



Homes  
England

Date: 28 October 2020

Our Ref: RFI3100

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████  
By Email Only

Windsor House  
Homes England – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████

**RE: Request for Information – RFI3100**

Thank you for your request for information which we have processed in accordance with the Freedom of Information Act 2000 (FOIA).

You requested the following information:

*Please may I see the Housing Infrastructure Fund grant determination agreements for Wiltshire Council's Chippenham Urban Expansion or "Future Chippenham" Forward Funding HIF Bid, and Wiltshire Council's Ashton Park Urban Extension Marginal Viability HIF Bid?*

*If there's a generic or standard or template or similar Housing Infrastructure Fund grant determination agreement, or one for each of the two streams, please may I see it/them?*

*If you've got internal policy, guidance etc. about Housing Infrastructure Fund grant determination agreements, and/or guidance etc. for HIF applicants about them, please may I see these?*

**Response**

We can confirm that we hold some information that falls within the scope of your request, the information held is listed below;

- Wiltshire Council's Ashton Park Urban Extension Marginal Viability Funding (MVF) Housing Infrastructure Fund (HIF) Bid – *Executed (final) document*
- Wiltshire Council's Chippenham Urban Expansion or "Future Chippenham" Marginal Viability Funding (MVF) Housing Infrastructure Fund (HIF) Bid – *Draft document*
- Template for the Forward Funding Housing Infrastructure Fund Grant Determination Agreement
- Assurance Framework for the Forward Funding Housing Infrastructure Fund

Please find enclosed to this response within Annex A the template for the Forward Funding Housing Infrastructure Fund Grant Determination Agreement.

We rely on section 41 and section 43 of the FOIA to withhold the remaining information listed above from disclosure.

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#### Section 41 – Information provided in confidence

Under section 41(1)(b) of the FOIA Homes England is not obliged to disclose information to the public if it would constitute a breach of confidence.

Given that some of the information is subject to confidentiality provisions, section 41 of the FOIA is engaged. Information contained within the Grant Funding Agreements (GFA) includes information that has been provided to Homes England in confidence and with the expectation that they will not be publicly disclosed. We rely on this exemption to withhold from disclosure the financial and technical information contained in the GFA only.

Although section 41 of the FOIA is an absolute exemption and there is no requirement to conduct a full public interest test, we can confirm that we've considered the public interest as a breach of confidence may not be actionable if there is an overriding public interest in disclosure. We feel that there is no overriding public interest in favour of disclosure.

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

<https://www.legislation.gov.uk/ukpga/2000/36/section/41>

#### Section 43 - Commercial interests

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

The information requested which is contained within the documents listed above 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 project and the funding programme.

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 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.

#### Arguments in favour of withholding:

- While there is obviously a public interest in understanding the terms on which funding has been made available to Wiltshire Council (WC) the fact that some of those terms may be amended means that the public



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interest in refusing disclosure for the time being outweighs the public interest in disclosure as information being disclosed without further background may mislead the public;

- Furthermore, disclosure would also likely lead to WC being required to pay more to landowners in order to secure the necessary land/rights to deliver the scheme. This would result in a worse outcome for the public purse;
- To disclose information this at a time when negotiations are ongoing with would significantly prejudice WC's ability to deliver the schemes;
- Disclosure would result in local authorities being deterred from including commercially sensitive information in future bids for grant funding. This will mean that Homes England would have to evaluate bids that are less comprehensive than would otherwise have been the case, meaning that Homes England's ability to undertake due diligence on the bids will be impaired. This will result in decision makers not taking all relevant information into account, meaning the decisions will be less robust and less likely to deliver value for money;
- The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put these potential funding allocations at risk. This would not be in the public interest as this could put potential homes in jeopardy; 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>

### **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 – 6<sup>th</sup> Floor  
Windsor House  
50 Victoria Street  
London  
SW1H 0TL

Or by email to [infogov@homesengland.gov.uk](mailto: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;



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

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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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<b>Document Type</b>	<b>Housing Infrastructure Fund Grant Determination Agreement (Forward Funding) (GDA A)</b>
<b>Use</b>	<ul style="list-style-type: none"> <li>• Solely for use on Housing Infrastructure Fund (Forward Funding) transactions.</li> </ul>
<b>Mandatory Clauses</b>	<ul style="list-style-type: none"> <li>• The clauses in this Agreement can only be amended where indicated.</li> </ul>
<b>Instructions</b>	<ul style="list-style-type: none"> <li>• All instructions must be issued using the Transaction Management System and will be accompanied by an instruction form setting out the key terms and points of principle agreed.</li> <li>• It is your responsibility to ensure that Homes England's position is appropriately protected.</li> <li>• Homes England's standard documents should therefore be fully reviewed by you for each transaction to ensure that they are fit for purpose.</li> <li>• Amendments to this Agreement are not permitted. We do not expect there to be protracted negotiations. The only permitted amendments are those of a of a "project specific" nature provided that such amendments are factual and have no impact on the standard clauses.</li> </ul>
<b>Last Updated</b>	4 March 2020

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dated

2020

**Homes England**

and

[       ]

and

[       ]

**Housing Infrastructure Fund Grant Determination Agreement  
(Forward Funding)**

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# Housing Infrastructure Grant Determination Agreement (Forward Funding)

dated 2020

## Parties

- (1) **Homes England** (the trading name of Homes and Communities Agency), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of 1 Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**); and
- (2) [ ] of [ ] (the **Grant Recipient**).
- (3) [ ]<sup>1</sup>

## Introduction

- (A) Homes England is empowered under Section 19 of the HRA 2008 to make the HIF Funding available.
- (B) The HIF Funding provided under this Agreement is (at its date) made in compliance with the requirements set out in the European Commission's Decision of 20 December 2011 concerning public service compensation granted for Services of General Economic Interest (2012/21/EU).
- (C) Homes England entrusts the Grant Recipient with a public service obligation to provide and facilitate the provision of affordable homes in England for persons failed by market housing.
- (D) The Grant Recipient has submitted proposals to Homes England in respect of the proposed construction and/or delivery of the Infrastructure Works and the Housing Outputs and Homes England has agreed in principle to make HIF Funding available on terms which are in part set out in the Assurance Framework.
- (E) It is a condition precedent to Homes England providing any HIF Funding to the Grant Recipient that the Grant Recipient enters into agreements which secure, amongst other things, the delivery of specific outputs or interventions which facilitate or contribute to the delivery of infrastructure and/or the future use of the various sites to facilitate an increase in the level of housing in [*insert name of administrative area of local authority*].
- (F) This Agreement sets out the terms and conditions upon which specific amounts of HIF Funding will be advanced to the Grant Recipient by Homes England in relation to the outputs and interventions set out in this Agreement.

## Agreed terms

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<sup>1</sup>This document is to be amended where more than one party will owe obligations to Homes England

## 1 Definitions

1.1 In this Agreement (including in the Introduction and Schedules) the following words and expressions have the following meanings:

**Actual Infrastructure Expenditure** means the Infrastructure Expenditure actually incurred by the Grant Recipient in delivering the Infrastructure Works;

**Annual Forecast** means a written forecast (in a form satisfactory to Homes England) provided by the Grant Recipient in respect of its projected delivery of the Infrastructure Works for the Financial Year in which it is supplied;

**Annual Review Meeting** means a Review Meeting held within the first Quarter in each Financial Year which is to occur after the Grant Recipient has provided the Annual Forecast for that Financial Year to Homes England;

**[Architect** means [ ] or such other firm or company of architects appointed by the Grant Recipient in respect of the Infrastructure Works]<sup>2</sup>;

**Associated Person** means in relation to the Grant Recipient, a person who performs or has performed services for or on the Grant Recipient's behalf;

**Assurance Framework** means the "Assurance Framework for the Housing Infrastructure Fund – Forward Funding" dated [ ] and appended at Annexure 5;

**Availability Period** means the period from the date of this Agreement until 31 March 2024 unless otherwise brought to an end pursuant to clause 2;

**Balancing Sum** means such sum as represents the amount by which the Public Sector Contribution exceeds the Actual Infrastructure Expenditure incurred by the Grant Recipient;

**Base Interest Rate** means the base rate of The Royal Bank of Scotland plc or such other rate as Homes England determines (acting reasonably);

**Best Practice** has the meaning ascribed to it in clause 17.7;

**Bid** means the submission by the Grant Recipient of its proposal for the delivery of the Infrastructure Works and the delivery or facilitation of the Housing Outputs;

**Business Day** means any day other than a Saturday, Sunday or statutory bank holiday in England;

**CDM Regulations** means the Construction (Design and Management) Regulations 2015;

**CEDR** means the Centre for Effective Dispute Resolution;

**Certificate of Title** means a certificate of title in relation to each Infrastructure Site in the form annexed at Annexure 6 (as such form may be updated by Homes England and notified to the Grant Recipient from time to time);

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<sup>2</sup> To be amended to reflect the composition of Professional Team by project

**[Civil Engineer** means [ ] or such other firm or company of civil engineers appointed by the Grant Recipient in respect of the Infrastructure Works;]<sup>3</sup>

**Claim** means an application for drawdown of an instalment of HIF Funding;

**Claim Form** means a claim form substantially in the form of Schedule 3 or such other form as Homes England will notify the Grant Recipient from time to time;

**[Collateral Warranties** means each collateral warranty in favour of Homes England from a Contractor or any member of the Professional Team (as required by Homes England) in a form satisfactory to Homes England;]<sup>4</sup>

**Competent Authority** means (as the case may be):

- (a) the EU Competent Authorities during such time as the United Kingdom remains a Member State of the European Union or it is otherwise bound to comply with such European Union treaty obligations regulations or other instruments concerning State Aid; or
- (b) the English Competent Authorities if the United Kingdom ceases to be a Member State of the European Union and it is not otherwise bound to comply with such European Union treaty obligations regulations or other instruments concerning State Aid;

**Confidential Information** means all information relating to the existence or terms of any HIF Document or any Infrastructure Related Document in respect of which a Party becomes aware in its capacity as a party to this Agreement or any HIF Document or any Infrastructure Related Document or which is received by that Party in relation to this Agreement or any HIF Document or any Infrastructure Related Document (including all financial information provided by another Party) from another Party or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from another Party or any of its advisers in whatever form (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information);

**Consents** means and includes any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by, of or from any governmental or other authority, the local planning authority, landlord, funder, adjoining land owner or any other person required to undertake the Infrastructure Works;

**Contract** means each contract entered into or to be entered into by the Grant Recipient or a Developer with a Contractor or Contractors for or in relation to the delivery of any part of the Infrastructure Works;

**Contractor** means, as the case may be, each contractor or other party (however described) engaged by or on behalf of the Grant Recipient or a Developer for the delivery of the Infrastructure Works;

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<sup>3</sup> To be amended to reflect the composition of Professional Team by project

<sup>4</sup> Homes England will expect Collateral Warranties to provide step in rights in its favour

**Cost Overrun** means at any time the amount by which the aggregate costs and expenses incurred by the Grant Recipient in relation to the Infrastructure Works exceed the Total Infrastructure Costs;

**CPO** means one or more compulsory purchase orders that may be made by a local authority pursuant to Section 226 of the Town and Country Planning 1990 Act, Section 17 of the Housing Act 1985 and/or such other appropriate power of acquisition as the case may be to acquire the Infrastructure Site;<sup>5</sup>

**CPO Strategy** means a plan for the proposed acquisition of any part of the Infrastructure Site by way of CPO (including details on expected timeframes) in a form satisfactory to Homes England;

**Dangerous Substance** means any natural or artificial substance (whether in the form of a solid, liquid, gas or vapour) the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or causing damage to the Environment or public health and includes, but is not limited to, any controlled, special, hazardous, toxic, radioactive or dangerous waste or substance;

**Data Protection Legislation** means all legislation and regulatory requirements in force from time to time relating to the use of personal data, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK) and any formal guidance or Codes of Conduct issued by the Information Commissioner (or other competent authority) in each case as amended, superseded or replaced from time to time;

**Data Subject** has the meaning ascribed to it in the Data Protection Legislation;

**Delivery Plan** means a plan which sets out the stages in delivery of the Infrastructure Works as annexed at Schedule 8;

**Developer** means [*details to be added*] and any other developer who enters into a contract with the Grant Recipient for the delivery of the Infrastructure Works and/or the Housing Outputs;

**Direction** means a direction by the Secretary of State under Section 15 of the Local Government Act 1999;

**Disposal** means a disposal of the whole or any part of:

- (a) the Infrastructure Site; and
- (b) any asset funded by HIF Funding pursuant to this Agreement;

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<sup>5</sup> This definition will need to be amended if the body to exercise CPO powers in respect of the project is not a local authority (eg. statutory undertakers)

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

**EIR Exception** means any applicable exemption to EIR;

**Encumbrance** means any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, standard security, assignation in security, bond and floating charge or other security interest of any kind, and any right of set-off, assignment, trust, flawed asset or other agreement or arrangement whatsoever for the purpose of providing security or having a similar effect to the provision of security;

**English Competent Authorities** means:

- (a) such persons officeholders and bodies (however constituted) that are specified under any United Kingdom Competition Requirement as having responsibility for monitoring compliance with and/or legally enforcing State Aid or United Kingdom Competition Requirements or otherwise authorised to recover any Unlawful State Aid;
- (b) the courts of England and Wales;

**Environment** means the environment as defined in section 1(2) of the Environmental Protection Act 1990;

**Environmental Claim** means any claim by any person:

- (a) in respect of losses or liabilities suffered or incurred by that person as a result of or in connection with any violation of Environmental Laws; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings;

**Environmental Consents** means all licences, authorisations, consents or permits of any kind under or relating to Environmental Laws;

**Environmental Contamination** means the following and the consequences thereof:

- (a) any release, emission, leakage or spillage at or from the Site by any person into any part of the Environment of any Dangerous Substance; or
- (b) any accident, fire, explosion or sudden event which adversely affects the Environment and which is attributable to the operations, management or control of the Site by any person including (without limitation) the storage, handling, labelling or disposal of Dangerous Substances;

**Environmental Law** means any common or statutory law, regulation, publicly available code of practice, circular or guidance note (if not having the force of law being of a kind that is customary for the relevant person (or persons of its status or type carrying on a

similar business) to comply with) issued by any official body, concerning the protection of human health, the workplace or the Environment;

**EU Competent Authorities** means:

- (a) the Commission of the European Union;
- (b) the Secretary of State if he is responding to a request from the Commission of the European Union;
- (c) a United Kingdom government department if it has competence and is responding to a request from the Commission of the European Union;
- (d) a court of England and Wales or the Court of Justice of the European Union;

**Event of Default** means a General Default or a Fundamental Default;

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

**Expenditure Forecast** means the forecast set out in Annexure 1, comprising amongst other things a budget and cashflow of Infrastructure Expenditure as against the Delivery Plan and showing the proposed drawdowns of HIF Funding during each Financial Year within the Availability Period subject to such amendments variations or updates to the same which may be made with the consent of Homes England pursuant to clause 8.1;

**Final Certificate** means in relation to the Infrastructure Works a certificate provided by the Grant Recipient certifying that:

- (a) the Infrastructure Works have been constructed in accordance with the Infrastructure Details;
- (b) the Highways, sewers drains and other services ancillary to and reasonably necessary for the proper enjoyment of the Infrastructure Works have been completed commissioned and are ready for use; and
- (c) all planning conditions relating to the Site and the Infrastructure Works have been satisfied in accordance with the most up-to-date planning permission (to the satisfaction of Homes England);

**Financial Year** means from the date of this Agreement to the next 31 March and thereafter from 1 April to 31 March in each year until the expiry of the Term or earlier termination of this Agreement;

**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 Authority/Authorities** means a public authority as defined by FOIA and/or EIR;

**FOIA Exemption** means any applicable exemption to the FOIA;

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**Fundamental Default** means the occurrence of any of the following:

- (a) a Report or Direction is made;
- (b) the Grant Recipient or where applicable any Developer, Contractor, subcontractor, employee, officer or agent commits any Prohibited Act (in respect of which the Waiver Condition has not been satisfied);
- (c) there has been an act/omission on the part of the Grant Recipient or a Developer or any of its contractors (including Contractors) that in Homes England's opinion (using its absolute discretion) harms the reputation of Homes England, the Housing Infrastructure Funding Programme or to bring them into disrepute;

**General Default** means the occurrence of any of the following:

- (a) a Milestone Failure occurs or is in the opinion of Homes England (acting reasonably) likely to occur (having regard to the information supplied pursuant to clause 10 and 11) and such Milestone Failure is not the direct result of a Milestone Extension Event;
- (b) there has been an act/omission on the part of the Grant Recipient or a Developer or any of its contractors (including Contractors) that in Homes England's opinion (using its absolute discretion) has the potential to harm the reputation of Homes England, the Housing Infrastructure Funding Programme or to bring them into disrepute;
- (c) the Grant Recipient fails to perform and/or observe any obligation or restriction on it under any Infrastructure Related Document (to which it is a party) such that delivery of the Infrastructure Works in the opinion of Homes England (acting reasonably) is unlikely to be achieved in accordance with the requirements of this Agreement;
- (d) any representation or warranty made by the Grant Recipient pursuant to clause 3 is incorrect in any material respect when made or repeated;
- (e) any Consent is withdrawn or revoked, where such withdrawal or revocation is likely to have a Material Adverse Effect;
- (f) any Infrastructure Related Document is terminated without the prior consent of Homes England and such termination is likely in the opinion of Homes England (acting reasonably) to have a Material Adverse Effect;
- (g) the Grant Recipient fails to pay any sum due under a HIF Document on the due date for payment thereof provided that if Homes England is satisfied that such failure to pay any amount due hereunder is due solely to technical delays in the transmission of funds and such amount is paid within two (2) Business Days, this limb (i) will not apply for the purposes of this definition;

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- (h) Homes England (acting reasonably) considers (whether as a result of its due diligence or otherwise) that the Grant Recipient or does not have sufficient funds or resources available to them to complete the Infrastructure Works in accordance with the Infrastructure Details;
- (i) a Disposal other than a Permitted Disposal has occurred without the prior consent of Homes England;
- (j) there is a breach of any of the conditions at clause 7.4;
- (k) clause 26.3 applies;
- (l) any other material breach by the Grant Recipient of any of its obligations under this Agreement has occurred;
- (m) the Final Certificate issued by the Grant Recipient's Section 151 Officer is inaccurate or misleading in any respect;
- (n) there is a failure by the Grant Recipient to comply (or secure compliance) with a Remediation Plan where one is approved by Homes England pursuant to clause 12.2; or
- (o) Homes England determines (acting reasonably) that proper progress against the Grant Recipient's Delivery Plan has not been made by the Grant Recipient in delivering the Infrastructure Works;
- (p) the Grant Recipient fails to secure legal and beneficial ownership and vacant possession of the Infrastructure Site by [*insert date Sites are to be acquired*];

**Good Industry Practice** means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the delivery of works or outputs of the same type as the Infrastructure Works or Housing Outputs (as applicable)) under the same or similar circumstances;

**Grant Recipient Contribution** means [ ]<sup>6</sup>;

**Grant Recipient Senior Officer** means [ ];

**Health and Safety Legislation** means any applicable health and safety legislation, statutory instruments or regulations (including but not limited to the Health and Safety at Work etc. Act 1974) and any guidance and/or codes of practice relating to them;

**HIF Document** means:

- (a) this Agreement;

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<sup>6</sup> If the Grant Recipient will be receiving additional third party contributions towards funding the Infrastructure Works, this Agreement will need to be amended to reflect that



- (b) any other document designated as such by the Grant Recipient and Homes England; and
- (c) any document entered into, pursuant to, or which amends or varies any document referred to in paragraphs (a) or (b) above;

**HIF Funding** means the funding made available or to be made available by Homes England to the Grant Recipient under this Agreement for the purposes of application towards Infrastructure Expenditure incurred or to be incurred by the Grant Recipient in delivering or procuring the delivery of the Infrastructure Works and the Housing Outputs;

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

**Historic Expenditure** means Infrastructure Expenditure incurred:

- (a) between the date of submission of the Grant Recipient's expression of interest for the Housing Infrastructure Fund and the date hereof; and
- (b) which was specifically requested in the Bid for inclusion within the HIF Funding;

**HMRC** means Her Majesty's Revenue & Customs;

**Homes England Senior Officer** means the person notified as such by Homes England to the Grant Recipient;

**Housing Delivery Statement** means the statement for the housing delivery timetable including planning, site assembly, site marketing and profiling of Housing Output delivery as annexed at Annexure 2;

**Housing Outputs** means the dwellings which are to be delivered or facilitated pursuant to the HIF Funding further details of which are set out at Schedule 2 (as the same may be amended from time to time in accordance with the terms of this Agreement);

**Housing Output Target Dates** means each date set out in Schedule 2 by which the relevant Housing Output Target should be achieved (as the same may be revised by Homes England in accordance with clause 8.3)

**Housing Output Target** means each stage in the delivery of the Housing Outputs identified in Schedule 2;

**Housing Site** means the land upon which the Housing Outputs will be situated as identified on the plan annexed at Annexure 4;

**Housing Start on Site Date** means the date identified in Schedule 2 on which:

- (a) the Developer has taken possession of the Housing Site; and
- (b) the Housing Start on Site Works on the Housing Site have commenced;

**Housing Start on Site Works** means:

- (a) excavation for strip or trench foundations or for pad footings;
- (b) digging out and preparation of ground for raft foundations;
- (c) vibroflotation, piling, boring for piles or pile driving; or
- (d) drainage works specific for the buildings on the Housing Site;

**HRA 2008** means the Housing and Regeneration Act 2008;

**Information** means:

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

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

**Infrastructure Details** means information provided by the Grant Recipient in relation to the Infrastructure Works, which shall include:

- (a) the descriptive and other details in respect of the Infrastructure Works as set out in Schedule 1;
- (b) the Housing Outputs to be facilitated by the delivery of the Infrastructure Works and the projected dates for their achievement;
- (c) the Delivery Plan;
- (d) the Expenditure Forecast;
- (e) the Milestone Dates;
- (f) all Consents which are available;
- (g) the proposed timing of all drawdowns of HIF Funding and any other funding sources

all in accordance with the Bid and each as varied from time to time in accordance with the terms of this Agreement;

**Infrastructure Expenditure** means the costs of delivering the Infrastructure Works as set out in the Expenditure Forecast which Homes England is satisfied either have been or will be reasonably and properly incurred by the Grant Recipient in delivering the Infrastructure

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Works and where any costs relate to both construction works and professional fees (including design) then the maximum proportion of HIF Funding which can be claimed in relation to professional fees shall be included in the Expenditure Forecast (such proportion to be determined by Homes England);

**Infrastructure Milestones** means the stages in the delivery of the Infrastructure Works set out in Schedule 1 as may be extended from time to time pursuant to clause 8.2 or clause 8.3;

**Infrastructure Related Documents**<sup>7</sup> means

- (a) Contracts;
- (b) [Collateral Warranties];
- (c) [drawings, plans and specifications];
- (d) planning permissions required for the Infrastructure Works [and the provision of the Housing Outputs] and all compulsory purchase orders, road closures and approvals of reserved matters or details provided pursuant to them and all other licences and approvals under any applicable planning legislation or regulations, the building and fire regulations and any other statute or bylaw of any relevant authority which are necessary to carry out and complete the Infrastructure Works [and the Housing Outputs];
- (e) any guarantees, warranties and representations given or made by and any rights or remedies against all or any of the valuers, professional advisers, contractors or sub-contractors or manufacturers, suppliers and installers of any fixtures;
- (f) rights and claims to which the Grant Recipient [or the Developer] is now or may hereafter become entitled in relation to the Infrastructure Works;
- (g) other grant agreements relating to the funding of Infrastructure Works;
- (h) [the Development Agreement(s)];
- (i) [the Joint Venture Agreement]; and
- (j) [OTHERS?]

and any other document the parties agree in writing from time to time will be designated as an Infrastructure Related Document;

**Infrastructure Site** means the land upon which the Infrastructure Works are to be constructed as identified on the plan annexed at Annexure 3;

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<sup>7</sup> To be updated to include project specific requirements

**Infrastructure Start on Site** means the date on which all pre-planning conditions have been satisfied and the Grant Recipient [or the Developer, as applicable] has control of the Infrastructure Site to enable the Infrastructure Works to commence;

**Infrastructure Start on Site Date** means the date or dates identified in Schedule 1 on which Infrastructure Start on Site is to have occurred;<sup>8</sup>

**Infrastructure Works** means the outputs described in the Infrastructure Details together with associated infrastructure and any other construction on the Infrastructure Site in respect of which Homes England has agreed to provide the HIF Funding in accordance with this Agreement (as such Infrastructure Works may be varied from time to time with the prior written consent of Homes England);

**Infrastructure Works Practical Completion** means completion of the Infrastructure Works in accordance with the definition of "Practical Completion" (or equivalent) in the relevant Contract(s);

**Infrastructure Works Practical Completion Date** means the date set out in Schedule 1 whereby Infrastructure Works Practical Completion must be achieved;

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

**Interest** means interest accruing on the relevant amount at the Base Interest Rate from the date of receipt by the Grant Recipient of that amount up to and excluding the date of payment by the Grant Recipient to Homes England;

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

**Legal Opinion** means a legal opinion in the form set out in Schedule 4 given by the Grant Recipient's Solicitor;

**Legislation** means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;

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<sup>8</sup>This has been drafted to take into account there may be multiple Start on Site Dates for the various elements of a project

- (d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;  
  
in each case in the United Kingdom; and
- (e) any regulations, orders, by-laws or codes of practice of any local or statutory or competent authority having jurisdiction over the territory in which the Infrastructure Works are situated.

**Market Value** means the valuation of a property's market value, determined by a Chartered Surveyor who is a registered Valuer, in accordance with the guidance set out in the Red Book;

**Material Adverse Effect** means any present or future event or circumstances which could, in the opinion of Homes England (using its absolute discretion):

- (a) materially impair the ability of the Grant Recipient to perform and comply with its obligations under any HIF Document or Infrastructure Related Document;
- (b) materially or adversely affect the assets or financial condition of the Grant Recipient; or
- (c) materially impair the validity or enforceability of, or the effectiveness or ranking of any HIF Document or any security granted or purporting to be granted pursuant to any HIF Document or the rights or remedies of Homes England under any HIF Document or Infrastructure Related Document;

**Maximum Sum** means the sum identified in Schedule 1 being the maximum amount of HIF Funding to be provided by Homes England to the Grant Recipient under this Agreement;

**Milestones** means the Infrastructure Milestones;

**Milestone Date** means each date set out in Schedule 1 by which the relevant Milestone must have been achieved (as the same may be revised by Homes England in accordance with clause 8.3) otherwise an Event of Default will occur;

**Milestone Extension Events**<sup>9</sup> means any of the following:

- (a) exceptionally adverse weather conditions provided that any extension permitted on this ground will be restricted to the number of days for which the adverse weather continued;
- (b) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the Infrastructure Works by restricting the availability or use of labour which is essential to the proper carrying out of the Infrastructure Works or preventing the Grant Recipient or a Developer from, or delaying in,

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<sup>9</sup> Definition may be amended by agreement to take into account project specific circumstances

securing such goods or materials or such fuel or energy as are essential to the proper carrying out of the Infrastructure Works;

- (c) the use or threat of terrorism and/or the activity of the relevant authorities in dealing with such use or threat;
- (d) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (e) failure by any statutory undertaker, utility company or other like body to carry out works or provide services which the Grant Recipient or the Developer has taken all reasonable steps open to it to procure and expedite;
- (f) any failure or major shortage of power, fuel or transport;
- (g) any blockade or embargo;
- (h) any:
  - i official or unofficial strike;
  - ii lockout;
  - iii go-slow; or
  - iv other dispute,  
  
generally affecting the house building industry or a significant sector of it or a Developer engaged in the delivery of the Infrastructure Works to a material extent;
- (i) the exercise after the date of this Agreement by the United Kingdom Government (excluding for the avoidance of doubt, the Grant Recipient) of any statutory power which directly affects the Grant Recipient's obligations under this Agreement;
- (j) any reasonable delays in a statutory planning process (including compulsory purchases and planning permission applications); or
- (k) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any default, whether by act or omission, of the Grant Recipient.

Unless:

- (a) any of the events arises (directly or indirectly) as a result of any wilful default or wilful act or negligent act of the Grant Recipient, any Contractor or a Developer; or

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- (b) in respect of the event referred to in (e) above, such event arises as a result of any failure by the Grant Recipient or the Developer (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the relevant Milestone to be achieved.

**Milestone Failure** means a failure by the Grant Recipient to achieve any Milestone by the relevant Milestone Date;

**Monitoring Report** has the meaning ascribed to it in clause 10.3.2;

**Monitoring Surveyor** means such suitably qualified monitoring surveyor as may be approved by Homes England and appointed by the Grant Recipient on terms satisfactory to Homes England pursuant to clause 6.8;

**Notifiable Event** means an event of the type described in clause 10.1;

**Open Book** means the transparent and full disclosure of information to be undertaken in utmost good faith and to include the declaration of all information which the Grant Recipient is required to maintain keep or disclose under this Agreement and any other financial components such as price, profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and service, apportionments of these items with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

**Permitted Disposal** means:

- (a) any disposal expressly contemplated in this Agreement; and/or
- (b) the disposal of part or parts of the Site upon which an electricity sub-station, gas generation or pumping station or other statutory services or infrastructure have been or are to be constructed or installed and the immediate curtilage of the same together with ancillary easements; and/or
- (c) disposals made pursuant to a planning obligation pursuant to section 106 of the Town & Country Planning Act 1990 or the Local Government (Miscellaneous Provisions) Act 1982 or section 33 and/or the Local Government Act 1972 section 111 and the Highways Act 1980 section (s) 38 and/or 278;
- (d) and any other disposal which Homes England agrees from time to time will become a Permitted Disposal;

**Permitted Encumbrance** means:

- (a) any lien arising solely by operation of Law in the ordinary course of the Grant Recipient's business in respect of any obligation which is not more than thirty (30) days overdue for settlement;





or engaged by the Grant Recipient or a Developer in connection with the Infrastructure Works<sup>10</sup>;

**Prohibited Act** means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
  - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of a HIF Document; or
  - ii for showing or not showing favour or disfavour to any person in relation to a HIF Document;
- (b) entering into a HIF Document in connection with which commission has been paid or has been agreed to be paid by the Grant Recipient or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed to Homes England;
- (c) committing any offence:
  - i under legislation creating offences in respect of fraudulent acts;
  - ii at common law in respect of fraudulent acts in relation to this Agreement; or
  - iii under the Bribery Act 2010; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England;

**Public Sector Financial Assistance** means any funding (received or receivable by the Grant Recipient) to finance any part of the Infrastructure Works or Housing Outputs from public sector bodies including but not limited to funding by Homes England (other than the HIF Funding), funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Act 1993 and 1998;

**Public Sector Contribution** means any funding (excluding the Grant Recipient Contribution) received or receivable by the Grant Recipient or a Developer to finance any part of the Infrastructure Works or Housing Outputs from public sector bodies including but not limited to funding by Homes England (including HIF Funding), funding from the European Commission, government bodies (whether national or local) or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Act 1993 and 1998;

**Quarter Date** means 31 March, 30 June, 30 September and 31 December;

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<sup>10</sup> To be updated to reflect project specific details

**Red Book** means the "Red Book" (The RICS Valuation Standards - Global and UK, 7<sup>th</sup> edition), which is the code of practice and guidance for all members of the Royal Institution of Chartered Surveyors;

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

**Remediation Plan** means the plan described in clause 12.2.1;

**Report** means a report under Section 114(3) or Section 114A of the Local Government Finance Act 1988 or Section 5 of the Local Government and Housing Act 1989;

**Request for Information/RFI** shall have the meaning set out in the FOIA or any request for information under EIR which may relate to the Infrastructure Works or the Housing Outputs, any HIF Document or any activities or business of Homes England;

**Required Standards** means the requirements of this Agreement, Good Industry Practice, all Consents, Legislation and unless otherwise agreed with Homes England, the requirements of the relevant local authority's Development Plan (as defined in section 38 of the Planning and Compulsory Purchase Act 2004);

**Retention** means a cost or expense referred to in the Expenditure Forecast and payable under an Infrastructure Related Document [on or] after [Practical Completion];

**Review Meeting** means a meeting of the type described in clause 10.3;

**RIDDOR** means Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (as amended from time to time);

**Section 151 Officer** means an officer of the Grant Recipient appointed under section 151 of the Local Government Act 1972;

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

**Site** means the Infrastructure Site and the Housing Site;

**Solicitors** means a firm of solicitors approved by Homes England (acting reasonably and having regard, inter alia, to the number of partners, relevant experience and professional indemnity cover of any proposed firm) from time to time;

**Special Contractual Provisions** means the conditions set out in Schedule 6;

**State Aid** means (as the case may be):

- (a) any aid granted by a Member State of the European Union or through the resources of such Member State in any form whatsoever which distorts or threatens to distort competition by favouring a particular undertaking or

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the production of certain goods, in so far as such aid affects trade between European Union Member States; or

- (b) any aid benefit or advantage (which includes but is not limited to assets, rates, funds and land) granted by or through a public sector body which is subject to any United Kingdom Competition Requirements;

**State Aid Confirmation** means written confirmation from a firm of reputable solicitors with expertise in State Aid Law that (at the time at which such confirmation is given) the terms of the State Aid Opinion remain valid and correct;

**State Aid Opinion** means the opinion as to the State Aid treatment of the Infrastructure Works provided pursuant to the Pre Commencement Conditions;

**Tax** means any tax, levy, impost, duty or other charge or withholdings and any charges of a similar nature, together with interest thereon and penalties with respect thereto, if any, and any payments made on or in respect thereof and Taxation or taxation and Taxes or taxes shall be construed accordingly;

**Term** means the period of time from the date hereof until [ ]<sup>11</sup> subject to earlier termination by Homes England of the entirety of this Agreement;

**Total Infrastructure Costs** means, if all costs in relation to the Infrastructure Works:

- (a) have been incurred, the aggregate of such costs; and
- (b) have not yet been incurred, the actual and forecasted value (as relevant) of the aggregate of such costs

each as such costs are identified in the Expenditure Forecast;

**Undrawn Amount** means such part of the Maximum Sum as has not been paid to the Grant Recipient under this Agreement;

**United Kingdom Competition Requirement** means any Legislation which:

- (a) is in force and/or in effect and/or applies (in England) on or after the date the United Kingdom ceases to be a Member State of the European Union; and
- (b) which regulates any aid funding assets or advantage granted or directed by a public sector body to the extent that the same has the ability to threaten to or actually distort either competition or an economic market in the United Kingdom and/or in any part of the European Economic Area and/or in any other country or countries;

**Unlawful State Aid** means (as the case may be):

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<sup>11</sup> Term to be agreed on a project basis and will take into account any obligations which are required to be observed after delivery of the Infrastructure Works

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- (a) State Aid which has been granted in contravention of Article 108(3) Treaty of the Functioning of the European Union (**TFEU**), does not benefit from an exemption from notification and has not been approved by a decision of the European Commission under Article 107(2) or (3) TFEU;
- (b) State Aid which has been granted after the United Kingdom ceases to be a Member State of the European Union to the extent that the same is granted contrary to or is an infringement of any United Kingdom Competition Requirement;

**Valuation** means a valuation report to be shared with Homes England presenting the Market Value of the Site by the Valuer, addressed to Homes England and prepared on the basis of the most current guidance and statements of asset valuation practice and guidance notes issued by the Royal Institution of Chartered Surveyors]<sup>12</sup>;

**Valuer** means such reputable firm of surveyors as is a member of the Royal Institute of Chartered Surveyors as may be appointed by the Grant Recipient and approved by Homes England;

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

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

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

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<sup>12</sup> Definition and associated provisions to be used where HIF Funding is being utilised for site assemble/site acquisition.

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Grant Recipient or the Developer or relevant Contractor.

## 1.2 Interpretation

- 1.2.1 The masculine includes the feminine and vice versa.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any condition, sub-condition, paragraph, Schedule, Annexure or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, Schedule, Annexure or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A time of day shall be a reference to London time.
- 1.2.9 A party means a party to this Agreement.
- 1.2.10 The words includes or including are to be construed without limitation.
- 1.2.11 A document in the agreed form is to be the form of the relevant document agreed between the parties and for the purpose of identification initialled by each of them or on their behalf (in each case with such amendments as may be agreed by or on behalf of the parties) or in the form set out in a Schedule to this Agreement.
- 1.2.12 A paragraph in a Schedule shall be construed as references to a paragraph in that particular Schedule.
- 1.2.13 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.14 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by or to Homes England,

such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified to the other parties from time to time. Any consent, approval or refusal to consent or approve should be issued within a reasonable time frame.

- 1.2.15 An obligation to do anything includes an obligation to procure its being done.
- 1.2.16 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.17 The terms Housing Site and Infrastructure Site include each and every part of such Site and estate or interest in it.
- 1.2.18 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 No review comment or approval by Homes England under the provisions of this Agreement shall operate to exclude or limit the Grant Recipient's obligations or liabilities under this Agreement save where Homes England have confirmed the said review comment or approval in writing.
- 1.2.21 The Grant Recipient shall be responsible as against Homes England for the acts or omissions of any Developer as if they were the acts or omissions of the Grant Recipient.
- 1.2.22 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve the Grant Recipient of any of its obligations under any HIF Document or any of the Infrastructure Related Documents or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 1.2.23 Save where a contrary intention is shown or where an express discretion is given by this Agreement, Homes England will act in a reasonable manner in deciding whether to give any consent, agreement, determination or approval or express its satisfaction and whether to give any such consent, agreement, determination or approval or express its satisfaction subject to restrictions, terms or conditions unless in each case to do so would fetter its statutory powers, rights or obligations.

## 2 **Provision of HIF Funding**

- 2.1 Homes England (in exercise of its powers under section 19 of the HRA 2008) agrees to make available to the Grant Recipient, during the Availability Period, HIF Funding in an aggregate principal amount equal to the Maximum Sum on the terms set out in this Agreement.
- 2.2 The Grant Recipient acknowledges and agrees that the Maximum Sum may be reduced by Homes England:
- 2.2.1 in the exercise of its rights under this Agreement; or
- 2.2.2 to accommodate factors such as (but without limitation):
- (a) changes to the Infrastructure Details;
  - (b) variations arising out of the operation of clause 8.2;
  - (c) changes to the Infrastructure Works or the Housing Outputs agreed between the parties; or
  - (d) increases in income or other sources of financial assistance becoming available to the Grant Recipient or a Developer in relation to the delivery of the Infrastructure Works.
- 2.3 The Availability Period will come to an end in relation to all Undrawn Amounts on termination of this Agreement.
- 2.4 The Grant Recipient acknowledges and agrees that Homes England's obligation to provide the HIF Funding is subject to Homes England receiving any approvals Homes England may require (whether internally or from central Government).

## 3 **Representations and warranties**

As at the date of this Agreement, on the date of each Claim and the date of each Monitoring Report (by reference to the facts and circumstances then existing) the Grant Recipient makes the representations and warranties set out in Schedule 5 to Homes England.

## 4 **Payment of HIF Funding**

### 4.1 **Initial conditions precedent**

Homes England's obligations under this Agreement are subject to the condition precedent that it has conducted due diligence (including financial and legal due diligence) satisfactory to it in relation to the Infrastructure Works and has confirmed to the Grant Recipient that the Pre Commencement Conditions have been satisfied or waived.

### 4.2 **Conditions Precedent to each Claim for HIF Funding in respect of Preliminary Costs**

The obligation of Homes England to make available HIF Funding in relation to Preliminary Costs is subject to the further conditions precedent that, at or before the time of a Claim

and at or before the time Homes England pays HIF Funding that it has or confirmed to the Grant Recipient that it has received evidence from the Section 151 Officer that the Grant Recipient has incurred the costs relating to the Claim (in a form satisfactory to Homes England) and such costs form part of the Preliminary Costs and relate to the Infrastructure Works, in whole or in part.

### 4.3 Conditions Precedent to each Claim for HIF Funding

4.3.1 The obligation of Homes England to make available any HIF Funding (other than in respect of Preliminary Costs) is subject to the further conditions precedent that, at or (in the case of the matters set out in sub-paragraphs (b), (e), (f) and (i)(h)) before the time of a Claim and at or (in the case of the matters set out in such sub-paragraphs) before the time Homes England pays HIF Funding that it has or (in the case of the matters set out in sub-paragraphs (c), (d) (f) and (k)) the Monitoring Surveyor has, confirmed to the Grant Recipient that it or the Monitoring Surveyor (as applicable) has received all of the following in form and substance satisfactory to Homes England:

- (a) evidence from the Section 151 Officer that the Grant Recipient has (and continues to have) sufficient funds (in addition to the HIF Funding) whether from its own resources or otherwise to complete the Infrastructure Works;
- (b) each Infrastructure Related Document executed by the Grant Recipient and all other relevant parties as is then required to deliver such part of the Infrastructure Works which form the subject of the Claim;
- (c) evidence of the Developer's capability, capacity and resourcing to be able to deliver the Infrastructure Works by the Infrastructure Works Practical Completion Date<sup>13</sup>;
- (d) a valid Claim made in accordance with clause 4.4;
- (e) the amount of the Claim is in accordance with the Expenditure Forecast, as determined by Homes England in its absolute discretion;
- (f) unless otherwise agreed with Homes England, a copy of the grant of detailed planning permission satisfactory to Homes England (acting reasonably) including approval of siting, design, access and use, landscaping and materials for such part of the Infrastructure Works that are the subject of the Claim<sup>14</sup>;
- (g) copies of policies, certificates or cover notes relating to each contract or policy of insurance taken out by or on behalf of the Grant Recipient in respect of the works and such part of the Infrastructure Works that relate to the Claim;

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<sup>13</sup> If there are multiple stages on a project, this will need to be updated to refer to the relevant works and relevant practical completion date

<sup>14</sup> If planning permission has yet to be secured, Homes England may require the insertion of additional provisions to deal with obligations/time frames to secure it.

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- (h) [such evidence as it may require (acting reasonably) to be satisfied as to the level and availability of the Grant Recipient Contribution;]
- (i) evidence that all necessary Consents [as are then required] have been obtained and all other matters are in place to enable the Infrastructure Works be commenced; and
- (j) a Delivery Plan which incorporates the Milestones and Milestone Dates;
- (k) if required by Homes England, an updated opinion (satisfactory to Homes England acting reasonably) given by a firm of reputable solicitors who have an expertise in State Aid Law as to the State Aid treatment of the Infrastructure Works;
- (l) evidence satisfactory to Homes England demonstrating that the delivery arrangements relating to all HIF Funding for the Infrastructure Works accord with the Delivery Plan;
- (m) where requested by Homes England, the Collateral Warranties;
- (n) [a satisfactory Valuation in respect of the Infrastructure Site]<sup>15</sup>;
- (o) where the Claim or any part of it relates to a Retention, evidence that such Retention will be ring-fenced from any other funds of the party who is under the obligation to hold the Retention<sup>16</sup>; and
- (p) a Certificate of Title [(to be provided as a condition precedent to a Claim once the relevant planning permissions are in place for the Infrastructure Site)]<sup>17</sup> in a form acceptable to Homes England in respect of the ownership of the Infrastructure Site and the Grant Recipient's estate or interest in them (being either the freehold estate or a lease for a term of 99 years or more on terms acceptable to Homes England) issued to Homes England by Solicitors appointed by the Grant Recipient certifying among other things that: (a) the Infrastructure Site is free from any conditions, restrictions, covenants or third party interests which do or might affect the right to carry out and maintain the Infrastructure Works and (b) the Grant Recipient has sufficient rights appurtenant to its estate or interest in the Infrastructure Site to enable Infrastructure Works to be fully carried out and fully serviced without the need to acquire further land or obtain any rights from any other party; and<sup>18</sup>

4.3.2 The obligation of Homes England to make available any HIF Funding is also subject to the conditions precedent that at the time of the Claim and at the time of Homes England paying such HIF Funding:

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<sup>15</sup> To be included where HIF Funding is used for land acquisition

<sup>16</sup> CPs to be updated on a project by project basis

<sup>17</sup> Timing of provision of certificate to be considered on a project by project basis.

<sup>18</sup> These will be updated on a project by project basis

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- (a) the Grant Recipient has all rights required in the Infrastructure Site or Housing Site (as applicable) to secure access to deliver or procure the delivery of the Infrastructure Works;
- (b) no Event of Default has occurred and is continuing or would result from payment of the proposed HIF Funding;
- (c) Homes England has received such evidence as Homes England may reasonably require that all matters represented and warranted by the Grant Recipient under clause 3 are true and correct as if made at the date of each Claim and would be true and correct immediately after the making of any such HIF Funding; and
- (d) prior receipt by Homes England of any approvals Homes England may require whether internally or as required by Legislation or by central Government;<sup>19</sup> and
- (e) Homes England has not become aware of any matter which (in its reasonable opinion) would cause the terms of the State Aid Opinion to be misleading or inaccurate or which would cast doubt upon its continuing validity.

4.3.3 The conditions precedent required by Homes England pursuant to Conditions 4.3.1 and 4.3.2 are for the sole benefit of Homes England and may only be waived or otherwise deferred by Homes England in writing at its entire discretion and Homes England are entitled to attach any condition it requires in respect of such waiver or deferral..

#### 4.4 **Mechanics and payment of HIF Funding**

4.4.1 A Claim will not be regarded as having been validly made by the Grant Recipient unless:

- (a) it is submitted on a Claim Form which must be signed by the Section 151 Officer and is submitted to Homes England within the Availability Period and prior to the 20<sup>th</sup> day of the month in which the Claim is required;
- (b) it relates to Infrastructure Expenditure for which the Grant Recipient has not submitted any other Claim or received any other HIF Funding and it is accompanied by written evidence satisfactory to Homes England that such Infrastructure Expenditure has been (or, in exceptional circumstances and always at Homes England's discretion, will be) incurred in the relevant Financial Year in which the Claim is made together with confirmation from the Section 151 Officer that it has verified and approved the Claim provided that if any amount of HIF Funding is retained by the Grant Recipient for the purposes of a Retention such Retention shall be deemed to relate to Infrastructure Expenditure incurred in the relevant Financial Year;

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<sup>19</sup> These may be updated on a project by project basis

- (c) it accords with the Expenditure Forecast and the Delivery Plan or is accompanied by evidence satisfactory to Homes England (in its absolute discretion) to justify any deviation;
- (d) it is for an amount which (if paid) would not cause the Maximum Sum to be exceeded;
- (e) if the Claim is for Preliminary Costs, the conditions at clauses 4.1, 4.2 and 4.3.2 (save for 4.3.2(a)) have been satisfied and
- (f) and if the Claim is for Infrastructure Expenditure other than Preliminary Costs, the conditions at clauses 4.1 and 4.3 have been satisfied.

4.4.2 Subject to the terms of this Agreement, Homes England will pay each undisputed instalment of HIF Funding to the Grant Recipient within [twelve (12)] Business Days of receipt of a valid Claim.

4.4.3 Any amount of HIF Funding not claimed by the Grant Recipient during the Availability Period will no longer be made available to the Grant Recipient.

4.4.4 The Grant Recipient may not make more than one Claim per calendar month unless Homes England has agreed otherwise in writing in advance of any ad hoc Claims.

#### 4.5 **Use of HIF Funding**

4.5.1 The HIF Funding will be the sole property of the Grant Recipient and must be used by the Grant Recipient for Infrastructure Expenditure only.

4.5.2 Without affecting the obligations of the Grant Recipient in any way, Homes England is not bound to monitor or verify the application of any amount drawn pursuant to this Agreement.

#### 5 **Repayment and Overpayments**

5.1 If the Grant Recipient is required to repay any amount of HIF Funding to Homes England, all such repayments shall be considered to be a debt due on demand and must be paid in cleared funds within [twenty (20)] Business Days to Homes England into such bank account as Homes England shall notify to the Grant Recipient from time to time.

5.2 If the Grant Recipient does not pay any amount it is obliged to pay under this Agreement when it is due, the Grant Recipient shall pay default interest on such outstanding amount from the due date until the date of actual payment (both before and after judgment) at a rate per annum equal to 2% above the Base Interest Rate.

5.3 All payments by the Grant Recipient under or in connection with this Agreement shall be made without set-off or counterclaim, free and clear of and without any deduction or withholding, including, without limitation, for or on account of all taxes except for taxes which must be deducted by Law.

- 5.4 If Homes England (acting reasonably) considers at any time that any part of the Maximum Sum was not expended by the Grant Recipient on Infrastructure Expenditure or if at any time Homes England has made any overpayment to the Grant Recipient or has paid the Grant Recipient any sum in excess of the Maximum Sum the Grant Recipient must immediately on written demand repay to Homes England such amount as may be stipulated by Homes England together with Interest.
- 5.5 Where a Balancing Sum has arisen the Grant Recipient shall repay to Homes England a sum equal to the Balancing Sum within twenty (20) Business Days of becoming aware of the Balancing Sum's existence or the request of Homes England, whichever is earlier.
- 5.6 Where the Grant Recipient has made a Claim which (in part or in whole) relates to a Retention and such Retention has not been paid by the Grant Recipient under the relevant Infrastructure Document within 2 years after the date of the relevant Claim, the Grant Recipient shall repay to Homes England such amount of the Claim which related to the Retention.

## 6 Delivery obligations

### 6.1 Infrastructure Works commencement and completion

- 6.1.1 The Grant Recipient acknowledges that Homes England has allocated the HIF Funding up to the Maximum Sum on the understanding that the Infrastructure Works will be delivered in accordance with the Delivery Plan.
- 6.1.2 The Grant Recipient must use its reasonable endeavours to procure that the Housing Output Targets are achieved by the Housing Output Target Dates.
- 6.1.3 The Grant Recipient will procure that Infrastructure Works are delivered in accordance with the Infrastructure Details and the Infrastructure Works commence by the Infrastructure Start on Site Date are completed by the date of Infrastructure Works Practical Completion and in any event by [date to be confirmed by Homes England].

### 6.2 Developers, Contractors and employees

- 6.2.1 The Grant Recipient must procure that each Developer complies with the terms of the Infrastructure Related Documents which relate to the Infrastructure Works, and the Grant Recipient will enforce and procure the enforcement of the terms of the Infrastructure Related Documents at all times.
- 6.2.2 The Grant Recipient must take all necessary steps to satisfy Homes England that its procurement policies and procedures in relation to employees, suppliers, Contractors and any Developer (as applicable) are suitable and competent in all respects to allow the proper performance of all work or tasks in relation to the Infrastructure Works.
- 6.2.3 The Grant Recipient must ensure that all Contracts entered into in connection with the Infrastructure Work are competitively procured (utilising a documented decision making process) and that the Infrastructure Expenditure represents fair market costs.

### 6.3 Infrastructure Works

- 6.3.1 The Grant Recipient shall procure that the Infrastructure Works are:
- (a) conducted and completed in accordance with all Consents and the technical specifications and to the Required Standards; and
  - (b) carried out in a good and workmanlike manner; and
  - (c) carried out in compliance with the provisions of the [Considerate Constructors Scheme] save that where there shall be any conflict between the provisions of this Agreement and the provisions of the said scheme the provisions of this Agreement shall prevail.<sup>20</sup>
- 6.3.2 The Grant Recipient shall provide to Homes England a Final Certificate promptly upon completion of the Infrastructure Works.

### 6.4 Insurances

- 6.4.1 The Grant Recipient shall procure that:
- (a) at all times during the carrying out of the Infrastructure Works there shall be maintained full and proper insurance policies including policies in respect of all buildings upon the Infrastructure Site and all works undertaken in carrying out the Infrastructure Works and all unfixed goods and materials in connection with such works for, in every case, the full reinstatement or replacement costs of them from time to time including professional fees (**Insurance Policies**); and
  - (b) [Homes England is a named beneficiary of such Insurance Policies.]
- 6.4.2 The Grant Recipient shall supply evidence of such insurance policies (satisfactory to Homes England) within five (5) Business Days of written request from Homes England.
- 6.4.3 If any building upon the Infrastructure Site or any works forming part of the Infrastructure Works, or any materials or goods required to undertake such works are destroyed or damaged (other than as necessary as part of the carrying out of the Infrastructure Works), the Grant Recipient shall procure the rebuilding, reinstatement or replacement of such building, work, goods or materials in accordance with the provisions of this Agreement as soon as reasonably practicable. If the insurance proceeds shall be insufficient the Grant Recipient shall make up any deficiency out of its own monies.
- 6.4.4 The Grant Recipient shall not do or permit or suffer to be done anything which may render any policy or policies of insurance void or voidable.

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<sup>20</sup> additional requirements to be considered on a project by project basis

## 6.5 Planning

The Grant Recipient must ensure that:

- 6.5.1 [where required by Homes England, a Planning Performance Agreement is in place in relation to the Site; or]<sup>21</sup>
- 6.5.2 it uses its reasonable endeavours to secure the grant of a planning permission satisfactory to Homes England to deliver the Infrastructure Works; and
- 6.5.3 no change is made to the arrangements contemplated in this clause 6.5 without Homes England's prior written consent (acting reasonably).

## 6.6 Other

- 6.6.1 The Grant Recipient must take all reasonable steps to procure that the Housing Outputs are delivered in accordance with the Required Standards.
- 6.6.2 The Grant Recipient will allow Homes England and/or any nominated representative or agent to visit the Infrastructure Site at reasonable times and on reasonable notice for the purposes of monitoring the Grant Recipient's progress as against each Milestone and its relevant Milestone Date.
- 6.6.3 Until such time as the Infrastructure Works have been fully delivered in accordance with the terms of this Agreement, the Grant Recipient will ensure that Homes England has the right to be represented at each project meeting relating to the same and that such representative (the details of which are to be advised by Homes England to the Grant Recipient) is provided with reasonable notice of all such meetings and all relevant meeting materials.
- 6.6.4 The Grant Recipient shall meet all Cost Overruns from its own resources.
- 6.6.5 The parties agree that for the purposes of this Agreement "delivered" when used in the context of the Infrastructure Works or Housing Outputs shall be construed to mean that the Infrastructure Works or Housing Outputs (as the context requires) have reached the applicable Practical Completion.
- 6.6.6 The Grant Recipient must ensure that any on-lending or other advance to a third party by the Grant Recipient of the whole or a part of the Maximum Sum:
  - (a) is approved in principle by Homes England in advance;
  - (b) is in the case of
    - i a loan, protected by such security arrangements as would be expected by a prudent lender advancing its own funds to the borrowing organisation with a view to ensuring their repayment in accordance with the terms of the on-lending agreement; or

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<sup>21</sup> To be agreed on a case by case basis.

- ii a grant, protected by such arrangements as would be expected of a prudent grant giver advancing its own funds to the Grant Recipient with a view to ensuring the proper application of the grant monies for the purposes for which they were advanced and appropriate arrangements for their recovery; and
- (c) is compliant with State Aid requirements and ensures the repayment (together with interest and any penalty) of any sums found to be Unlawful State Aid.

6.6.7 The Grant Recipient must provide a State Aid Confirmation to Homes England every [6] months during the Term<sup>22</sup> or at such other intervals as Homes England may agree from time to time.

## 6.7 **[<sup>23</sup>Valuation**

The Grant Recipient must ensure that:

- 6.7.1 all information supplied by it or on its behalf to the Valuer for the purposes of each Valuation was true and accurate as at its date or (if appropriate) as at the date (if any) at which it is stated to be given;
- 6.7.2 any financial projections contained in the information referred to in clause 6.7.1 above have been prepared as at their date, on the basis of recent historical information and on the basis of reasonable assumptions;
- 6.7.3 it has not omitted to supply any information within its knowledge, having made all due and careful enquiry, to the Valuer which, if disclosed, would adversely affect any Valuation; and
- 6.7.4 as at the date of the first Claim, nothing has occurred since the date the information referred to in paragraph 6.7.1 above was supplied which, if it had occurred prior to the relevant Valuation of the Site or the Housing Outputs, would have adversely affected that Valuation.]

6.8 If required by Homes England, the Grant Recipient shall appoint a Monitoring Surveyor to review, monitor progress and report on delivery as against the Delivery Plan and Expenditure Forecast on such terms as Homes England shall reasonably require.

## 7 **Regulatory and operational obligations**

### 7.1 **Consents**

The Grant Recipient will procure that no Infrastructure Works are commenced and/or continued without all necessary Consents being received and in particular will procure that no work constituting development for which planning permission is required under the Town and Country Planning Act 1990 is carried out without having obtained detailed

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<sup>22</sup> Term to be agreed on a project basis and will take into account any obligations which are required to be observed after delivery of the Infrastructure Works

<sup>23</sup> Provisions to be used where HIF Funding is being utilised for site assemble/site acquisition.

planning consent and will provide such documents as Homes England requires to demonstrate compliance with this clause 7.1.

## 7.2 **Public procurement**

The Grant Recipient must comply with all applicable Procurement Laws in connection with the procurement of the Infrastructure Works or any services relating to them and must further ensure that the procurement of works, equipment, goods and services by the Grant Recipient relating to such Infrastructure Works are based on value for money.

## 7.3 **Legislation (including Health & Safety and Equality & Diversity)**

7.3.1 The Grant Recipient must comply with and assist and co-operate with the Homes England in order that it can comply with (and (so far as it is legally able) require third parties who benefit from this HIF Funding do the same) all applicable legal obligations and statutory requirements in relation to delivery of the Infrastructure Works or Housing Outputs, including, but not limited to:-

- (a) EU and UK Planning and Environmental legislation;
- (b) State Aid Law;
- (c) any relevant Health and Safety Legislation;
- (d) Modern slavery legislation;
- (e) Employment legislation;
- (f) CDM Regulations;
- (g) RIDDOR;
- (h) the Equality Act 2010;
- (i) Equal opportunities (in relation to race, sex, disability, faith and sexuality);
- (j) Financial regulations and legislation;
- (k) Copyright and Data Protection Legislation

7.3.2 The Grant Recipient shall maintain or procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with the Infrastructure Works and shall (if requested) provide a report to the Homes England Senior Officer as part of the Monitoring Report arrangements.

## 7.4 **Disposals**

7.4.1 The Grant Recipient must not, without the prior written consent of Homes England, dispose of the whole or any part of the Infrastructure Site save by way of a Permitted Disposal.



7.4.2 In granting any consent under clause 7.4.1 Homes England may impose such conditions as it deems to be appropriate to such consent including a requirement that any disponent registers a restriction on title in favour of Homes England and/or agrees to be bound by clauses similar in effect to clause 7.4.1.<sup>24</sup>

7.4.3 The Grant Recipient must not and shall procure that no Developer or Contractor shall grant any lender security over assets funded, or part funded, by this HIF Funding unless the Grant Recipient has first obtained Homes England's written consent.

7.4.4 The Grant Recipient must not transfer any land acquired with the benefit of HIF Funding to any Developer to enable or facilitate the provision of the Infrastructure Works for a value which is less than Market Value.

## 7.5 Other

7.5.1 The Grant Recipient must:

- (a) supply to Homes England a copy of any Valuation of the Site the Grant Recipient obtains, promptly upon obtaining it.
- (b) provide Homes England or any Regulatory Body with such information as may be requested to demonstrate compliance with the Grant Recipient's obligations under clauses 6 and 7; and
- (c) ensure the availability and application of the Grant Recipient Contribution in the form, quantum and timescale required pursuant to this Agreement.

7.5.2 The Grant Recipient must comply with the terms of the Assurance Framework as it applies to Category A projects.

## 8 Variations and Milestone Date Amendments

8.1 The Grant Recipient may not make any amendment to the Infrastructure Works or the Infrastructure Details without the prior written consent of Homes England other than amendments which have no material impact upon the delivery of the Infrastructure Works and no impact on the Maximum Sum, the Expenditure Forecast and or the achievement of Milestones.

8.2 If a Milestone Failure occurs or is in the reasonable opinion of Homes England likely to occur (having regard to the information supplied pursuant to this Agreement) and such Milestone Failure is not the result of a Milestone Extension Event Homes England shall be entitled (but not obliged) to (acting reasonably):

8.2.1 exercise the rights described under clause 12; or

8.2.2 agree by exchange of written correspondence a revised Milestone Date with the Grant Recipient in which case any relevant condition of this Agreement shall apply (changing that which needs to be changed) to the revised Milestone Date.

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<sup>24</sup> Homes England may require the registration of restrictions on title over Sites on a project by project basis. In that case, additional provisions will be inserted into the Special Contractual Provisions at Schedule 6.

- 8.3 Where any Milestone Failure occurs or is in the reasonable opinion of Homes England likely to occur (having regard to the information supplied to Homes England pursuant to this Agreement or otherwise) and Homes England (acting reasonably) determines that such failure is the result of a Milestone Extension Event Homes England shall extend the relevant Milestone Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event save that Homes England shall not for any reason be required to extend beyond **[longstop dates subject to Homes England confirmation]**.
- 8.4 Where it becomes apparent that a material amendment to the Delivery Plan, the Expenditure Forecast, the Bid, the Infrastructure Works or the Housing Outputs is or will be required, the Grant Recipient must immediately notify Homes England and the parties must cooperate in good faith with a view to identifying what steps are available to the Grant Recipient to ensure delivery of the Infrastructure Works and/or Housing Outputs or otherwise agreeing variations to the same.
- 8.5 Until such time as a resolution is agreed between the parties, Homes England will be under no obligation to make HIF Funding available pursuant to any further Claims or otherwise to the Grant Recipient.
- 8.6 Where the parties fail to agree a resolution pursuant to clause 8.4 within [three (3) months] of the date of notification under clause 8.4, Homes England will be entitled to exercise its rights under clause 12.3.

## 9 **Special Contractual Provisions**

- 9.1 The parties agree that the Special Contractual Provisions have effect.<sup>25</sup>

## 10 **Notifications, reporting and audit**

- 10.1 The Grant Recipient shall notify Homes England:

- 10.1.1 immediately upon any change (whether actual or estimated) required to the Infrastructure Details other than any change permitted under this Agreement;
- 10.1.2 immediately upon becoming aware of any event which:
- (a) has or might have a Material Adverse Effect on the Grant Recipient; or
  - (b) has a detrimental effect on any aspect of the Infrastructure Works and/or the Housing Outputs including, but not limited to, any Milestone Failure;
  - (c) prejudices or might prejudice the Grant Recipient's ability to deliver the Infrastructure Works in accordance with the Infrastructure Details;
  - (d) [prejudices or might prejudice the Grant Recipient's ability to provide the Grant Recipient Contribution]; or
  - (e) has resulted in or might give rise to the making of a Report or Direction.

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<sup>25</sup> Project specific arrangements will be documented in the Special Contractual Provisions

- 10.1.3 as soon as reasonably practicable on becoming aware of any claim brought against the Grant Recipient arising out of or relating to the activities of the Grant Recipient in relation to the HIF Funding;
- 10.1.4 immediately upon there being a proposed change to:
- (a) any Infrastructure Related Documents which is material;
  - (b) the use of any asset funded by means of HIF Funding made available under this Agreement (including the purposes for which it is to be used and/or any time periods for which the asset is to be used);
  - (c) the ownership of any asset funded by means of HIF Funding made available under this Agreement
- 10.1.5 immediately upon the occurrence of an Event of Default;
- 10.1.6 immediately upon becoming aware of any investigations into or findings of any breach of:
- (a) any equality or anti-discrimination legislation or regulations directly or indirectly related to the Infrastructure Works (or any part of them) whether or not the Grant Recipient and/or any Developer and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Homes England Senior Officer); and/or
  - (b) the Data Protection Legislation whether or not the Grant Recipient and/or any Developer and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Homes England Senior Officer); and/or
  - (c) any challenge under, investigations into or findings of any breach of the Procurement Laws whether or not the Grant Recipient and/or any Developer and/or any other third party is responsible for the breach or is the subject of the investigation (as appropriate) (such notice to be addressed to the Homes England Senior Officer);
- 10.1.7 immediately upon becoming aware of:
- (a) any audit or statutory or regulatory investigation in relation to any aspect of the Infrastructure Works; or
  - (b) the occurrence of any act/omission of the Grant Recipient or of any Contractors, any Developer or subcontractors that harms or has the potential to harm the reputation of Homes England, the Ministry of Housing, Communities and Local Government or to bring them into disrepute; or

- (c) any event or circumstance which would cause the terms of the State Aid Opinion to be misleading or inaccurate or which would cast doubt upon its continuing validity;
- 10.1.8 immediately upon becoming aware that the Maximum Sum is greater than is necessary to deliver the Infrastructure Works to which it relates;
- 10.1.9 immediately, in the event of the receipt by it of any other income or funds or other Public Sector Financial Assistance or guarantees of them, or the offer of same, in respect of the Infrastructure Works or the Housing Outputs beyond any amounts of the same notified by the Grant Recipient to Homes England as part of or in connection with its Bid; and/or
- 10.1.10 immediately upon becoming aware that any information given or supplied in relation to the Pre Commencement Conditions becomes misleading or inaccurate.

## 10.2 **Resolution**

In the event of notification by the Grant Recipient under this clause 10, if applicable and if requested by Homes England, the Grant Recipient will provide, together with such notification, a proposal for resolution or mitigation of the event and will take into account all representations of Homes England on such proposals.

## 10.3 **Annual Forecast and Monitoring Reports**

- 10.3.1 The Grant Recipient must provide Homes England with its Annual Forecast within one calendar month of the start of each Financial Year.
- 10.3.2 Within ten (10) Business Days of each Quarter Date (or within such longer period as Homes England may at its absolute discretion agree) the Grant Recipient must provide Homes England with a report (the **Monitoring Report**) which provides details on:
- (a) progress in achieving the Infrastructure Works and the Housing Outputs;
  - (b) the Grant Recipient's progress against the Delivery Plan and Expenditure Forecast;
  - (c) the need for changes to the Delivery Plan or Expenditure Forecast;
  - (d) the occurrence of any Milestone Failure;
  - (e) the implications of any Notifiable Events;
  - (f) [progress on engagement with relevant landowners, developers and promoters (if applicable) in accordance with the Delivery Plan];
  - (g) any amendments made to the Infrastructure Works or Infrastructure Details made pursuant to clause 8.1;
  - (h) whether a Balancing Sum has arisen; and

- (i) such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least fifteen (15) Business Days prior to the relevant Quarter Date.
  - 10.3.3 Any Annual Forecast or Monitoring Report provided pursuant to this Agreement must be signed by the Section 151 Officer and the Grant Recipient acknowledges that any representations or confirmations made in such Annual Forecasts and Monitoring Reports are true and accurate in all material respects.
  - 10.3.4 Notwithstanding the provisions of clauses 10.3.1 and 10.3.2, Homes England may, if it considers (acting reasonably) that sufficient progress is not being made against the most recent Delivery Plan, request that the Grant Recipient provides additional reports containing such information as it reasonably requests to enable it monitor progress of the Infrastructure Works and the Housing Outputs more closely.
  - 10.3.5 Homes England or the Grant Recipient may call a Review Meeting at any time to discuss (amongst other things) the contents of any Annual Forecast or any matter arising out of the Monitoring Reports provided that the party requesting the meeting:
    - (a) gives not less than 15 Business Days prior written notice to the other of such meeting; and
    - (b) includes with the notice an agenda for such meeting.
  - 10.3.6 The Grant Recipient shall provide Homes England as soon as is reasonably practicable with such information or reports as Homes England shall reasonably require to support or facilitate the meetings referred to in this Agreement and to monitor the performance of the Grant Recipient's obligations under this Agreement.
  - 10.3.7 Homes England and the Grant Recipient shall each use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this clause 10.3 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
  - 10.3.8 Subject to the prior approval of the other party (such approval not be unreasonably withheld or delayed) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.
  - 10.3.9 Save as otherwise agreed between the parties, any meeting under this clause 10.3 shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England and any other attendee.
  - 10.3.10 Nothing in this clause 10.3 shall prevent Homes England from requesting (whether on behalf of itself or any Government office) at any other time information from the Grant Recipient in respect of any of the items listed in this clause 10.3 and the Grant Recipient shall promptly respond to any such request.
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## 10.4 **Annual Review**

10.4.1 Homes England and the Grant Recipient shall attend an Annual Review Meeting within ten (10) Business Days (or within such longer period as Homes England may at its absolute discretion agree) of the first Quarter Date in each Financial Year to discuss (but without limitation):

- (a) progress in achieving the Infrastructure Works and the Housing Outputs;
- (b) the Grant Recipient's projections in relation to its future performance in achieving the Housing Outputs;
- (c) the Grant Recipient's progress against the Delivery Plan and Expenditure Forecast;
- (d) the need for changes to the Delivery Plan or Expenditure Forecast;
- (e) the occurrence of any Milestone Failure;
- (f) the implications of any Notifiable Events;
- (g) the Annual Forecast;
- (h) such other matters in relation to the performance of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Annual Review Meeting.

## 10.5 **Inspection and audit facilities**

10.5.1 The Grant Recipient shall as and when requested by Homes England, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement or the HIF Documents a copy of each of:

- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Grant Recipient for the purposes of this Agreement or the HIF Documents; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the Grant Recipient's officers, employees, agents or consultants relating to the Infrastructure Works or the Housing Outputs and which have been supplied to the Grant Recipient for the purposes of this Agreement.

10.5.2 The Grant Recipient shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by the Grant Recipient in respect of the Infrastructure Works;

- (b) when required to do so by Homes England, provide a summary of any of the income and expenditure referred to in clause 10.5.2(a) as Homes England may require to enable it to monitor the performance by the Grant Recipient of its obligations under this Agreement; and
- (c) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 10.5.

10.5.3 The Grant Recipient shall ensure that it and each Developer keeps on an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Infrastructure Works which identify items of revenue received and expenditure incurred in relation to the same.

10.5.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Grant Recipient shall, if requested to do so, deliver up to Homes England all the data, materials, documents and accounts referred to in this clause 10.5 which it has in its possession, custody or control and shall procure the handing over to Homes England such data, materials, documents and accounts referred to in clause 10 or as otherwise directed by Homes England.

10.5.5 The Grant Recipient must (and shall procure that each Developer does) for a period of 10 (ten) years from the date of the last payment made to the Grant Recipient under this Agreement retain all of the data, documents, materials and accounts referred to in this clause 10.5 and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to Homes England pursuant to this clause 10.

## 11 **Change in financial circumstances**

11.1 The Grant Recipient shall notify Homes England immediately where there is or has been any change in it or the Developer's financial circumstances which has or might have a Material Adverse Effect, including for the avoidance of doubt any withdrawal or reduction of any funding or income available to the Grant Recipient relative to the delivery of the Infrastructure Works, or any reduction or withdrawal in relation to the [Grant Recipient Contribution].

11.2 In the event that Homes England (acting reasonably) believes that any change notified to it pursuant to clause 11.1 or which it otherwise becomes aware of has or might have a Material Adverse Effect, Homes England shall be entitled to exercise any of the rights and remedies set out in clause 12.

## 12 **Events of Default**

12.1 Where a Fundamental Default has (in Homes England's opinion (acting reasonably)) occurred Homes England shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to:

12.1.1 terminate this Agreement in its entirety;

- 12.1.2 suspend or alter the timing of the payment of any HIF Funding for such period as Homes England will determine in its sole discretion;
  - 12.1.3 withhold and cancel any further payment of HIF Funding due to the Grant Recipient under this Agreement;
  - 12.1.4 require the Grant Recipient immediately to repay the HIF Funding and all other amounts due under this Agreement together with Interest; and
  - 12.1.5 reallocate or redirect such part of the HIF Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 12.2 Where a General Default has (in Homes England's opinion (acting reasonably)) occurred and is in the opinion of Homes England (using its absolute discretion) capable of remedy:
- 12.2.1 the Grant Recipient must submit a proposed remediation plan (the **Remediation Plan**) to Homes England within [twenty (20)] Business Days of the occurrence of the General Default setting out the Grant Recipient's proposals for the steps to be taken to remedy or mitigate the effects of the General Default and a basis for testing whether this has been achieved within an appropriate timeframe;
  - 12.2.2 Homes England will notify the Grant Recipient as to whether the Remediation Plan is approved as submitted within [twenty (20)] Business Days of its receipt;
  - 12.2.3 if the Remediation Plan is not approved, the Grant Recipient Senior Officer and Homes England Senior Officer (acting in good faith with a view to securing delivery of the Infrastructure Works) must meet as soon as practicable (and in any event within ten (10) Business Days of Homes England's notification under clause 12.2.2 or such later date as Homes England may agree) to try to agree a revised Remediation Plan. In default of agreement, a General Default shall be continuing and the Homes England shall be entitled freely to exercise the rights under clause 12.3 without any further suspension of its rights to do so;
  - 12.2.4 if the Remediation Plan is approved, the Grant Recipient must comply with the obligations set out in the Remediation Plan and any failure to do so will be treated as a General Default entitling Homes England to exercise its rights under clause 12.3 free of any rights of suspension which would otherwise benefit the Grant Recipient; and
  - 12.2.5 within ten (10) Business Days of the end of the timeframe specified in the Remediation Plan, the Grant Recipient Senior Officer and the Homes England Senior Officer must meet to review the efficacy of the Remediation Plan in remedying or mitigating the effects of the General Default. If in the opinion of Homes England (acting reasonably) the Remediation Plan has not been effective, Homes England shall be entitled in its absolute discretion either to extend the timeframe for the Remediation Plan's operation or to declare that the Remediation Plan has failed in which case an General Default shall be deemed to have occurred entitling Homes England to exercise its rights under



clause 12.3 free of any rights of suspension which would otherwise benefit the Grant Recipient.

12.3 Subject to clause 12.4, in the circumstances contemplated in clauses 8.6 and 12.2 or where a General Default is in the opinion of Homes England (using its absolute discretion) incapable of remedy, Homes England shall be entitled forthwith and without any liability to the Grant Recipient to:

12.3.1 terminate this Agreement in its entirety;

12.3.2 withhold and cancel any further payment of HIF Funding due to the Grant Recipient under this Agreement; and/or

12.3.3 reallocate or redirect such part of the HIF Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.

12.4 Nothing in clause 8 or 12.2 shall require Homes England to agree any measure or extension which would delay the delivery of the Infrastructure Works beyond 31 March 2024;

12.5 Any exercise by Homes England of its rights under clauses 12.1 or 12.3 will be without prejudice to any other right of action or remedy of Homes England (including any claim for damage) in respect of the relevant Event of Default.

### 13 **Public relations and publicity**

13.1 The Grant Recipient will ensure that, where appropriate, publicity is given to the Infrastructure Works by drawing attention to the benefits and opportunities afforded by it. In acknowledging the contribution and investment made by Homes England, the Grant Recipient must comply with any guidance on publicity provided by or on behalf of Homes England from time to time.

13.2 The Grant Recipient must not publicise or promote the HIF Funding without Homes England's prior written agreement.

13.3 The Grant Recipient shall not refer to Homes England or the HIF Funding in any publicity and/or promotional material relating to the Infrastructure Works without first receiving Homes England's written approval to such references.

13.4 Homes England reserves the right to use all data provided by the Grant Recipient in relation to the HIF Funding for publicity or promotional purposes.

13.5 The Grant Recipient grants to Homes England a non-exclusive, royalty free licence (to the extent it can grant such a licence) to use any photographs, records, images, articles or illustrations relating to the Infrastructure Works or Housing Outputs undertaken by or for the Grant Recipient for use in any publicity or advertising, whether published alone or in conjunction with any other person.

## 14 **Reputation of the parties**

- 14.1 The Grant Recipient will not, and will use all reasonable endeavours to procure that the Developer(s) will not knowingly do or omit to do anything in relation to the HIF Documents, the Infrastructure Works and Housing Outputs or in the course of their other activities that may bring the standing of Homes England into disrepute or attract adverse publicity for Homes England.
- 14.2 No party will publish any statement, orally or in writing, relating to the other party which might damage that other party's reputation or that of any of its officers or employees.
- 14.3 The Grant Recipient has not at any time, engaged in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.4 The Grant Recipient is not ineligible to be awarded any contract or business under the Public Contracts Regulations or section 26 of the Utilities Contracts Regulations 2006 (SI 2006/6) (each as amended).
- 14.5 The Grant Recipient will not engage (directly or indirectly) in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.
- 14.6 The Grant Recipient will maintain in place adequate procedures in line with guidance published by the Secretary of State under section 9 of the Bribery Act 2010 designed to prevent any Associated Person of a person from bribing another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of the business of a person. The Grant Recipient shall supply to Homes England, promptly on request of Homes England, copies of such documentation or other evidence as is reasonably requested by Homes England to enable Homes England to satisfy itself that such procedures are in place.
- 14.7 The Grant Recipient shall supply to Homes England, promptly on becoming aware of them, details of any investigation, enquiry or enforcement proceedings by any governmental, administrative or regulatory body relating to any offence or alleged offence under the Bribery Act 2010 against it.

## 15 **Confidentiality and freedom of information**

### 15.1 **Confidentiality**

- 15.1.1 Each party recognises that under the HIF Documents it may receive Confidential Information belonging to the other.
- 15.1.2 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 Homes England arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under the relevant HIF Document.

- 15.1.3 The obligations of confidence referred to in clause 15.1 will 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 a HIF Document or of any other duty of confidentiality relating to that information; or
  - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
  - (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
  - (d) is independently developed without access to the Confidential Information of the other party.
- 15.1.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- (a) to enable the disclosing party to perform its obligations under any HIF Document or Infrastructure Related Document; or
  - (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA and the EIR and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such Confidential Information; or
  - (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
  - (d) In order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- 15.1.5 The Grant Recipient will ensure that all Confidential Information obtained from Homes England under or in connection with any HIF Document:
- (a) is given only to such of its and the Grant Recipient's employees, professional advisors, Contractors, Developers or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of the HIF Document and only to the extent necessary for the performance of that HIF Document;
  - (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors, Contractors or consultants or Developers otherwise than for the purposes of that HIF Document;

- (c) Where it is considered necessary in the opinion of Homes England (using its absolute discretion) the Grant Recipient will procure that such staff, professional advisors, Contractors, Developers or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

15.1.6 Nothing in this clause 15.1 shall prevent Homes England:

- (a) disclosing any Confidential Information for the purpose of:
  - i the examination and certification of Homes England's accounts; or
  - ii any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
- (b) disclosing any Confidential Information obtained from the Grant Recipient:
  - i to any other department, office or agency of the Crown; or
  - ii to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to a HIF Document or any person conducting an Office of Government Commerce gateway review;
- (c) provided that in disclosing information under clauses 15.1.6(b)i or 15.1.6(b)ii Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.1.7 Nothing in this clause 15.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of the HIF Documents in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

15.1.8 Nothing in the clause 15.1 shall prevent Homes England from publishing information relating to Total Infrastructure Costs, the Infrastructure Expenditure, the Maximum Sum, the Infrastructure Works or the Housing Outputs.

## 15.2 **Freedom of information**

15.2.1 The parties to this Agreement are FOIA Authorities and:

- (a) are subject to legal duties which may require the release of information; and
- (b) FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

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**OFFICIAL SENSITIVE - COMMERCIAL**

15.2.2 The FOIA Authority in receipt of or to receive the RFI (**Relevant FOIA Authority**) will be responsible for determining in its absolute discretion whether:

- (a) any Information is Exempted Information or remains Exempted Information; and/or
- (b) any Information is to be disclosed in response to a Request for Information;

and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a RFI except to confirm receipt of the RFI and that the RFI has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.

15.2.3 Subject to clause 15.2.4 below, each party acknowledges that the Relevant FOIA Authority may disclose Information:

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

15.2.4 Without in any way limiting clauses 15.2.2 and 15.2.3, in the event that the Relevant FOIA Authority receives a RFI, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other party.

15.2.5 Each party will assist and co-operate as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and will procure that its agents and subcontractors will), at their own cost:

- (a) transfer any RFI received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a RFI;
- (b) provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or Information as may be requested by the Relevant FOIA Authority;
- (c) provide the Relevant FOIA Authority with any data or Information in its possession or power in the form that the Relevant FOIA Authority requires within thirty (30) Business Days (or such other period as the Relevant FOIA Authority may specify (acting reasonably)) of the Relevant FOIA Authority requesting that Information; and
- (d) permit the Relevant FOIA Authority to inspect any records as requested from time to time.

15.2.6 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice

recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.

15.2.7 Each party acknowledges and agrees that the Relevant FOIA Authority may in its absolute discretion redact all or part of the Information within a RFI prior to its publication. In so doing and in its absolute discretion the Relevant FOIA Authority may take account of any EIR Exceptions and FOIA Exemptions. The Relevant FOIA Authority may in its absolute discretion consult with the other party regarding any redactions to the Information to be published pursuant to this clause 15. The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.

15.2.8 The obligations in this clause 15 will survive the expiry or termination of the HIF Documents for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of a HIF Document or of any other duty of confidentiality relating to that information.

### 15.3 **Publication of information before Parliament**

The Grant Recipient acknowledges that the National Audit Office has the right to publish details of the HIF Documents in its relevant reports to Parliament.

## 16 **Data protection**

16.1 The parties will co-operate with one another in order to enable each party to fulfil its statutory obligations under the Data Protection Legislation.

16.2 Without prejudice to the generality of clause 16.1, the Grant Recipient warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the Data Protection Legislation to Process Personal Data for the purposes of performing its obligations under this Agreement. The Grant Recipient undertakes at all times during the term of this Agreement to comply with the Data Protection Legislation (and the data protection principles contained therein) in processing all Personal Data in connection with this Agreement and shall not perform its obligations under this Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation.

## 17 **Intellectual property**

17.1 Subject to the provisions of this clause 17.1 the Grant Recipient hereby grants, to the extent it can grant, to Homes England a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy, use (from computer disk or otherwise) and to make publicly available all and any Intellectual Property Rights, drawings, reports, specifications, calculations and other documents and information provided by the Grant Recipient or which are or become owned by the Grant Recipient and which relate to the Infrastructure Works or the Housing Outputs, for any purpose either relating to this Agreement or to the dissemination by Homes England of Best Practice.

- 17.2 To the extent that any of the data, materials and documents referred to in clause 17.1 are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by Homes England procure for the benefit of Homes England at the cost of the Grant Recipient the grant of a licence or sub-licence for the term of this Agreement and supply any relevant software and/or database to enable Homes England making such request to access and otherwise use such data for the purposes referred to in clause 17.1.
- 17.3 No party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 17.4 The Grant Recipient shall fully indemnify Homes England within five (5) Business Days of demand under this clause 17.4 against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this clause 17.4, any breach by the Grant Recipient of this clause 17.4 and against all costs and damages of any kind which Homes England may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 17.5 The Grant Recipient shall only be entitled to revoke the licence granted to Homes England under clause 17.1 on the termination of the whole of this Agreement.
- 17.6 The Grant Recipient shall provide whatever assistance and explanation is required by Homes England to enable it to disseminate Best Practice (including the methods by which the Infrastructure Works were conducted).
- 17.7 Homes England's decision as to what constitutes Best Practice shall be final (and Homes England acknowledges that it does not intend to use this clause 17.7 to make commercially sensitive information publicly available).
- 17.8 Homes England shall be entitled to amend any of the Intellectual Property Rights or information provided under this clause 17.8 or to combine them with any other information or know how as it thinks fit when compiling and publishing Best Practice in exercise of the right conferred under clause 17.1.

18 **Further assurance**

At any time upon the written request of Homes England the Grant Recipient will promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of obtaining for Homes England the full benefit of this Agreement or any other HIF Document and of the rights and powers therein granted.

19 **Indemnity**

The Grant Recipient shall:

- 19.1 be liable for and will indemnify Homes England in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property whether belonging to Homes England or otherwise or any claim by any third party arising out of or in the

course of or caused or contributed to by the Grant Recipient and/or the performance or non-performance or delay in performance by the Grant Recipient of its obligations under any of the HIF Documents except to the extent that the same is due to any wilful neglect of Homes England; and

19.2 be liable for and shall indemnify Homes England against any expense, liability, loss, claim or proceedings arising directly or indirectly from or in connection with any breach of the terms of this Agreement by or otherwise through the default or negligence of the Grant Recipient.

## 20 **Senior Officers**

### 20.1 **Authority of the Grant Recipient Senior Officer**

The Grant Recipient represents to Homes England that the Grant Recipient Senior Officer has full authority to act on its behalf for all purposes under the HIF Documents. Homes England and the Homes England Senior Officer are entitled to treat any act of the Grant Recipient Senior Officer in connection with the HIF Documents as being expressly authorised by the Grant Recipient (save where the Grant Recipient has notified Homes England that such authority has been revoked) and Homes England will not be required to determine whether any express authority has in fact been given.

### 20.2 **Grant Recipient Senior Officer's power to delegate**

The Grant Recipient Senior Officer may authorise any of its subordinates to exercise its powers under the HIF Documents by notice to Homes England.

### 20.3 **Authority of the Homes England Senior Officer**

Homes England represents to the Grant Recipient that the Homes England Senior Officer has full authority to act on its behalf for all purposes under the HIF Documents. The Grant Recipient is entitled to treat any act of the Homes England Senior Officer in connection with the HIF Documents as being expressly authorised by Homes England (save where Homes England has notified the Grant Recipient that such authority has been revoked) and the Grant Recipient will not be required to determine whether any express authority has in fact been given.

### 20.4 **Homes England Senior Officer's power to delegate**

The Homes England Senior Officer may authorise any of its subordinates to exercise any of its powers under any HIF Document by notice to the Grant Recipient.

### 20.5 **Notices**

Subject to clause 28, any notice, information, instructions or public communication given in writing to the Homes England Senior Officer or the Grant Recipient Senior Officer will be deemed to have been given to their respective appointing party.



21 **No agency, partnership or employment**

21.1 Nothing in this Agreement or otherwise shall be held, implied or deemed to constitute a partnership, joint venture or other association or, save as expressly provided, the relationship of principal and agent between the parties for any purpose whatsoever.

21.2 The Grant Recipient shall at all times be independent and nothing in this Agreement shall be construed as creating the relationship of employer and employee between Homes England and the Grant Recipient. Neither the Grant Recipient nor any of its respective employees shall at any time hold itself or themselves out to be an employee of Homes England.

21.3 The Grant Recipient will not say or do anything which may pledge the credit of or otherwise bind Homes England or that may lead any other person to believe that the Grant Recipient is acting as Homes England.

22 **Assignment and sub contracting**

22.1 Homes England will be entitled to assign, transfer or novate its rights and obligations under this Agreement.

22.2 The Grant Recipient will not be entitled to assign, transfer or novate its rights and obligations under this Agreement.

23 **Value Added Tax**

23.1 The parties understand and agree that the HIF Funding by Homes England under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Grant Recipient or otherwise.

23.2 If, notwithstanding the agreement and understanding of the parties as set out in clause 23.1 above, it is determined that the HIF Funding is consideration for a supply for VAT purposes, the HIF Funding shall be treated as inclusive of any VAT.

23.3 All sums or other consideration payable to or provided by the Grant Recipient to Homes England at any time will be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Grant Recipient will pay to Homes England all the VAT payable upon the receipt of a valid VAT invoice.

24 **No fettering of discretion/statutory powers**

Nothing contained in or carried out pursuant to any HIF Document or apparently or impliedly contained in this Agreement or any of the deeds and documents referred to herein and no consents given by Homes England or the Grant Recipient will unlawfully prejudice Homes England's or the Grant Recipient's (as appropriate) rights, powers or duties and/or obligations in the exercise of its functions or under any statutes, byelaws, instruments, orders or regulations.

25 **Fees and Expenses**

25.1 **Costs**

Each party shall pay its own costs in connection with the negotiation, preparation, and execution of this Agreement, and all documents ancillary to it.

25.2 **Variations and Enforcement Costs**

The Grant Recipient shall, forthwith on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

25.2.1 in connection with the variation or amendment (where such variation or amendment is proposed by the Grant Recipient) of, or the enforcement or preservation of any rights under, any HIF Document; or

25.2.2 in investigating any Event of Default which has or is believed to have occurred.

25.3 The Grant Recipient shall not be required to pay any costs or expenses of the type contemplated in Condition 25.2.2 if the results of Homes England's investigation reveal that there is no Event of Default.

26 **State Aid**

26.1 The parties acknowledge that HIF Funding will only be provided where such payment is compliant with State Aid requirements.

26.2 If the HIF Funding is found to constitute Unlawful State Aid (or is under investigation or subject to judicial proceedings in relation to State Aid compliance) then:

26.2.1 the parties acting in good faith will seek to restructure the arrangements surrounding the project which includes the Infrastructure Works and the terms of this Agreement to the extent necessary to ensure State Aid compliance; and/or

26.2.2 the parties shall promptly cooperate in good faith to provide evidence that the project which includes the Infrastructure Works (or the restructured Infrastructure Works) is or will be State Aid compliant.

26.3 If the project which includes the Infrastructure Works is found to constitute Unlawful State Aid and/or is not capable of being restructured so as to be compliant then the Grant Recipient must repay any sum of Unlawful State Aid plus such interest as is prescribed by State Aid Law within fifteen (15) Business Days of Homes England issuing it with a written demand for payment.

26.4 Homes England may review this Agreement, at any time prior to or following the withdrawal of the United Kingdom from the European Union, to ensure that the provisions of the Agreement comply with any United Kingdom Competition Requirements which may be applicable to it or the parties and to ensure that no Unlawful State Aid has or is likely to arise.

26.5 If as a result of any review undertaken in accordance with clause 26.4 it is found that a United Kingdom Competition Requirement applies or will apply to this Agreement then the Grant Recipient and Homes England shall amend this Agreement to the extent necessary to ensure that the provisions of this Agreement are compatible with any applicable United Kingdom Competition Requirement.

27 **Co-operation**

27.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and the delivery of the Infrastructure Works and the Housing Outputs and in particular will (subject to clause 27.2):

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

27.1.2 not interfere with the rights of any other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent any other party (nor its employees, members, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent any party from exercising its express rights under this Agreement; and

27.1.3 ensure that the Infrastructure Works are delivered in an economically commercial manner.

27.2 Nothing in clause 27.1 shall:

27.2.1 interfere with the right of each of the parties to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement and in connection with the Infrastructure Works or the Housing Outputs in the manner in which it considers to be the most effective and efficient; or

27.2.2 relieve a party from any obligation contained in this Agreement.

27.3 The Grant Recipient shall co-operate fully and in a timely manner with any reasonable request from time to time:

27.3.1 of any auditor (whether internal or external) of Homes England to provide documents, or to procure the provision of documents, relating to the Infrastructure Works, and to provide, or to procure the provision of, any oral or written explanation relating to the same; and/or

27.3.2 of the Monitoring Surveyor to provide the information or documents, relating to the Infrastructure Works, and to provide, or to procure the provision of, any oral or written explanation relating to the same;

27.3.3 of Homes England where Homes England is required under any legislation to provide any document relating to the Infrastructure Works or the Housing Outputs to any person.

27.4 The Grant Recipient shall fully co-operate and procure that any Developer co-operates with any reasonable request made by the Monitoring Surveyor which relates to the Infrastructure Works.

27.5 The Grant Recipient shall promptly and fully co-operate with any request for information or evidence or for it to provide an explanation to Homes England (to the extent this arises from compliance with State Aid requirements or if Homes England is required to provide to a third party such information or evidence either under Legislation or by a competent authority).

## 28 Notices

28.1 The Grant Recipient contact for all enquiries at Homes England is the HIF Programme Management Office.

All correspondence with Homes England must be in writing and either be delivered at or sent by first class post to:

Homes England, 1 Friargate, Coventry CV1 2GN with a copy to:

HIF Programme Management Office, Homes England, Windsor House, 50 Victoria Street, London SW1H 0TL.

28.2 Any notice or other communications between the parties shall be accepted as having been received:

28.2.1 if sent by first class post, three (3) days after posting exclusive of the day of posting, or

28.2.2 if delivered by hand, on the day of delivery,

28.2.3 in the case of Homes England addressed as set out above and in the case of the Grant Recipient, [*inserted address of Grant Recipient*].

28.3 Either of Homes England or the Grant Recipient may change the details of service by notice in accordance with the above.

## 29 Rights of third parties

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

## 30 Entire agreement

30.1 This Agreement and the conditions herein contained together with the Schedules and Annexures constitute the entire agreement between the parties in relation to its subject matter and may only be varied or modified in accordance with clause 37.

30.2 The Grant Recipient hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of Homes

England of whatsoever nature on the faith of which the Grant Recipient is entering into this Agreement.

31 **Severance**

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

32 **Cumulative rights and enforcement**

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

33 **Waiver**

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

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

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

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

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

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

34 **Disclaimer**

Homes England will not be liable to the other party for any advice given by a representative of Homes England. In addition, Homes England gives no assurance as to the suitability or viability of the Infrastructure Works or the Housing Outputs and no endorsement of the same.

35 **Dispute Resolution**

35.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this clause 35.

35.1.1 In the event that the Grant Recipient or Homes England consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties

shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 35.

- 35.1.2 Representatives of the parties (who should rank at least as Assistant Director (or equivalent)) shall meet within five (5) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of receipt of a Notice of Dispute.
  - 35.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 35.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executive (or nominated deputy) of the Grant Recipient and Homes England's Chief Investment Officer (the **Senior Executives**).
  - 35.1.4 The Senior Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Senior Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
  - 35.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Senior Executives, such Dispute must be dealt with in accordance with clause 35.2.
- 35.2 In the circumstances contemplated in clause 35.1.5, 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:
- 35.2.1 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; and
  - 35.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice.
- 35.3 In the event that either the mediation referred to in clause 35.2 has terminated or the Grant Recipient has failed to participate in the mediation Homes England may:
- 35.3.1 require the Grant Recipient immediately to repay the HIF Funding and all other amounts due under this Agreement together with interest;
  - 35.3.2 terminate this Agreement in its entirety;
  - 35.3.3 withhold and cancel any further payment of HIF Funding due to the Grant Recipient under this Agreement; and/or
  - 35.3.4 reallocate or redirect such part of the HIF Funding (which has not yet been paid to the Grant Recipient) to such other person or for such purpose as Homes England in its discretion considers appropriate.

35.4 Homes England reserves the right to invite the Developer to attend any meeting held pursuant to clause 35.1. The parties agree that the Developer shall be entitled to express an opinion at such meeting, but any opinion so expressed shall not be binding upon either of Homes England or the Grant Recipient.

36 **Governing law**

This Agreement shall be governed by and construed in accordance with the Laws of England and Wales and subject to the provisions of clause 35 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

37 **Amendment**

37.1 The parties agree that (save as otherwise provided) this Agreement may be amended by agreement in writing between Homes England and the Grant Recipient.

37.2 In granting any consent or waiver under this Agreement Homes England may impose such conditions as it deems to be appropriate to such consent.

38 **Survival of this Agreement**

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

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

39 **Miscellaneous**

39.1 Any approval by Homes England or any person on behalf of Homes England pursuant to this Agreement of any matter submitted by the Grant Recipient for approval will not be deemed to be an acceptance by Homes England of the correctness or suitability of the contents of the subject of the approval or consent.

39.2 The parties will and will ensure that their respective officers and employees will act at all times in a way which is compatible with the Convention Rights within the meaning of the Human Rights Act 1998.

39.3 A certificate by Homes England as to any sum payable hereunder by the Grant Recipient will be conclusive save in the case of manifest error.

In witness of which this Agreement has been duly executed as a deed and is delivered and takes effect on the date written at the beginning of this Agreement.

## Schedule 1

### Infrastructure Details

**Project Name:**

#### Infrastructure Information

[Description of Infrastructure Works including any associated infrastructure and any other construction on the Site or outputs in respect of which Homes England has agreed to provide the HIF Funding]

Maximum Sum [*to be inserted by the parties*]

Other partners (e.g. Developer)

#### Milestones and Milestone Dates

Infrastructure Milestone	Milestone Date
Site assembly completion (where applicable)	
Planning application submission	
Receipt of planning approval	
Commencement of tendering of main contractor for Infrastructure Works	
Entered into contract with main contractor for Infrastructure Works	
Infrastructure Start on Site	
Infrastructure Works Practical Completion	
[Other e.g. Local Plan adoption]	



**Schedule 2**

**Grant Recipient Information**

**Grant Recipient Contribution**

NAME OF SITE	DESCRIPTION OF GRANT RECIPIENT CONTRIBUTION (FINANCIAL AND NON-FINANCIAL)	GRANT RECIPIENT FINANCIAL CONTRIBUTIONS (IF RELEVANT)

**Housing Outputs**

NAME OF SITE	Number of units

**Housing Output Targets** *[Homes England/Grant Recipient to confirm details below]*

Address/Site	Number	Housing Start on Site Date	Practical Completion Date
	[ ]	[ ]	[ ]
	[ ]	[ ]	[ ]

### Schedule 3 - Claim Form

To: Homes England

From: [insert full name of Grant Recipient]

Date: [ ]

Housing Infrastructure Fund Grant Determination Agreement (Forward Funding) dated [ ] 201[ ] (the Agreement)

1 I refer to the Agreement. This is a Claim Form. Terms defined in the Agreement have the same meaning in this Claim Form.

2 I wish to claim the following amount of Funding:

2.1 funding amount for Infrastructure Expenditure

2.2 Period of Claim: [ ] From [insert start date] to [insert end date]

2.3 Date of claim: [ ]

2.4 Such part of the Infrastructure Works which [insert details] that relates to the Claim

#### 3 **Payment Instructions**

3.1 Bank name: NatWest

3.2 Bank branch/address:

3.3 Bank sort code:

3.4 Bank account number:

3.5 Bank account name

#### 4 **Additional Information**

4.1 Maximum Sum £

4.2 Total Infrastructure Costs claimed and approved to date to date (excluding this claim): [ ]

4.3 Total Infrastructure Costs claimed and approved to date to date (including this Claim): [ ]

- 5 The Claim is made in accordance with the Agreement.
- 6 I confirm that each condition specified in clause 4 of the Agreement required to be satisfied on the date of this Claim Form is so satisfied and I know of no reason why any condition specified in clause 4 of the Agreement to be satisfied on or before the date of drawdown will not be so satisfied.
- 7 I confirm compliance with each representation, warranty and covenant specified in the Agreement.
- 8 I confirm that:
- 8.1 no Event of Default has occurred and is continuing or will occur as a result of the proposed Claim; and
- 8.2 no event or circumstance has occurred or arisen since the date of submission of the State Aid Opinion which would render it misleading or inaccurate or which would cast doubt upon its continuing validity.
- 9 [I confirm that the HIF Funding to be provided pursuant to this Claim Form is in respect of Infrastructure Expenditure and will be used to meet the Infrastructure Expenditure and that no other Claim has been made in respect of such Infrastructure Expenditure [and that supporting evidence (to Homes England's satisfaction) is submitted with this Claim to provide evidence of the relevant expenditure incurred to date].
- 10 I confirm that if a Monitoring Surveyor has been appointed, the Monitoring Surveyor has certified that the HIF Funding to be provided pursuant to this Claim Form is in respect of Infrastructure Expenditure and will be used to meet the Infrastructure Expenditure and that no other Claim has been made in respect of such Infrastructure Expenditure [and that supporting evidence (to Homes England's satisfaction) is submitted with this Claim to provide evidence of the relevant expenditure incurred to date.
- 11 I confirm that:
- 11.1 the Infrastructure Expenditure has been or will be incurred and constitute or will constitute capital expenditure in accordance with Regulations made under Section 11 of the Local Government Act 2003;
- 11.2 the Grant Recipient has not received and will not receive any Public Sector Financial Assistance or other contributions towards the Infrastructure Expenditure for which payment is now being sought;
- 11.3 the amount of the Claim is in accordance with the Expenditure Forecast;
- 11.4 [the Claim is in respect of Historic Expenditure];
- 11.5 [the Claim is in respect of Preliminary Costs which are set out in the Expenditure Forecast];
- 11.6 the information in this form is true and correct.

By: .....

Section 151 Officer

for and on behalf of

[insert full name of Grant Recipient]

Name (Printed):

Position:

Dated:

## Schedule 4 - Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes England  
1 Friargate  
Coventry  
CV1 2GN

To: Homes England

Dear Sirs,

### **Legal Opinion re [insert name of Site/Project] – Housing Infrastructure Fund Grant Determination Agreement (Forward Funding) and related matters**

I refer to the proposed Housing Infrastructure Fund Grant Determination Agreement (Forward Funding) to be entered into between [ ] (the **Grant Recipient**) and Homes England (the **Agreement**) for the purposes of, inter alia, providing or facilitating the delivery of infrastructure and housing and related outcomes which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

- 1 the Agreement in its final form prior to execution and delivery thereof by the Grant Recipient;
- 2 the Grant Recipient's [Standing Orders] for approving entry into and the execution and delivery of deeds by the Grant Recipient and for the delegation of its authority and the powers of the Grant Recipient's Executive; and
- 3 such other documents I consider appropriate for the purposes of giving this opinion.

I do not express any opinion as to, nor have I investigated the law of any jurisdiction other than England.

I am of the opinion that, as at the date hereof, as a matter of English law, the Grant Recipient has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Agreement [(including but without limitation the provision of the Grant Recipient Contribution as that term is defined in the Agreement)] and has taken all necessary action and has obtained all relevant consents and approvals (statutory or otherwise) to

authorise the execution and delivery of the Agreement and the performance and validity of the obligations under it.

Neither the execution and the delivery of, nor the performance by the Grant Recipient of its obligations under the Agreement will violate any provisions of any existing application law, rule, regulation or agreement binding on the Grant Recipient, and the Agreement will constitute when executed and delivered a valid and legally binding obligation on the Grant Recipient enforceable in accordance with its terms. I have given this opinion, taking into account the common law and statutory duties applicable to the exercise of power by the Grant Recipient.

The above opinions are subject to the reservation that under English law, the power of the court to order or pursue performance of an obligation and any other equitable remedies is discretionary and, accordingly, an English court might make an award of damages where specific performance of an obligation at work or remedy is sought.

This opinion is given by virtue of my position as Solicitor to the Grant Recipient and is only given as the holder of that office. I am not giving this opinion in a personal capacity, nor do I accept any private or personal liability for any error or omission in it or which may arise therefrom and the recipient, in seeking to place reliance on the contents of this letter, must duly acknowledge the same if any error or omission is later to be found. This opinion is addressed to Homes England and is solely for its benefit. It may not be disclosed to or relied upon by any other person or made public in any way without my prior consent. This opinion is limited to matters addressed herein and is not to be read as an opinion with respect to any other matter.

Yours faithfully

Grant Recipient Solicitor

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Agreement referred to above.

Name	Title	Specimen Signature
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## Schedule 5 - Representations and Warranties

### 1 Powers, vires and consents

1.1 It:

1.1.1 has the power to enter into and to exercise its rights and perform its obligations under the HIF Documents and the Infrastructure Related Documents (to which it is a party); and

1.1.2 has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under the HIF Documents and Infrastructure Related Documents (to which it is a party) (or, in the case of any other HIF Document or Infrastructure Related Document to be executed by it after the date hereof, such action will be taken before such execution).

1.2 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to have a Material Adverse Effect.

1.3 Its obligations under the HIF Documents and Infrastructure Related Documents (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with their terms.

1.4 The execution, delivery and performance by it of the HIF Documents and the Infrastructure Related Documents (to which it is a party) do not:

1.4.1 insofar as it is aware contravene any applicable law or directive or any judgment, order or decree of any court having jurisdiction over it;

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

1.4.3 contravene or conflict with its constitutional documents or arrangements.

1.5 All consents or steps, required by it in connection with the execution, delivery, issue, validity or enforceability of the HIF Documents and Infrastructure Related Documents (to which it is a party) have been obtained or taken and have not been withdrawn or omitted.

1.6 It is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.

1.7 No claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect.

1.8 It has not committed any Prohibited Act.

1.9 It has not, and its Associated Persons have not, engaged in and will not engage (directly or indirectly) at any time, in any activity, practice or conduct that would constitute an offence under the Bribery Act 2010.



2 **Deliverability**

- 2.1 No third party has any Security over the Site or any part of it or any other assets of the Grant Recipient which would prejudice the delivery of the Infrastructure Works.
- 2.2 All Consents (as are required by Homes England at the time of the relevant Claim) have been obtained and have not been withdrawn.
- 2.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.4 The Grant Recipient has or shall procure that the Developer sufficient legal control of the Site to enable Infrastructure Works Practical Completion of all Infrastructure Works.
- 2.5 It will procure that all Infrastructure Works have been and will be undertaken:
- 2.5.1 in a way to ensure that the Infrastructure Works meets the Required Standards and permits the delivery of the Housing Outputs; and
- 2.5.2 in accordance with the terms of the Bid.
- 2.6 Save as disclosed in the Certificate of Title, the Site is free from any conditions, restrictions or covenants which do or might affect the right to carry out the Infrastructure Works or achieve Infrastructure Works Practical Completion of all Infrastructure Works.
- 2.7 It shall take all reasonable steps to satisfy Homes England that its members and any Developers and any Contractors employed in connection with the Infrastructure Works are suitable and competent in all respects to allow the proper performance of all necessary work or tasks in relation to the Infrastructure Works.
- 2.8 Save as disclosed in the Certificate of Title, the Grant Recipient has:
- 2.8.1 good title to the Site and all other assets (including, but not limited to, Intellectual Property Rights), free from Encumbrances other than a Permitted Encumbrance or freedom to use those assets for that purpose under all applicable laws; and
- 2.8.2 access to and freedom to use under all applicable laws:
- (a) the Site;
- (b) any buildings or fixtures on the Site;
- (c) any easement, wayleaves or other rights necessary for access to and use of the Site.
- 2.9 The Grant Recipient is or shall procure that the Developer is in compliance with all applicable Environmental Laws.
- 2.10 The Grant Recipient is or shall procure that the Developer is in compliance with the terms of all Environmental Consents necessary for the ownership and operation of the Site, facilities and businesses as presently owned and operated and as presently proposed to be owned and operated.

- 2.11 Save as disclosed in the Certificate of Title, there is no Environmental Claim which is current, pending or threatened against it and there are no past or present acts, omissions, events or circumstances that could form the basis of any Environmental Claim against it<sup>26</sup>.
- 2.12 Save as disclosed in the Certificate of Title, there are no circumstances that may prevent or interfere with it obtaining or being in compliance with any Environmental Consent in the future and no action is pending or threatened by any authority against it which would result in any Environmental Consent being revoked, suspended or varied.
- 2.13 To the best of its knowledge and belief (having made all reasonable and proper enquiries) and save as disclosed in the Certificate of Title, no Dangerous Substance has been used, disposed of, generated, stored, transported, dumped, released, deposited, buried or emitted at, on, from or under any premises owned, leased, occupied, controlled or used by the Grant Recipient in circumstances where this results or could be expected to result in a liability on the Grant Recipient.

### 3 **Operational issues**

- 3.1 No Event of Default has occurred and is continuing or would result from the making of any payment of HIF Funding.
- 3.2 No other event or circumstance is continuing which constitutes (or with the giving of notice, the lapse of time, the determination of materiality or the fulfilment of any other applicable condition or any combination of the foregoing), would or could be expected to constitute a default by it under any other document or arrangement which is binding on it or on any of its assets in any case to an extent or in a manner which has or could be expected to have a Material Adverse Effect.
- 3.3 [Other than the registration of the HIF Documents at Companies House, the Financial Conduct Authority, the Land Registry and the Land Charges Registry (as appropriate), it is not necessary that any HIF Document to which it is a party, or to which the Grant Recipient is a party, be filed, recorded or enrolled with any court or other authority in England or that any stamp, registration or similar tax be paid on or in relation to any HIF Document to which it is a party or the transactions contemplated by the HIF Documents.]
- 3.4 The Grant Recipient has appointed a Principal Designer and has provided Homes England with a copy of the Principal Designer's notification to the Health and Safety Executive of the Particulars specified in Schedule 1 of the CDM Regulations.
- 3.5 Where the General Block Exemption Regulation under Commission Regulation (EU) No 651/2014 applies, the Grant Recipient has provided all necessary notifications to the relevant authorities pursuant to such regulation.

### 4 **Information**

- 4.1 All information supplied by or on behalf of it to Homes England or its agents or employees in connection with the Grant Recipient's initial application for HIF Funding or in the course of the subsequent negotiations was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.

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<sup>26</sup> Where land is being purchased, Homes England may require obligations in respect of Land Registry registrations

- 4.2 It has informed Homes England of any material change that has occurred since the date of submission of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect.
- 4.3 It is not aware of any material fact or circumstance that has not been disclosed to Homes England and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 4.4 The Bid and the Expenditure Forecast supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.
- 4.5 All data or other information submitted to Homes England to date under this Agreement is accurate.
- 4.6 So far as the Grant Recipient is aware (having made all reasonable enquiries) the Infrastructure Works and the Housing Outputs (including, inter alia, all Milestone Dates) remain capable of being delivered in accordance with the Infrastructure Details without the need for change.
- 4.7 It is not aware of any material fact or circumstance that would adversely affect the availability and deliverability of the Grant Recipient Contribution (in whole or in part).
- 4.8 It has not become aware of any matter which would cause the terms of the State Aid Opinion to be misleading or inaccurate or which would cast doubt upon its continuing validity.

**5 Reports and Directions**

No Report or Direction has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making of a Report or a Direction in relation to the Grant Recipient's obligations under the HIF Documents and Infrastructure Related Documents (to which it is a party) constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

## Schedule 6 - Special Contractual Provisions

1 ***[Developer Conditions – as agreed between the parties. Homes England may require specific step in rights in the contract between the Grant Recipient and the Developer.]***

2 ***[Clawback Provisions – as agreed between the parties]***

3 ***[Recovery Strategy Provisions<sup>27</sup> – as agreed between the parties]***

4 ***[Restriction on Title – as agreed between the parties. The restriction would be substantially in one of the following forms, which can be updated on scheme by scheme basis:***

***["No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by Homes England of 1 Friargate, Coventry CV1 2GN or its conveyancer]***

***["No disposition of the registered estate by the proprietor of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed by a conveyancer that the provisions of clause 7.4.1 of a grant agreement dated [ ] made between (1) Homes England and (2) [ ] have been complied with or that they do not apply to the disposition".]***

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<sup>27</sup> To be agreed on a case by case basis.

## Schedule 7

### Pre Commencement Conditions

***[these conditions are to be reviewed on a case by case basis]***

- 1 Prior to the date of this Agreement, the Grant Recipient has provided the following to Homes England (in forms satisfactory to Homes England):
  - 1.1 [the Grant Recipient's CPO Strategy for the Site];
  - 1.2 evidence of the Professional Team's capability, capacity and resourcing to deliver the Infrastructure Works by the Infrastructure Works Practical Completion Date;
  - 1.3 a Legal Opinion dated prior to the date of this Agreement;
  - 1.4 a copy of the Grant Recipient's procurement strategy in a form satisfactory to Homes England;
  - 1.5 a copy of the Expenditure Forecast;
  - 1.6 a certificate from the Grant Recipient's Section 151 Officer that all expenditure to which HIF Funding will be applied is classified (according to proper accounting practices) as capital expenditure;
  - 1.7 an opinion (satisfactory to Homes England acting reasonably) given by a firm of reputable solicitors who have an expertise in State Aid Law as to the State Aid treatment of the Infrastructure Works;
  - 1.8 [a satisfactory Valuation<sup>28</sup>];
  - 1.9 a Housing Delivery Statement;
  - 1.10 evidence satisfactory to Homes England demonstrating that the arrangements relating to all HIF Funding for the Infrastructure Works accord with the Delivery Plan;
  - 1.11 evidence satisfactory to Homes England demonstrating that the arrangements relating to all funding other than HIF Funding for the Infrastructure Works in addition to the HIF Funding accord with the Expenditure Forecast; and

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<sup>28</sup> Provisions to be used where HIF Funding is being utilised for site assemble/site acquisition.

**Schedule 8**

**Delivery Plan**

**Annexure 1**  
**Expenditure Forecast**

**Annexure 2**  
**Housing Delivery Statement**



**Annexure 3**  
**Infrastructure Site**

**Annexure 4**  
**Housing Site**

**Annexure 5**

**Assurance Framework**



- 1 We have investigated the title of the Grant Recipient to the Property, including:
  - 1.1 reviewing up-to-date official copies of the title register(s) and filed plan(s) of the Property from the Land Registry together with all documents referred to on the title register(s);
  - 1.2 where the Property is unregistered, reviewing the epitome of title; and
  - 1.3 carrying out all appropriate searches and enquiries (including enquiries of the Grant Recipient) in relation to the Property, that in our reasonable opinion a prudent lender would expect to be made prior to advancing monies on the security of the Property.
- 2 The Grant Recipient is the contracting party for purposes of the Grant.
- 3 The Property:
  - 3.1 is held [freehold/leasehold] by the Grant Recipient as sole legal and beneficial owner [and (where relevant) includes the Infrastructure Site];
  - 3.2 is held leasehold, the lease is on standard commercial terms;
  - 3.3 is registered with absolute title at the Land Registry<sup>37</sup>;
  - 3.4 (if the Property or part of the Property is not registered at the Land Registry) there is no caution registered against first registration and no event has occurred as a result of which first registration should have been effected;
  - 3.5 has the benefit of planning permission to allow its being developed and used for the Scheme which is:
    - 3.5.1 more than six weeks old;
    - 3.5.2 not subject to any challenge as to its validity;
    - 3.5.3 not personal;
    - 3.5.4 not subject to any unusual or onerous conditions which are still to be discharged or any conditions which should already have been discharged; and
    - 3.5.5 not subject to any enforcement proceedings; and
  - 3.6 The Property is subject to no encumbrances which would materially effect the Grant Recipient's ability to deliver the Scheme and the Property is not subject to:
    - 3.6.1 any planning agreements, highways agreements, adoption agreements, other agreements relating to town and country planning matters or similar; and/or
    - 3.6.2 sale agreements, estate contracts, options, rights of pre-emption or similar for the disposal of any right or interest in the Property.
  - 3.7 If any matters as described at paragraph 3.6.1 are disclosed in the Schedule, the Property is not subject to any other outstanding obligations relating to the carrying out of works or

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<sup>37</sup> If the Property or part of it is not registered, please include details of the root of title in the Schedule.

payment of monies pursuant to such agreements and there are no material obligations under such agreements which remain to be observed or performed

- 4 There are no financial charges secured on the Property which will have priority to the Legal Charge.
- 5 The Grant Recipient has confirmed that there are no insurance policies relating to planning, title or covenants affecting the Property.<sup>38</sup>
- 6 Where the Property also comprises other land which will not be the subject of the Scheme, the Grant Recipient and the [Infrastructure Site/Housing Site] have the benefit of such rights and easements (on reasonably satisfactory terms) as are necessary to make the Scheme capable of independent delivery.
- 7 The Property or (where appropriate) the interest of the Grant Recipient in the [Infrastructure Site/Housing Site] is sufficient to allow the Scheme to be developed and completed without the need to obtain any further property or rights or the consent of any third party.
- 8 The roads and sewers serving the [Infrastructure Site/Housing Site] are adopted and the [Infrastructure Site/Housing Site] enjoys direct pedestrian and vehicular access to the public highway at every point where access is proposed and both foul and surface water drain directly to a public sewer.<sup>39</sup>
- 9 The Grant Recipient has a good and marketable title to the Property and to any appurtenant rights free from prior mortgages or charges and from onerous encumbrances that have an adverse effect on the development or use of the Property for the Scheme or its intended disposal, or its value or marketability.
- 10 We have compared the Site Plan and the description of the Property against relevant plans in the title deeds and, in our opinion, there are no material discrepancies.
- 11 We have ourselves received satisfactory evidence or have been provided with a copy of a letter from the Grant Recipient's insurer or the Grant Recipient's insurance broker that there either is, or will be prior to any funding, sufficient insurance in place covering all risks appropriate to the state of construction of the Scheme for the Insurance Amount as set out above.
- 12 We are in possession of such searches<sup>40</sup> [or search insurances<sup>41</sup>] as are reasonably appropriate for Homes England in making the Grant available and securing that upon the

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<sup>38</sup> If there are any title indemnity policies etc, the Schedule should include details of the insurer, policy number, indemnity limit. brief summary of the risk covered and any unusual conditions or exclusions in the policy.

<sup>39</sup> Homes England is expecting that where this statement cannot be made, the Infrastructure Site or Housing Site will benefit from adequate rights of pedestrian and vehicular access and easements for the laying and maintaining of service media so as to enable the completed Scheme to be fit for occupation and marketable for disposal, supported where necessary by adoption agreements with appropriate bonds or sureties.

<sup>40</sup> Homes England is expecting as a minimum:(1) a local authority search in form LLC1 and CON29 Part 1, appropriate CON29 Part 2 enquiries including road proposals by private bodies, parks and areas of outstanding natural beauty, pipelines, hazardous substance consents, environmental and pollution notices and common land and town or village green, (2) a highways search, (3) a drainage and water search, (4) an index map search, (5) a desktop flood and desktop environmental search, (6) a chancel repair liability search, (7) a coal mining search (if in a relevant area), (8) utilities and infrastructure searches and (9) (if the Property or part of the Property is unregistered) Land Charges Act searches. Local authority searches are to be no older than four months as at the date of this certificate.

<sup>41</sup> Insurance in lieu of searches is not generally accepted by Homes England but may be in exceptional circumstances, and if accepted, must provide a minimum level of indemnity equal to the Amount of Grant.

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[Infrastructure Site/Housing Site] and in our view such searches are sufficient for us to provide this certificate to Homes England.

- 13 The Grant Recipient has confirmed that so far as it is aware:
- 13.1 the Property is not affected by any environmental contamination or any other matters capable of causing harm to the environment or which is likely to cause an actionable nuisance;
  - 13.2 there are no material breaches of any environmental laws or disputes of an environmental nature affecting the Property;
  - 13.3 the Property has not been affected by flooding (and insurance cover in relation to flooding remains on risk); and
  - 13.4 the Property has not been affected by subsidence.
- 14 The Grant Recipient is not subject to any other contractual obligations which will adversely affect its ability to carry out the Scheme or which materially affect the cost of the Scheme.
- 15 The Grant Recipient has confirmed that it is not aware of any material breach of the requirements of any statute affecting the Property that are capable of enforcement, nor of any outstanding order, notice or other requirement of any local or other authority that affects the Property.
- 16 The Grant Recipient has confirmed that there are no disputes, claims, actions, demands or complaints in respect of the Property which are outstanding or which are expected by it.
- 17 Nothing has been revealed by our searches and enquiries which would prevent the Property being developed and used for the Scheme.
- 18 The Property is not subject to any leases or other rights of occupation and the Grant Recipient is not aware of any unauthorised occupation at the Property or, if the Property is subject to any such matters, they will not adversely effect the delivery of the Scheme<sup>42</sup>
- 19 The Grant Recipient has obtained a rights to light report (details at paragraph 20) which confirms that the Development will not interfere with any rights of light of neighbouring landowners.<sup>43</sup>
- 20 The Grant Recipient has commissioned the following technical reports in relation to the Scheme and Homes England will be given direct reliance on those indicated below:

<b>Report type</b>	<b>Date</b>	<b>Prepared by</b>	<b>Reliance to Homes England<sup>44</sup></b>
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<sup>42</sup> If the Property is subject to any leases, licences or other basis of occupation, please provide details in the Schedule including date, parties, current occupier, term, security of tenure or other renewal rights, break options, rights of first refusal.

<sup>43</sup> If the report reveals rights which might be infringed, please include details in the Schedule of the current status and proposed resolution.

			[Yes / No]
			[Yes / No]

21 The following documents contain step in rights in favour of Homes England which together would enable Homes England to procure delivery of the Scheme:

Document	Date	Parties

22 Whilst we express no opinion on whether any transaction affecting title to the Property may have been at an undervalue or otherwise liable to be set aside under the provisions of the Insolvency Act 1986, the Grant Recipient has told us that it is not aware of any circumstances which could render any such transaction liable to be set aside under the provisions of that Act.

23 The Grant Recipient has obtained all necessary consents to allow it to grant the Legal Charge.

24 None of:

24.1 any principal in the Grant Recipient's Conveyancer;

24.2 any other solicitor or registered European lawyer in the Grant Recipient's Conveyancer;

24.3 any spouse, civil partner, child, parent, brother, or sister of any such person;

is interested in the Property (whether alone or jointly with any other) as Grant Recipient.

25 There are no other material matters that we consider ought to be brought to your attention in relation to the Property or the Grant Recipient's ability to deliver the Scheme.

26 We have professional indemnity insurance at least equal to the PI Cover Amount.

We confirm that the Grant Recipient has read this Certificate of Title within three working days prior to the date hereof and confirmed that it has no information which renders any statement in this Certificate incomplete, misleading or inaccurate.

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<sup>44</sup> Insert in this table details of technical reports e.g rights of light reports, environmental surveys, asbestos demolition surveys and similar, the named issuing party (from whom any reliance would be given) and whether a reliance letter to Homes England is proposed (yes/no).

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## The Schedule

Signed on behalf of the Grant Recipient's Conveyancer .....
Name of Authorised Signatory .....
Qualification of Authorised Signatory.....
Date of Signature .....

[Note:

1. If applicable, there will be a separate solicitor's undertaking with regard to the registration of the Legal Charge.]

**Signatory page**

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The common seal of )  
**HOMES AND COMMUNITIES AGENCY** )  
is hereunto affixed in the presence of: )

.....

Name:  
Authorised Signatory

**EXECUTED** as a **DEED** by affixing )  
**THE COMMON SEAL** of )  
**[COUNCIL]** )  
in the presence of: )

Authorised Officer

**[Grant Recipient's attestation details to be provided]**