reduce, prejudice or affect the liability of the Chargor or the Secured Liabilities nor will the Agency be obliged to account for any money or other property received or recovered in consequence of any enforcement or realisation of any such guarantees, indemnities, Security Interests or other means of payment.

17.8 Variation

No variation of the terms of this deed will be valid unless it is in writing signed by the Chargor and confirmed in writing by the Agency.

18 Release of Security

18.1 **Redemption of security**

Upon the Secured Liabilities being discharged in full the Agency will, at the request and cost of the Chargor, release and cancel the security constituted by this deed and procure the reassignment to the Chargor of the property and assets assigned to the Agency pursuant to this deed, in each case subject to clause 18.2 and without recourse to, or any representation or warranty by, the Agency or any of its nominees.

18.2 **Avoidance of payments**

If the Agency considers that any amount paid or credited to it is capable of being avoided or reduced by virtue of any bankruptcy, insolvency, liquidation or similar laws the liability of the Chargor under this deed and the security constituted hereby will continue and such amount shall not be considered to have been irrevocably paid.

18.3 **Retention of security**

Where the Agency has reasonable cause to be concerned that the Chargor is or may become insolvent, the Agency may retain this deed, the Security and all documents of title, certificates and other documents relating to or evidencing ownership of all or any part of the Charged Assets.

19 **Subsequent Security Interests**

If the Agency at any time receives or is deemed to have received notice of any subsequent Security Interest affecting all or any part of the Charged Assets or any assignment or transfer of the Charged Assets which is prohibited by the terms of this deed, all payments thereafter by or on behalf of the Chargor to the Agency will be treated as having been credited to a new account of the Chargor and not as having been applied in reduction of the Secured Liabilities as at the time when the Chargor received such notice.

20 **Assignment**

20.1 **Right of Agency to assign**

The Agency may at any time assign, novate or otherwise transfer all or any part of its rights under this deed in accordance with and subject to the Appointment.

20.2 **Restriction on Chargor**

The Chargor may not assign or transfer any of its rights or obligations under this deed.

20.3 **Confidentiality**

The Agency may give such information relating to the Chargor and the Chargor's Liabilities as it thinks fit to any person proposing to take an assignment and/or transfer from the Agency and/or to enter into contractual relations with the Agency with respect to this deed.

21 **Expenses, stamp taxes and indemnity**

21.1 **Expenses**

The Chargor will, from time to time on demand of the Agency, reimburse the Agency on a full indemnity basis for all the costs and expenses (including legal fees) together with any VAT thereon properly incurred by it or by any Receiver in connection with:

- 21.1.1 the negotiation, preparation and execution of this deed and the completion of the transactions and perfection of the security contemplated in this deed; or
- 21.1.2 the exercise, preservation and/or enforcement of any of the Collateral Rights or the security contemplated by this deed or any proceedings instituted by or against the Agency or any Receiver as a consequence of taking or holding the security or of enforcing the Collateral Rights,

and such expenses will carry interest until so reimbursed at the rate referred to in clause 2.2.

21.2 **Stamp taxes**

The Chargor will pay all stamp, stamp duty land tax, registration and other taxes to which this deed, the security contemplated in this deed or any judgement given in connection with it is or at any time may be subject and will, from time to time, indemnify the Agency on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

21.3 **Indemnity**

The Chargor will, notwithstanding any release or discharge of all or any part of the Security, indemnify the Agency, its agents, attorneys and any Receiver against any action, proceeding, claims, losses, liabilities and costs which it may sustain as a consequence of any breach by the Chargor of the provisions of this deed, the exercise or purported exercise of any of the rights and powers conferred on them by this deed or otherwise relating to the Charged Assets.

22 **Payments free of deduction**

All payments to be made under this deed will be made free and clear of and without deduction or withholding whatsoever for or on account of any taxes except to the extent that the Chargor is required by law to make such payment subject to the deduction or withholding of any taxes. If any tax or amount in respect of tax is required to be deducted from any amounts payable or paid by the Chargor, the Chargor will pay such additional amounts as may be necessary to ensure that after the making of the deduction or withholding which is required the relevant recipient receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the full amount which it would have received and retained had no such deduction or withholding been made.

23 **Discretion and delegation**

23.1 **Discretion**

Any liberty or power which may be exercised or any determination which may be made hereunder by the Agency or any Receiver may, be exercised or made in its absolute and unfettered discretion without any obligation to give reasons.

23.2 **Delegation**

Each of the Agency and any Receiver will have full power to delegate (either generally or specifically) the powers, authorities and discretions conferred on it by this deed (including the power of attorney) on such terms and conditions as it sees fit which delegation may include power to sub-delegate and will not preclude either the subsequent exercise of such power, authority or discretion by the Agency or the Receiver itself or any subsequent delegation or revocation thereof.

24 **Perpetuity period**

The perpetuity period under the rule against perpetuities, if applicable to this deed, will be the period of 80 years from the date of this deed.

25 **Counterparts**

This deed may be executed in counterparts, all of which when taken together will constitute a single deed.

26 **Constitutive documents**

The Chargor hereby certifies that its creation of this deed in favour of the Agency does not contravene any of the provisions of the Companies Acts 1985 to 2006 or its memorandum and articles of association or, as the case may be, its Rules.

27 **Reorganisation**

This deed will remain binding on the Chargor notwithstanding any change in the constitution of the Agency or its absorption by, or amalgamation with, or the acquisition of all or part of its undertaking by, any other person, or any reconstruction or reorganisation of any kind. The security granted by this deed will remain valid and effective in all respects in favour of the Agency and for any assignee, transferee or other successor in title of the Agency.

28 **Set-off**

The Agency may set off any obligation due from the Chargor under this deed against any obligation owed by the Agency to the Chargor (whether actual or contingent, present or future), regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Agency may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

29 **Payment of monies**

29.1 **Date for payment**

Where neither the Appointment nor this deed specifies the due date for payment of any monies owed by the Chargor to the Agency such monies will be due and payable to the Agency by the Chargor on demand.

29.2 **Currency**

The Chargor's liability under this deed is to discharge the Chargor's Liabilities in the Relevant Currency. If at any time the Agency receives a payment (including by set-off) referable to any of the Chargor's Liabilities from any source in a currency other than the Relevant Currency, then such payment will take effect as a payment to the Agency of the amount in the Relevant Currency which the Agency is able to purchase (after deduction of any relevant costs) with the amount of the payment so received in accordance with its usual practice.

29.3 **Currency indemnity**

If a payment is made under a court order or in satisfaction of a claim or proof and is treated by clause 29.2 as a payment of an amount which falls short of the relevant liability of the Chargor expressed in the Relevant Currency, the Chargor as a separate and independent obligation will on demand from time to time indemnify the Agency against such shortfall and pay interest on such shortfall from the date of such payment to the date on which the shortfall is paid.

29.4 **Certificates**

A certificate signed by an official of the Agency as to the amount due or owing from the Chargor will be conclusive evidence against the Chargor except in the case of manifest error or any question of law.

30 **Communication**

30.1 **Written**

Any communication to be given in connection with this deed will be in writing.

30.2 **Addresses**

Any communication will either be delivered by hand or sent by first class prepaid post or fax to the Agency or the Chargor at its address or fax number shown on page 1 unless it has communicated another address or fax number to the other in which case it must be sent to the last address or fax number so communicated.

30.3 **Delivery**

A communication sent by the Agency under this clause 30 will be deemed to have been received:

30.3.1 if delivered by hand, at the time of delivery;

30.3.2 if sent by first class pre-paid post, on the next day after posting; or

30.3.3 if sent by fax, when the Agency's fax machine records a complete transmission.

A communication by the Chargor will be deemed made only when actually received by the Agency.

30.4 Confirmation in writing

The Chargor may not rely on any oral notice, waiver, consent, approval, representation, advice, statement or other communication by the Agency or any of its employees, agents or representatives except where such communications are confirmed in writing and signed for the Agency pursuant to clause 30.

31 Governing law

31.1 Law of England

This deed will be governed by and is to be construed in accordance with the laws of England and Wales.

31.2 Exclusive jurisdiction

The courts of the jurisdiction specified in clause 31.1 have exclusive jurisdiction to settle any dispute arising in connection with the deed (a Dispute). The parties agree that these courts are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

31.3 Benefit

This clause 31 is for the benefit of the Agency only. As a result the Agency will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Agency may take concurrent proceedings in any number of jurisdictions.

This Deed has been executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this deed.

Schedule 1 (Account Charge)

Part I Notice to Account Bank

To: [REDACTED]

[REDACTED]

Date:

Notice of assignment

We hereby give notice that by a charge dated [•] made between Target Servicing Limited (the **Chargor**) (1) and Homes and Communities Agency (the **Agency**) (2) (the **Charge**), the Chargor charged to the Agency all its rights, title and interest present and future over the following account opened by it with you:

Account

Account number: S43(2) [REDACTED]

Account: S43(2) [REDACTED]

Sort code: S43(2) [REDACTED]

(the **Account**) as security for the obligations more particularly referred to in the Charge.

The Chargor hereby gives you notice that pursuant to the Charge, it has, with full title guarantee, charged to the Agency all its rights, title and interest in and to all amounts standing to the credit of the Account from time to time together with all entitlements to interest and other rights and benefits accruing to or arising in connection therewith (the **Account Funds**).

In connection therewith and by way of security for its obligations to the Agency the Chargor hereby irrevocably and unconditionally instructs and authorises you (notwithstanding any previous instructions whatsoever which it may have given you to the contrary):

- 1 to disclose to the Agency without any reference to or further authority from the Chargor and without any enquiry by you as to the justification for such disclosure, such information relating to the Account Funds and the debt represented thereby as the Agency may, at any time and from time to time, request you to disclose to it;
- 2 to comply with the terms of any written notice, statement or instructions in any way relating or purporting to relate to the Account Funds or the debt represented thereby which you receive at any time and from time to time from the Agency or without any reference to or further authority from the Chargor and without any enquiry by you as to the jurisdiction for such notice, statement or instructions or the validity thereof; [and]
- 3 to only accept instructions from the Agency in connection with any payments from or withdrawals from the Account, at any time and from time to time, and to comply with all such instructions;

The instructions and authorisations which are contained in this letter will remain in full force and effect until the Agency gives you notice in writing revoking them.

[In consideration of your accepting the instructions and authorisations which are contained in this letter the Chargor will at all times indemnify you and keep you indemnified from and against all actions, suits, proceedings, claims, demands, liabilities, damages, costs, expenses, losses and charges whatsoever in relation to or arising out of your acting on or complying with such instructions and authorisations and the Chargor will pay or reimburse to you on demand the amount of all losses, costs and expenses whatsoever suffered or incurred from time to time by you under or by reason or in consequence of you acting or complying with such instructions and authorisations.]

This letter will be governed by, and construed in accordance with, English law.

Would you please acknowledge receipt of this letter and your acceptance of the instructions and authorisations contained in it by sending a letter addressed to us and to the Agency in the form attached hereto.

Yours faithfully

.....

Authorised Signatory

for and on behalf of

Target Servicing Limited

Schedule 2 (Account Charge)

Acknowledgement of the Account Bank to the Agency

Dear Sirs

Acknowledgement of notice

Account number **S43(2)** (the **Account**)

We hereby acknowledge receipt of a letter (a copy of which is attached hereto) dated [•] and addressed to us by **Target Servicing Limited** and hereby accept the instructions and authorisations contained therein and undertake to act in accordance and comply with the terms thereof. To: Homes and Communities Agency of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH

Dated:

We hereby acknowledge and confirm to each of the Chargor and the Agency that we have not, as at the date hereof, received any notice that any third party has or will have any right or interest whatsoever in or has made or will be making any claim or demand or taking any action whatsoever against the Account Funds or the debt represented thereby or any part thereof.

We hereby acknowledge and confirm to each of the Chargor and the Agency that we will not make any claim or demand or exercise any rights of counterclaim, rights of set-off or any other equities whatsoever against the Chargor in respect of the Account Funds or the debt represented thereby or any part thereof.

We agree that in the event of us receiving notice at any time that any person or entity other than the Chargor or the Agency claims to have or claims it will acquire any right or interest whatsoever in the Account Funds or any part thereof we will as soon as is reasonably practical give written notice of the terms thereof to both the Agency and the Chargor.

We have made the acknowledgements and confirmations and have given the undertakings set out in this letter in the knowledge that they are required by the Agency in connection with the security which has been constituted by the Chargor in favour of the Agency under the Charge.

The expressions defined or used in your letter mentioned in the opening paragraph hereof will, unless the context otherwise requires, have the same meanings in this letter.

This letter will be governed by, and construed in accordance, with English law.

Yours faithfully

.....
Duly authorised signatory
for and on behalf of
[name of Account Bank]

Execution Page

The Chargor

TARGET SERVICING LIMITED by

.....(Signature)

.....(Full name)

Director

In the presence of the following witness:

..... (Signature of witness)

..... (Full name of witness)

..... (Address of witness)

.....

The Agency

THE COMMON SEAL of)

HOMES AND COMMUNITIES AGENCY)

was hereunto affixed)

in the presence of:)

Authorised Signatory

Schedule 6
Disaster Recovery Plan

Schedule 7

Security Requirements and Plan

S43(2)



Schedule 8

Security Policy

INFORMATION SECURITY POLICY – 3rd PARTIES (Version 1.0)

For the purpose of this policy, '3rd parties' includes any individual or company (including individuals working with the company) to whom access to Homes & Communities Agency's information systems, or information assets, has been granted.

IT IS THE POLICY OF HOMES & COMMUNITIES AGENCY (HCA) THAT 3rd PARTIES, WHO ARE GRANTED ACCESS TO HOMES & COMMUNITIES AGENCY INFORMATION ASSETS, IN ANY FORM, WILL:

1. Protect information provided or made available to them by HCA, from unauthorised access;
2. Ensure the confidentiality of information provided, or made available to them, unless such documents or other materials, data or other information are public knowledge at the time when they are so provided;
3. Ensure the continued integrity of information provided or made available to them; (Safeguarding the accuracy and completeness of information by protecting against unauthorised modification);
4. Adhere to Regulatory and Legislative requirements, including, but not limited to: Data Protection Act 1998, Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000, and Freedom of Information Act 2000;
5. Ensure that all of its employees who have access to Homes & Communities Agency information assets will have signed a confidentiality document in an agreed format, and are made aware of the requirements of this policy;
6. Report all breaches or weaknesses of information security, actual or suspected, to HCA's Information Security Officer (ISO) for investigation. Where required, the ISO will escalate these internally, and where appropriate, to other relevant third parties;
7. Be aware that monitoring tools will be utilised to monitor all network activity on a regular basis, and independent third parties will be engaged to carry out ethical hacking attacks on a regular basis to ensure the effectiveness of HCA's security implementation against attack;
8. Ensure that any access to HCA's information systems is protected with a strong password, and that user access credentials will be held securely, and will not be shared, or disclosed to unauthorised persons;
9. Notify HCA's IT Service Desk (01908 353604) in a timely manner, where an employee, or other user, with access to Homes & Communities Agency IT systems, leaves the organisation, or no longer requires system access, so that such access can be revoked in a timely manner.

This Policy has been approved by Sir Bob Kerslake, Chief Executive

Date: 1 December 2008.

It is the responsibility of all third parties, where they have been granted access to Homes & Communities Agency information assets, whether electronically, or by other means, to adhere to the policy.

Failure to comply with this Policy may be deemed as Breach of Agreement.