



Homes
England

Date: 19 January 2021

Our Ref: RFI3256

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████
By Email Only

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

Dear ██████████

RE: Request for Information – RFI3256

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

*PLEASE COULD YOU PROVIDE A COPY OF THE "GRANT DETERMINATION AGREEMENT" BETWEEN ESSEX COUNTY COUNCIL AND HOMES ENGLAND FOR THE **HIF BID FOR THE A133 LINK ROAD AND RAPID TRANSIT SYSTEM.***

Response

We can confirm that we hold information that falls within the scope of your request. However, we rely on section 43 and section 41 of the FOIA to withhold some of the information held from disclosure.

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 Grant Funding Agreement (GFA) 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; and

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- Homes England acknowledges there is an interest in the terms of the funding it delivers.

Arguments in favour of withholding:

- 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 affect Homes England's ability to deliver against its objectives in our strategic plan;
- To disclose information at a time when negotiations are ongoing would significantly prejudice the council's ability to deliver the program. The program is a key scheme and failure to deliver could lead to significant planning harm to the local area;
- Disclosure would result in the council's negotiating position being adversely affected. If other potential or confirmed sources of funding became aware of how much funding is likely to be provided and by whom it would be likely to result in Homes England having to pay a higher grant than would have otherwise be the case. This would result in greater cost to the public purse which would not be in the public interest; 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>

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 the GFA is subject to confidentiality provisions, section 41 of the FOIA is engaged. Information contained within the GFA includes information for the ARB scheme that have 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.



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

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

Advice and Assistance

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. As such please find enclosed as Annex A the template for the Housing Infrastructure Fund (Marginal Viability Fund) grant agreement which shows the requested terms and conditions of funding.

Right to Appeal

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

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

Or by email to infogov@homesengland.gov.uk

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

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

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

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

Yours sincerely,

The Information Governance Team
For Homes England

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| | |
|--------------------------|--|
| Document Type | Short Form Funding Agreement - Housing Infrastructure Fund (Marginal Viability Fund) (A) |
| Use | <ul style="list-style-type: none"> • Solely for use on Housing Infrastructure Fund (Marginal Viability Fund) transactions. • If you are instructed to utilise the Short Form Funding Agreement - Housing Infrastructure Fund (Marginal Viability Fund) for any other programme, written confirmation should be obtained from Parvinder Miah, In-house Legal Services in the first instance. |
| Mandatory Clauses | <ul style="list-style-type: none"> • This document should be accompanied by the Standard Terms and Conditions (included at Schedule 2). • The Standard Terms and Conditions of Funding are not negotiable (see Instructions below). This must be communicated to the Local Authority and their legal advisors. |
| Instructions | <ul style="list-style-type: none"> • All instructions must be issued using the Transaction Management System and will be accompanied by a term sheet setting out the key terms and points of principle agreed with a Local Authority. • It is your responsibility to ensure that Homes England's position is appropriately protected. • Homes England's standard documents should therefore be fully reviewed by you for each transaction to ensure that they are fit for purpose. • The Standard Terms and Conditions of Funding must not be amended. <p>Any instructions whatsoever (including of a "deal specific" nature) must be referred to Homes England Legal Services.</p> <ul style="list-style-type: none"> • Pre-Conditions to Funding: Prior to Funding, the completed CP checklist accompanied by a letter confirming that all of the CPs have been satisfied should be provided to your instructing officer. |
| Last Updated | 31st May 2019 |

Homes England – Short Form Funding Agreement (A) (the Agreement) in relation to:

Programme: Housing Infrastructure Fund (Marginal Viability Fund)

Project: **[insert name and PCS details]**

Dated **2019**

Parties:

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

[redacted] of **[address redacted]**
[redacted] (the **Local Authority**).

Recitals

- 1.1 Homes England agrees to make the Funding available to the Local Authority on the terms of this Agreement.
- 1.2 Subject to the terms of this Agreement, the Local Authority may seek to deliver the HIF Funded Infrastructure Works by directly procuring contractors or a Developer.
- 1.3 The Local Authority acknowledges and agrees that the HIF Funded Infrastructure Works will unlock delivery of residential units on neighbouring or adjoining land.

General

- 2.1 In this Agreement (which expression includes the recitals, the schedules and any appendices) the words and phrases defined herein shall unless the context otherwise requires or admits have the meanings thereby ascribed to them and this Agreement shall be subject to the provisions as to interpretation set out in paragraph 1 of Schedule 2 (**Standard Terms and Conditions of Funding**).
- 2.2 This Agreement shall be made and take legal effect on the date above provided that Homes England shall have no obligations hereunder until such time as the conditions set out in Part 1 of Schedule 4 (Pre Conditions) are met (such date being the **Effective Date**) to the satisfaction of Homes England or are waived by it or deferred by it to become pre conditions to drawdown of Funding (in each case in its absolute discretion).
- 2.3 The Local Authority acknowledges and agrees that Homes England's obligation to provide the Funding is subject to Homes England receiving any approvals Homes England may require (whether internally or from central Government) and on central Government making funds available to Homes England for the Funding. Homes England will not be in breach of its obligations under this Agreement if it is unable to provide the Funding should any such approval and/or funding not be forthcoming.
- 2.4 The terms set out in the left hand column of the Table below shall apply to this Agreement and shall have the meanings ascribed in the right hand column thereto:

| | |
|-------------------------|---|
| Total Commitment | Means Funding up to [redacted] pounds (£ [redacted]) |
| Project | means the HIF Funded Infrastructure Works |

| | |
|--|--|
| HIF Funded Infrastructure Works | means [insert description of works from offer letter]; |
| Site | means all of the land and buildings known as [insert details], registered at Land Registry under Title Number(s) [insert details] and identified on the plan(s) at Appendix 1 to this Agreement; |
| Availability Period | [] |
| Outputs and Milestones | See Schedule 3 |
| Start Date | [] |
| Project Completion Date | [] |
| Wider Project | [note – insert plan and description of the land which is to be developed for residential and/or commercial use which is to benefit from the HIF Funded Infrastructure Works] |
| Developer | means any party with whom the Local Authority enters into one or more works contracts with for the undertaking of the HIF Infrastructure Works and/or the Wider Project |
| Site Owner | means any party with a freehold and/or leasehold estate in the Project and/or the Wider Project or any part or parts thereof |

2.5 The terms set out in the left hand column of Schedule 1 (**Additional Defined Terms**) shall apply to this Agreement and shall have the meanings ascribed in the right hand column thereto.

2.6 [The provisions of Schedule 5 (**Additional Project Specific Provisions**) shall apply and this Agreement shall be read and constructed as amended thereby.]

3. Conditions Precedent

3.1 Conditions precedent to each Claim for Funding:

Homes England's obligations under this Agreement to make available any Funding is subject to the conditions precedent more particularly specified in Part 1 and Part 2 of Schedule 4, each being in a form and substance satisfactory to Homes England at the time:

- (a) when the Local Authority delivers a Claim Form to Homes England, and
- (b) when such Funding is to be made available to the Local Authority.

3.2 The conditions precedent required by Homes England pursuant to this clause 3 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.

4. Funding

Subject to the terms of this Agreement, Homes England will pay the Funding on the terms set out in this Agreement.

5 Reporting

The Local Authority will provide Homes England with the Monitoring and Progress Report in accordance with paragraph 9 of Schedule 2.

6 Repayment

The Local Authority will repay any overpayment of the Funding in accordance with paragraph 8 of Schedule 2.

7 Communications

7.1 The Local Authority 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, Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH

with a copy to

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

7.2

Any notice or other communications between us shall be accepted as having been received;

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

(b) if delivered by hand, on the day of delivery,

in the case of Homes England addressed as set out above and in the case of the Local Authority [address].

Either of Homes England or the Local Authority may change the details of service by notice in accordance with the above.

8 Amendments to the Agreement

Homes England may amend or vary this Agreement:

(a) unilaterally to give effect to mandatory changes required by the UK or EU laws or regulations; or

- (b) in any other case by mutual written consent between the Local Authority and Homes England.

9 Termination

Homes England reserves the right to terminate this Agreement by notice in writing and / or to implement paragraph 7 of Schedule 2 (in respect of which any of (a), (b) and (c) below constitute an Event of Default for the purposes of paragraph 7.1) with immediate effect where:

- (a) the Local Authority fails to achieve any Milestone;
- (b) the Local Authority fails to remedy any breach of this Agreement which is capable of remedy as soon as practicable and in any event within thirty (30) Business Days of Homes England requesting the Local Authority to do so;
- (c) the Local Authority commits a breach of this Agreement which is incapable of remedy.

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

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

.....
Name:
Authorised Signatory

The common seal of)
[LOCAL AUTHORITY])
is hereunto affixed in the presence of:)

.....
Name:
Authorised Signatory

SCHEDULE 1

ADDITIONAL DEFINED TERMS

| | |
|---------------------------------------|---|
| Assurance Framework | means the assurance framework for the Housing Infrastructure Fund – Marginal Viability Funding provided by Homes England to the Local Authority. |
| Development Costs | means the costs as set out in the Cashflow which Homes England is satisfied will be reasonably and properly incurred by the Local Authority in carrying out the HIF Funded Infrastructure Works provided such costs constitute capital expenditure in accordance with regulations made under the Local Government Act 2003. |
| Disposal | means a disposal of any legal or equitable interest in or over the Site or part thereof including by way of lease (other than (in relation to any land assets) the grant of a legal charge or the grant of a licence not creating exclusive possession terminable on three (3) months' notice or less) and the terms “Dispose” and “Disposed” shall be construed accordingly. |
| End Date | The date specified in Schedule 3 by which Homes England may exercise any Clawback provision. |
| Local Authority Senior Officer | means the employee of the Local Authority holding the title of 'Section 151 Officer' or any such other person with equivalent seniority notified to Homes England by the Local Authority. |
| Initial Grant Recovery Amount | means [£ Amount] or [Not Applicable]. |
| Market Value | <p>means in relation to the Site or any part or parts thereof (including in each case the works (or the relevant part thereof) thereon) the Market Value as defined in the most current guidance and statements of asset valuation, practice and guidance notes of the Royal Institute of Chartered Surveyors BUT (in addition to the assumptions mentioned in that definition) on the following further assumptions in relation to the Site (or relevant part or parts of it) where owned by the Local Authority only:</p> <ul style="list-style-type: none"> a) the Disposal is subject to and with the benefit of any subsisting leases which are Permitted Disposals or agreements for the same but otherwise sold with vacant possession free from all charges and other encumbrances; b) the Local Authority has a good and marketable title; c) all necessary consents for any works have been obtained and the same can be lawfully used; d) any damage caused by any insurable risk has been made good; e) it has the benefit of all easements and rights necessary for the beneficial use and occupation of it, and f) which complies with: <ul style="list-style-type: none"> i. the Local Authority's obligations to obtain Market Value under the Local Government Act 1972; and ii. State Aid Law (as defined under paragraph 8 of Schedule 2), <p>in each case disregarding the existence of this Agreement and any provision for Clawback.</p> |
| Project Completion Date | The date by which the Project is completed in accordance with the terms of this Agreement to Homes England's reasonable satisfaction. |
| Receipts | <p>means the aggregate of all proceeds or other receipts in relation to the Project and/or the Wider Project to which the Local Authority (in whatever capacity) or any other party as provided for by this Agreement has received or is entitled to receive including but not limited to:</p> <ul style="list-style-type: none"> (a) all rents, licence fees and other income or sums received or receivable; |

| | |
|---------------------|---|
| | <p>(b) all proceeds received or receivable or the amount or value of all consideration received or receivable from any disposal of any part of the Site;</p> <p>(c) the proceeds of any insurance policy;</p> <p>(d) interest (if any) accruing on any items listed at (a) to (c) above;</p> <p>(e) any anticipated or projected receipts which are envisaged with respect to any part of the Site which has not been disposed of by the Project Completion Date;</p> <p>(f) all income or sums received or receivable from any party (directly or indirectly benefitting from the Project and/or the Wider Project) pursuant to an obligation imposed by the Local Authority (in whatever capacity)</p> <p>but excluding Funding.</p> |
| Title Letter | means the certificate of title to the land in form set out in Appendix 3. |

SCHEDULE 2

STANDARD TERMS AND CONDITIONS OF FUNDING

1 DEFINITIONS and INTERPRETATION

Availability Period means as defined in clause 2.4 to the Agreement;

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

Cashflow means the cashflow for the Project as detailed at Appendix 2 setting out information including but not limited to:

- (a) total costs;
- (b) envisaged total Receipts;
- (c) total source(s) of funding for the Project;

as updated from time to time with the approval of Homes England and provided to Homes England pursuant to the Monitoring and Progress Report;

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

Claim means an application for Funding;

Claim Day

means a day on which a Claim for Funding is submitted in accordance with the terms of this Agreement, such day being no later than the 20th day within a Claim Month save where the Claim Month falls during March when the day is to be no later than the 15th of March;

Claim Month means for the purposes of this Agreement:

- (a) the month on which the first Claim for Funding is received by Homes England; and
- (b) the month which is every third month following the month on which the first Claim for Funding is received by Homes England.

Claim Form means the document in the form of the template annexed as Appendix 4 to be completed and provided by the Local Authority to the nominated Homes England contact at agreed intervals to claim Funding;

Clawback means Homes England's right to recover the whole or any part of the Funding under paragraph 7 of this Schedule 2;

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

EU Procurement Regulations means all applicable United Kingdom and European procurement legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services including European Union directives 89/665/EEC, 2004/17/EC and 2014/24/EU, United Kingdom Statutory Instruments 1991/268, 1995/201, 1993/3228, 2006/6 and 2015/102 (Public Contracts Regulations 2015) insofar as the same are applicable;

Financial Year means the period from 1st April in one year to the 31st March in the subsequent calendar year;

Funding means funding made or to be made under the Agreement or the principal amount of each advance of Funding made by Homes England under the Agreement or the aggregate amount of all advances of Funding which have been made by Homes England as a financial contribution towards the Project;

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 Funded Infrastructure Works means as defined in clause 2.4 to the Agreement;

Initial Cashflow means the cashflow for the Project as detailed at Appendix 2 setting out information including but not limited to:

- (a) total costs;
- (b) envisaged total Receipts;
- (c) total source(s) of funding for the Project.

Intellectual Property Rights includes, without limit, all copyright (and future copyright), patents, trademarks and service marks (whether registered or not) design rights, registered designs, database rights, moral rights and know-how together with the right to register, protect, enforce and exploit the above anywhere in the world;

Monitoring and Progress Report means a report (including the Cashflow) prepared by the Local Authority and submitted to Homes England, the means of submission and the location of the form being as notified by Homes England to the Local Authority from time to time in writing;

Milestones means the key events and stages as agreed between the Local Authority and Homes England in relation to the Project as detailed in Schedule 3 and Milestone Dates shall be construed accordingly;

Outputs means the specific targets and objectives agreed between the Local Authority and Homes England as detailed in Schedule 3;

Permitted Disposal means:

- (a) a Disposal of freehold or leasehold part or parts of the Site in an arm's length transaction;
- (b) a Disposal of part or parts of the Site pursuant to a lease, or licence and in an arm's length transaction;
- (c) a 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;
- (d) the grant of an easement or wayleave agreement for the supply of statutory services or infrastructure which is consistent with and provided that the easement or wayleave does not prejudice the delivery of the Project;

- (e) a Disposal 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;
- (f) any other disposal which Homes England agrees (in writing) from time to time will become a Permitted Disposal;

provided that in the case of a Disposal the contracted sale price is at Market Value and the Disposal is in line with the Project Details;

Project Details means information provided by or on behalf of the Local Authority in relation to the Project, which shall include, without limitation:

- (a) the descriptive and other details in respect of the Project as set out in the definitions of Project, the Milestones and the Outputs;
- (b) all details of the works required to complete the Project;
- (c) the Cashflow;
- (d) the timing for Disposals,

each as may have been varied from time to time with Homes England's prior agreement in accordance with the terms of the Agreement;

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

Regulatory Body means any UK or EU Government department or agency or any other regulatory body having jurisdiction whether regional, national or local and including, but not limited to, the Ministry for Housing, Communities and Local Government, UK central Government, the European Commission or any successor such department, agency or regulatory body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of Homes England;

1.2 INTERPRETATION

1.2.1 A reference to:

- (a) the masculine includes the feminine and vice versa;
- (b) the singular includes the plural and vice versa; and
- (c) a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.

1.2.2 Any reference in the Agreement (including, for the avoidance of doubt, these Standard Terms and Conditions) to any condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such condition, sub-condition, paragraph, schedule, appendix or section heading of the Agreement.

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

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

1.2.5 A party means a party to the Agreement.

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

1.2.7 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 the Agreement or such other person as may be specified to the other parties from time to time.

- 1.2.8 If there is any ambiguity or conflict between the implied terms and the express terms of the Agreement then the express terms shall prevail.
- 1.2.9 No review comment or approval by Homes England under the provisions of the Agreement shall operate to exclude or limit the Local Authority's obligations or liabilities under the Agreement save where Homes England have confirmed the said review comment or approval in writing.
- 1.2.10 The Local Authority shall be responsible as against Homes England for the breach of this Agreement by any contractor, Developer or relevant Site Owner (as applicable) as if they were the breach of the Local Authority.
- 1.2.11 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 the Agreement or agreed in writing by Homes England, relieve the Local Authority of any of its obligations under the Agreement or of any duty which it may have to ensure its correctness, accuracy or suitability nor does it 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, or acknowledgement was given or review made.
- 1.2.12 "**disposal**" includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and "**dispose**" will be construed accordingly.
- 1.2.13 any reference to "works" in the Agreement (including these Standard Terms and Conditions) shall mean the works to be carried out on each Site to enable the delivery of a Project in accordance with the Agreement, the Project Details, the Project documents, the consents and the authorisations.

2 PROVISION OF FUNDING

Homes England (in exercise of its powers under the Housing and Regeneration Act 2008) agrees to make available to the Local Authority during the Availability Period the Funding in an aggregate principal amount equal to the Total Commitment.

3 PRE-CONDITIONS OF FUNDING

Homes England's obligations under this Agreement are subject to it having received all documents and other evidence detailed in Schedule 4 each in form and substance to the satisfaction of Homes England in its absolute discretion.

4 WARRANTIES AND REPRESENTATIONS

In accepting this offer (and every time the Local Authority submits a Claim Form) the Local Authority warrants and confirms to Homes England that:

- 4.1 it:
 - 4.1.1 is a legally constituted body and has the full capacity and authority and all necessary consents to enter into and perform the obligations under this Agreement;
 - 4.1.2 acknowledges that it constitutes valid, legal and binding obligations of and on the Local Authority which are enforceable against it;
- 4.2 all information, documents and accounts provided by the Local Authority or on its behalf, from time to time are and will be true, valid and correct;
- 4.3 it is not in breach of any law, regulation, agreement or obligation which affects or may affect its ability to commit to this Agreement;
- 4.4 is not under any statutory obligation to carry out the Project or any part of it;
- 4.5 is not aware of any fact or circumstance that may affect the successful completion of the Project and/or the Wider Project or otherwise constitutes a breach of this Agreement;
- 4.6 is not aware of any fact or circumstance whereby the Project and/or the Wider Project is not proceeding in accordance with the Cashflow;

- 4.7 it will ensure that all the necessary consents and licences are in place and maintained for the duration of the Project without limitation;
- 4.8 it will ensure that all necessary planning consents and property licences for the Project are in place and maintained for the duration of the Project. If any such consents or licences are varied in any way or revoked it must inform Homes England in writing immediately;
- 4.9 it has or has secured through any Developer or Site Owner full legal control and good title to the Site and all other assets (including Intellectual Property Rights) necessary to enable delivery of the Project and has all such further rights as are necessary to comply with its obligations in this Agreement;
- 4.10 it will comply with the Assurance Framework;
- 4.11 All:
- 4.11.1 Development Costs saved or recovered (as compared to those referenced in the Initial Cashflow);
- 4.11.2 any Receipts to the extent that they exceed the projected amount for such Receipts in the Initial Cashflow;
- 4.11.3 the Initial Grant Recovery Amount (if applicable); and
- 4.11.4 any other monies the Local Authority is required to recover from a contractor, Developer and/or Site Owner as stipulated in the Cashflow,
- may be retained by the Local Authority subject to:
- 4.11.5 Homes England's written approval; and
- 4.11.6 any conditions imposed by Homes England (in its entire discretion) as a term of such approval, and
- 4.11.7 any such monies must be used for further housing delivery.
- 4.12 it has (or, in respect of arrangements yet to be entered into, will have) in place legally binding arrangements with its contractor, Site Owners and Developers (as required) to recover any:
- 4.12.1 savings;
- 4.12.2 recoveries;
- 4.12.3 Receipts exceeding projections which are made and/or required to be made by a contractor, Developer and/or Site Owner (as applicable);
- 4.12.4 the Initial Grant Recovery Amount (if applicable); and
- 4.12.5 any other monies the Local Authority is required to recover from a contractor, Developer and/or Site Owner as stipulated in the Cashflow,
- such that the Local Authority can comply with its obligation in paragraph 4.11.
- 4.13 it will ensure or procure that Homes England is recognised as a third party pursuant to the Contracts (Rights of Third Parties) Act in contracts with its contractors, Developers and Site Owners (as applicable) such that Homes England's interest in paragraphs 4.11 and 4.12 pursuant to paragraph 7.2.6 will be recognised.
- 4.14 it will comply with EU Procurement Regulations (to the extent that the same apply).
- 4.15 it will procure that all contractors, Site Owners and Developers comply with EU Procurement Regulations (to the extent that the same apply), and

- 4.16 it has or has procured that the Developer has appointed a Principal Designer and Principal Contractor (each being as defined by the CDM Regulations) and has provided Homes England with a copy of the notification to the Health and Safety Executive of the particulars specified in schedule 1 of the CDM Regulations.
- 4.17 It has made its own assessment of the compliance of the Funding with State aid law and, where relevant, shall retain records of compliance with any block exemption or notification decision for not less than ten (10) years.

5 PAYMENT OF FUNDING

5.1 Mechanics and Payment of Funding

5.1.1 Claims must be submitted:

- (a) during a Claim Month: and
- (b) on a Claim Day,

save where a Claim Month would fall during the months of January and February of a given year when such Claim must be submitted during the month of March on a Claim Day;

5.1.2 Claims can be submitted in advance of spend but only where the spend by the Local Authority will be incurred in the relevant Financial Year, save where a Claim Month falls in March for which the Claim must relate to Development Costs already incurred;

5.1.3 Only one Claim can be made in a Claim Month unless otherwise agreed by Homes England in writing;

5.1.4 A Claim will not be regarded as having been validly made by the Local Authority unless:

- (a) it is submitted on a Claim Form which must be signed by the Local Authority Senior Officer and it is:
 - (i) received by Homes England no later than the time period specified in paragraph 5.1.1, and
 - (ii) delivered during the Availability Period, and
 - (iii) it relates to Development Costs and for which the Local Authority has not submitted any other Claim or received any other funding and it is accompanied by written evidence satisfactory to Homes England that the Development Costs have been incurred or will be incurred within a three (3) month period in the relevant Financial Year in which the Claim is made together with confirmation from the Local Authority Senior Officer that it has verified and approved the Claim;
 - (iv) it accords with the Cashflow and each Milestone is to be met by the relevant Milestone Date or is accompanied by evidence satisfactory to Homes England (at its absolute discretion) to justify any deviation, and
 - (v) it is for an amount which (if paid) would not cause the Total Commitment to be exceeded.

5.1.5 Subject to the terms of the Agreement, Homes England will pay Funding to the Local Authority within twelve (12) Business Days of receipt of a valid Claim;

5.1.6 Any amount not drawn by the Local Authority under this Agreement during the Availability Period will be automatically cancelled.

5.2 Use of Funding

5.2.1 The Funding will be the sole property of the Local Authority and will be used by the Local Authority for Development Costs only in line with the Milestones and the Cashflow;

5.2.2 Without affecting the obligations of the Local Authority in any way, Homes England is not bound to monitor or verify the application of any amount provided pursuant to the Agreement.

6 LOCAL AUTHORITY DELIVERY OBLIGATIONS

6.1 The Local Authority will procure that:

6.1.1 the Project commences by the Start Date and is carried out in accordance with the Milestone Dates and the Cashflow, and

6.1.2 it will use reasonable endeavours to assist any Developer or Site Owner to achieve the Outputs unlocked by the HIF Funded Infrastructure Works.

7 CLAWBACK ON DEFAULT

7.1 In the event that Homes England in its sole and absolute discretion determines that an Event of Default has occurred in respect of the events listed at paragraph 7.2 (Event of Default) Homes England has the right to call an Event of Default by issue of a notice to the Local Authority in respect of the same.

7.2 An Event of Default occurs where:

7.2.1 any representation or warranty made by the Local Authority pursuant to paragraph 4 is materially incorrect when made or repeated;

7.2.2 the Local Authority fails to achieve any Milestone by reference to the Milestone in each case as provided in Schedule 3;

7.2.3 the Local Authority commits an irremediable material breach of any of the terms and conditions of the Agreement and/or any other agreement the Local Authority has with Homes England; or fails to remedy a remediable breach in accordance with clause 9 (Termination) of this Agreement.

7.2.4 the Local Authority does not comply with paragraph 6 or 9

7.2.5 the Local Authority does not comply with any conditions on it to permit a retention pursuant to paragraph 4.11.6 , and/or

7.2.6 subject to the provisions of paragraph 4.11, any amount of Funding has not been spent by the Local Authority on Development Costs.

7.3 Homes England's rights

Where an Event of Default has occurred Homes England at its absolute discretion may by notice to the Local Authority:

7.3.1 pursuant to paragraph 7.2.2 only, consider and agree a revised Milestone Date with the Local Authority in which case any relevant condition of this Agreement shall apply mutatis mutandis to the revised Milestone Date;

7.3.2 pursuant to paragraph 7.2.4 only, require the Local Authority to prepare a plan to remedy and/or mitigate the effects of the Event of Default and submit the plan to Homes England within five (5) Business Days of such request for approval. Homes England (at its absolute discretion);

(a) may approve the terms of the plan to remedy in writing in which case any relevant condition of this Agreement shall apply mutatis mutandis to the terms of the plan to remedy albeit the Event of Default shall continue until such time as it is remedied to Homes England's satisfaction;

(b) decline to approve the terms of the plan to remedy with the Event of Default continuing.

7.4 **Acceleration**

7.4.1 On and at any time after the occurrence of an Event of Default which is continuing Homes England may by notice to the Local Authority suspend or withhold payment of any instalments and/or recover all or part of the Funding together with costs and expenses), any such recoveries to be paid to Homes England within three (3) Business Days of Homes England's demand.

8 **OVERPAYMENTS**

8.1 Homes England may vary or withhold any or all of the payments of Funding under this Agreement and/or require repayment of any or all Funding already paid to the extent that:

8.1.1 repayment or recovery is required under or by virtue of any European Union state aid laws (including without limitation under Article 107 of the Treaty on the Functioning of the European Union and/or any applicable judgment, court order, statute, statutory instrument, regulation, directive or decision (insofar as legally binding) ("State Aid Law"), and/or

8.1.2 Homes England is otherwise required to repay or recover such Funding in whole or in part or to the European Commission;

Any Funding required to be repaid in accordance with this paragraph 8 will bear interest at such rate as required under or by virtue of State Aid Law from the date of Homes England's notice requiring repayment to the date of repayment (both before and after judgement) or such other period as may be required under or by virtue of State Aid Law.

9 **APPLICANT NOTIFICATION AND REPORTING OBLIGATIONS**

9.1 **Reporting**

The Local Authority will:

9.1.1 from the date of this Agreement until the end of the Availability Period and no later than ten (10) Business Days following each Quarter Date, the Local Authority will provide the Monitoring and Progress Report to Homes England save that the first Monitoring and Progress Report shall be the period commencing on the date of this Agreement and ending on the next Quarter Date;

9.1.2 once the Availability Period has expired, except where Homes England has confirmed to the Local Authority in writing (within three (3) calendar months following the expiration of the Availability Period) that the provisions of paragraph 9.1.1 are to remain effective (at its discretion), the Local Authority will provide the Monitoring and Progress Reports to Homes England twice a year, such reports to be provided no later than ten (10) Business Days following the end of March and September of the relevant Financial Year until the completion of the Wider Project such other date that Homes England notifies the Local Authority of in writing;

9.1.3 notwithstanding paragraphs 9.1.1 and 9.1.2, provide Homes England with more frequent Monitoring and Progress Reports should it be requested to do so by Homes England (at its absolute discretion);

9.1.4 provide Homes England with such other information as Homes England may reasonably require in connection with the Project and the Wider Project (including without limitation evidence that a Claim relates to Development Costs) and the Outputs, Receipts and Milestones, and

9.1.5 procure that the Local Authority's representative and/or any other officers appointed by the Local Authority to deal with the Project will attend such meetings as Homes England may reasonably request to review progress in relation to the Project and Wider Project.

9.2 **Inspection and Audit Facilities**

The Local Authority will:

- 9.2.1 Allow or procure access to its premises for Homes England, its internal auditors, its other duly authorised staff or agents or any Regulatory Body and will allow such persons to inspect and take copies of documents relating to the Project and the Wider Project. Homes England will be entitled to interview the Local Authority's employees to obtain oral and/or written explanations of documents;
- 9.2.2 provide Homes England, in writing, with any such information about the Funding and/or the Project and the Wider Project and/or the Programme as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and/or compliance functions;
- 9.2.3 allow Homes England or persons authorised by it to inspect, audit and take copies of all reports, books, accounting records and vouchers which relate to the Funding and the Project and the Wider Project provided that Homes England does not impede or obstruct the progress of the Project; and
- 9.2.4 at all times retain documentary evidence to support each Claim and will maintain full and accurate accounts for the Project and the Wider Project in accordance with all applicable law and accounting standards and (to the extent that no accounting standard is applicable) use generally accepted accounting principles and practices of the United Kingdom then in force. For the purpose of this paragraph 4 "Accounting Standards" means the statements of standard accounting practice referred to in section 464 of the Companies Act 2006 issued by the Accounting Standards Board.

10 TITLE TO THE LAND

The Local Authority will procure that the Local Authority's Solicitor provides a Title Letter in respect of the Site to Homes England in accordance with paragraph 5 of Part 2 of schedule 4 to this Agreement.

11 DISPOSALS

Where the Site is owned by the Local Authority, the Local Authority will procure that the whole and any part or parts of the Site are disposed of by way of a Permitted Disposal only.

12 CONDUCT

- 12.1 The Local Authority must comply with and assist and co-operate with Homes England in order that it can comply with (and require third parties who benefit from this Funding and any appointed contractors, Site Owners and Developers) do the same) all applicable legal obligations and statutory requirements in relation to the Project, including, but not limited to:
 - 12.1.1 EU and UK Planning and Environmental legislation;
 - 12.1.2 State Aid Law;
 - 12.1.3 Any relevant health and safety legislation;
 - 12.1.4 Modern slavery;
 - 12.1.5 Employment legislation;
 - 12.1.6 CDM Regulations;
 - 12.1.7 Equal opportunities (in relation to race, sex, disability, faith and sexuality);
 - 12.1.8 Financial regulations and legislation;
 - 12.1.9 Copyright and Data Protection legislation.
- 12.2 In carrying out the Project the Local Authority must not act directly or indirectly in any way that will bring Homes England into disrepute.
- 12.3 The Local Authority must inform Homes England immediately if any of its elected members or senior officers are disqualified from holding office or subject to investigation or challenge which may have a detrimental effect upon Homes England and/or the Project.

- 12.4 The Local Authority will act in good faith to achieve the Milestones and Outputs and will provide evidence of this to Homes England as required by Homes England.
- 12.5 The Local Authority will provide Homes England with such evidence that it requires that the Development Costs have been incurred.
- 12.6 Homes England agrees, and the Local Authority accepts, that the Local Authority or Developer (as applicable):
- 12.6.1 is a "**client**" as defined by the CDM Regulations and warrants that it will make suitable arrangements for the managing the Project and maintaining and reviewing these arrangements throughout, so the Project is carried out in a way that manages health and safety risks in accordance with applicable Legislation including but not limited to the CDM Regulations;
- 12.6.2 will act as the only client in respect of the Project and the Local Authority hereby agrees to be the only client under the CDM Regulations for the Project;
- 12.6.3 shall comply fully with all the duties of the client under the CDM Regulations.
- 12.7 The Local Authority will procure that all contractors or Developers comply at all times with the Health and Safety Legislation and the CDM Regulations and the requirements of the Health and Safety Executive.

13 **INSURANCE**

The Local Authority or Developer,(as applicable) must take out and maintain with a reputable insurance company adequate insurance of the type and level of cover which it is reasonable to expect from a business such as that operated by the Local Authority or Developer (as applicable). The Local Authority must produce a schedule of all appropriate insurance cover and copies of all relevant cover notes and insurance policies to Homes England within ten (10) days of any such request being made by Homes England.

14 **CONFIDENTIALITY, FREEDOM OF INFORMATION, DATA PROTECTION, INTELLECTUAL PROPERTY, PUBLIC RELATIONS AND PUBLICITY**

14.1 **Definitions**

In this paragraph 14, the following words and expressions have the following meanings:

Confidential Information means any and all information whether disclosed or otherwise made available by one Party to another (or otherwise obtained or received by a Party) whether before or after the date of this Agreement including but not limited to:

- (a) know-how, confidential, commercial and financial information and all other information which should reasonably be treated as confidential (whether marked confidential or otherwise);
- (b) the existence or terms of this Agreement or other information relating to the Project and/or the Wider Project, and
- (c) information relating to a Party's business and affairs, its customers, employees and suppliers,

in whatever form in each case (including but not limited to information given orally or in writing or in any document electronic file or machine readable form or other means of recording or representing information whatsoever) and including any information (in whatever form) derived from such information;

EIR means the Environmental Information Regulations 2004, and any subordinate legislation made under the Environmental Information Regulations 2004 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;

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

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;

Information means in relation to:

- (a) FOIA 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) EIR 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 6 of the DPA;

Pre-existing Intellectual Property Rights means any Intellectual Property provided or used by the Local Authority in connection with the Project which exists as at the date of the Agreement.

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 Project, any Agreement or any activities or business of Homes England.

14.2 **CONFIDENTIALITY AND FREEDOM OF INFORMATION**

14.2.1 **Confidentiality**

- (a) Each party recognises that under the Agreement it may receive Confidential Information belonging to the other.
- (b) 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 the 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 Agreement.
- (c) The obligations of confidence referred to in paragraph (a) above will not apply to any Confidential Information which:
 - (i) is in, or which comes into, the public domain otherwise than by reason of a breach of the Agreement or of any other duty of confidentiality relating to that information, or
 - (ii) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential, or
 - (iii) is lawfully in the possession of the other party before the date of the Agreement and in respect of which that party is not under an existing obligation of confidentiality, or
 - (iv) is independently developed without access to the Confidential Information of the other party.
- (d) Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - (i) to enable the disclosing party to perform its obligations under the Agreement, or
 - (ii) 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 Local Authority 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

- (iii) 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
 - (iv) 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.
- (e) The Local Authority will ensure that all Confidential Information obtained from Homes England under or in connection with the Agreement:
- (i) is given only to such of its employees, professional advisors, contractors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
 - (ii) 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 otherwise than for the purposes of the Agreement;
 - (iii) where it is considered necessary in the opinion of Homes England the Local Authority will ensure that such staff, professional advisors, contractors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.
- (f) Nothing in this paragraph 14.2.1 shall prevent Homes England:
- (i) disclosing any Confidential Information for the purpose of:
 - (A) the examination and certification of Homes England's accounts, or
 - (B) 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
 - (ii) disclosing any Confidential Information obtained from the Local Authority:
 - (A) to any other department, office or agency of the Crown, or
 - (B) to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to the Agreement or any person conducting an Office of Government Commerce gateway review.
 - (iii) provided that in disclosing information under paragraphs 14.2.1 (f)(ii)(A) or 14.2.1 (f) (ii)(B) above 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.
- (g) Nothing in this paragraph 14.2.1 shall prevent a party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

14.2.2 **Freedom of Information**

- (a) The Local Authority acknowledges that Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information;
- (b) Homes England shall be responsible for determining at its absolute discretion whether:
 - (i) any Information is Exempted Information or remains Exempted Information, or
 - (ii) any Information is to be disclosed in response to a Request for Information;

- (c) Subject to paragraph 14.2.2 (d) below, the Local Authority acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:
 - (i) without consulting the Local Authority, or
 - (ii) following consultation with the Local Authority and having taken (or not taken, as the case may be) its views into account;
- (d) Without in any way limiting paragraphs 14.2.2 (b) and above, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Local Authority;
- (e) The Local Authority will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure obligations under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents, contractors and sub-contractors will), at their own cost provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England;
- (f) Nothing in the Agreement will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and/or the EIR in relation to any Exempted Information;
- (g) To the extent that the Local Authority becomes a FOIA Authority subject to the FOIA and the EIR during the course of the Agreement this paragraph will apply mutatis mutandis to both parties;
- (h) The obligations in this paragraph 14.2.2 will survive the expiry or termination of the Agreement 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 the Agreement or of any other duty of confidentiality relating to that information.

14.2.3 Publication of information before Parliament

The Local Authority acknowledges that the National Audit Office has the right to publish details of the Agreement in its relevant reports to Parliament.

14.3 Data Protection

For the purposes of this paragraph 14.3, "**Personal Data**" and "**Process**" shall have the meanings ascribed to them in the Data Protection Legislation as amended or re-enacted from time to time.

14.3.1 Cooperation

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

14.3.2 Registrations, notifications and consents

The Local Authority warrants and represents that it has obtained all and any necessary registrations, notifications and consents required by the DPL to Process Personal Data for the purposes of performing its obligations under the Agreement. The Local Authority undertakes at all times during the term of the Agreement to comply with the DPL (and the data protection principles contained therein) in processing all Personal Data in connection with the Agreement and shall not perform its obligations under the Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the DPL.

14.4 Intellectual Property Rights

- 14.4.1 All Intellectual Property Rights arising from the Project and the Wider Project vested in the Local Authority, other than pre-existing Intellectual Property Rights, unless specifically detailed and agreed in writing with Homes England, are hereby licensed to Homes England on a royalty free basis with the right to sub-license and assign (without limit).

- 14.4.2 Homes England is entitled to make publicly available best practice arising from the Project and/or the Wider Project ("**Project Know-how**") and (subject to paragraph 14.4.3) the Local Authority hereby grant to Homes England a licence to use such Project Know-how in accordance with this paragraph. Homes England will have the right to amend the Project Know-how or to combine with any other know how as it thinks fit when compiling and publishing what it regards as best practice.
- 14.4.3 If the Intellectual Property Rights in Project Know-how are owned by a third party, the Local Authority will use reasonable endeavours to obtain a licence for Homes England to use such Project Know-how in accordance with this paragraph 14. The Local Authority will notify Homes England where the Local Authority are unable to obtain such licence and will identify which parts of the Project Know-how Homes England is not licensed to use ("**Excluded Know how**").
- 14.4.4 Subject to paragraph 14.4.3 the Local Authority will provide Homes England with complete copies of and access to all information and know-how relating to or derived from the Project (including the methods by which the Project was conducted). The Local Authority will provide all assistance and explanation requested by Homes England to enable it to disseminate best practice.
- 14.4.5 The Local Authority agrees to indemnify Homes England and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by Homes England, or for which Homes England may become liable, with respect to any intellectual property infringement claim or other claim relating to the Intellectual Property Rights arising from the Project or the Project Know-how.

15 INDEMNITY

The Local Authority will be liable for and will indemnify Homes England in full for any expense, liability, loss, claim or proceedings arising under statute, tort (including negligence), contract and/or at common law in respect of personal injury to or death of any person or loss of or damage to property (whether belonging to Homes England or otherwise) or any claim by any third party arising directly or indirectly out of or caused or contributed to by the Project and/or the performance or non-performance or delay in performance by the Local Authority of its obligations under this Agreement except to the extent that the same is due to any act or neglect of Homes England.

16 ACCESS TO INFORMATION

- 16.1 The Local Authority is required to provide Homes England, in writing, any such information about the Funding as it requires for the conduct of its statutory functions or which may be required by any Regulatory Body in respect of its regulatory and/or compliance functions.
- 16.2 The Local Authority is required to record for Homes England any such information as may be required to monitor and evaluate the performance of the Agreement. The Local Authority is required to retain this information for access by Homes England or any Regulatory Body for a minimum period of ten (10) years from the Completion Date.
- 16.3 The Local Authority is required to promptly provide to Homes England, at its reasonable request, access to all and any information about the Project and the Wider Project including the location(s) at which the Project will be/ has delivered, Outputs, Receipts and / or beneficiaries of the Funding from the Start Date up to and including the End Date.

17 TRANSFER

The offer of Funding is personal to the Local Authority. Save as specifically agreed in writing by Homes England the Local Authority may not assign, novate, transfer, sub-contract or dispose of in any other way either the benefit of the Funding or any of your obligations under this Agreement.

18 VAT

The Local Authority and Homes England both understand and agree that the Funding by Homes England under this Agreement is not consideration for any supply for Value Added Tax ("**VAT**") purposes whether by the Local Authority or otherwise. If, notwithstanding the agreement and understanding of the Local Authority and Homes England, it is determined that the Funding is consideration for a supply for VAT purposes, the Funding shall be treated as inclusive of any VAT.

19 **CHANGES**

The Local Authority must advise Homes England immediately if the Local Authority want or require to make any changes to the Project including, but not limited to, changes to any of the Outputs, Receipts, Milestones, Start Date, End Date, Project Completion Date, Development Costs and/or funding of the Project. Any changes must be agreed, in writing, with Homes England (in its absolute discretion) before taking effect.

20 **PUBLICITY**

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

20.2 The Local Authority must not publicise or promote the Funding without Homes England's prior written agreement.

20.3 The Local Authority shall not refer to Homes England or the Funding in any publicity and/or promotional material relating to the Project without first receiving Homes England's written approval to such references.

20.4 Homes England reserves the right to use all data provided by the Local Authority in relation to the Funding for publicity or promotional purposes.

21 **FEES AND EXPENSES – VARIATIONS AND ENFORCEMENT COSTS**

21.1 The Local Authority shall within three (3) Business Days of demand on demand, pay to Homes England the amount of all costs and expenses (including legal fees and irrecoverable VAT relating thereto) incurred by it:

21.1.1 in connection with the variation or amendment of, or enforcement or preservation of any rights under, the Agreement, or

21.1.2 in investigating any Event of Default which has occurred.

22 **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior negotiations, representations and undertakings whenever occurring.

23 **FURTHER ASSURANCE**

On the written request of Homes England, the Local Authority will promptly execute and deliver or procure the execution and delivery of any further documents necessary to obtain for Homes England the full benefit of this Agreement.

24 **APPLICABLE LAW**

This Agreement is governed and interpreted in accordance with English Law and subject to the exclusive jurisdiction of the courts of England and Wales. If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction such provision shall be severed from it and the remainder of the provisions of this Agreement shall otherwise remain in full.

SCHEDULE 3

1. MILESTONES

HIF Funded Infrastructure Milestones

| MILESTONE | MILESTONE DATE |
|---|--|
| Commencement of procurement of HIF Funded Infrastructure Works | |
| Submission of first Claim for Funding | |
| Start Date | |
| Project Completion Date | |
| [Reserved Matters Planning Permission achieved for the HIF Funded Infrastructure Works] | |
| [Unconditional contract entered into by the Local Authority with a Developer or building contractor for the HIF Funded Infrastructure Works] | |
| End Date ¹ | |
| [Local Authority to have undertaken a scheme reappraisal and submit its proposal to Homes England in accordance with paragraph 4.11 of the Standard Terms & Conditions of Funding as to how the monies recovered will be used for further housing delivery (the Further Housing Plan).] | 1 month after Project Completion Date being [] |
| [Local Authority to have gained approval for the Further Housing Plan in accordance with paragraph 4.11 of the Standard Terms & Conditions of Funding] | 2 months after Project Completion Date being [] |

2. OUTPUTS

| OUTPUT | Measure |
|---|---|
| Number of residential units to be unlocked by the HIF Funded Infrastructure Works | By reference to paragraph 6.2 of Schedule 2 |
| [] | |
| | |
| | |

¹ This needs to be a period after the Project Completion Date in order for the LA to conclude whether there are any recoveries to be made for recycling and this should take account of any roof tax or other commuted sums or CIL due to the Local Authority in its capacity as local planning authority

SCHEDULE 4

PRE-CONDITIONS

Part 1 – Pre Conditions to Effective Date

1.
 - 1.1. [the Local Authority has provided Homes England with a copy of the legal opinion it has received for the Project and/or Wider Project in relation to EU State Aid Law, such legal advice shall be provided by a firm of reputable solicitors with expertise in EU State Aid Law on firm letterhead and shall clearly address and be based on the current Project, methods to be utilised for recovery of cost savings/increased receipts, and full recovery of the grant (where the grant is recoverable) and confirm that the proposed Funding is state aid compliant.]
 - 1.2. [Homes England has received from its lawyers advice acceptable to it in relation to State Aid Law arising from Homes England's ownership of all or part of the Site]
 - 1.3. **[insert other pre conditions to Effective Date]**

Part 2 – Pre Conditions to Drawdown of Funding

Homes England will not be obliged to advance any Funding under this Agreement (even where a Claim Form has been submitted) unless:

- 2 Homes England is satisfied that the Local Authority are not in breach of this Agreement;
- 3 the Local Authority has provided satisfactory evidence to Homes England that the Local Authority has complied with the Local Authority representations and warranties set out in paragraph 4 of Schedule 2;
- 4 Homes England is satisfied (acting reasonably) that contractors have or will be appointed with sufficient capability, experience and funding to deliver the Project by the Project Completion Date;
- 5 The Local Authority has legal title to the Site for which the Funding is claimed and has issued (or procured the issue) to Homes England of the Title Letter with disclosures approved by Homes England in its absolute discretion in respect of the Site for which Funding is claimed;
- 6 [the Local Authority has provided Homes England with confirmation from its legal advisors that it has received legal advice to ensure its compliance with paragraphs 4.11,4.12 and 4.13 and 4.13 of the Standard Terms and Conditions of Funding of this Agreement] *[for inclusion where the Site is owned by a party other than the Local Authority or where contractors and/or third parties will receive grant funding from the Local Authority to deliver the HIF Funded Infrastructure Works];*
- 7 [Homes England has approved the Cashflow];
- 8 **[insert other pre-conditions to drawdown of Funding];**
- 9 Homes England may agree to pay Funding to the Local Authority before the above pre-conditions have been met without prejudice or waiver to its rights under this Agreement or to its right to refuse to pay any further Funding until the above pre-conditions are met.

SCHEDULE 5

ADDITIONAL PROJECT SPECIFIC PROVISIONS

[Paragraph 4.7 of Schedule 2 shall not apply to this Agreement.]

[In accepting this offer (and every time the Local Authority submits a Claim Form) the Local Authority warrants and confirms to Homes England that it will or will procure that all the necessary consents and licences are in place and maintained for the duration of the Project without limitation]

[Paragraph 4.8 of Schedule 2 shall not apply to this Agreement.]

[In accepting this offer (and every time the Local Authority submits a Claim Form) the Local Authority warrants and confirms to Homes England that it will or will procure that all necessary planning consents and property licences for the Project are in place and maintained for the duration of the Project. If any such consents or licences are varied in any way or revoked it must inform or must procure that Homes England is informed in writing immediately]

[To be included where it is a condition of the Offer Letter:

1. If at any time:
 - (1) the Development Costs incurred to-date exceed those projected to have been incurred at that point in time (either in a previous Cashflow or other supporting monitoring information), or
 - (2) the total Development Costs incurred and to be incurred in completing the HIF Funded Infrastructure Works exceed those projected to be incurred (in a previous Cashflow or other supporting monitoring information),

the Local Authority will fund such costs]

APPENDIX 1
PLAN SHOWING THE SITE

APPENDIX 2

CASHFLOW

[NOTE – Cashflow to include any planning gain or CIL payable to the Local Authority in relation to the Wider Project]

APPENDIX 3

TITLE LETTER

[Title Letter to be provided on Solicitors letterhead]

Site: *[Land Registry description for the WHOLE title taken from the Official Copy Entries of the Title Number]*

Title Number:

Local Authority:

The Project:

Date of Certificate:

Insurance Amount:

TO: Homes and Communities Agency (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington, WA3 7QH (including any statutory successor) (Homes England);

Except as set out in the Schedule hereto.

We certify that:

- 1 We investigated the title of the **[Local Authority]** to the Site, including the carrying out of all appropriate searches and enquiries.
- 2 The Site is:
 - 2.1 held freehold by the **[Local Authority]**; and
 - 2.2 registered with absolute title at the Land Registry.
- 3 There are no financial charges secured on the Site.
- 4 The interest of the **[Local Authority]** in the Site is sufficient to allow the Site to be included in the Project and for the development of residential units without the need to obtain any further property or rights or the consent of any third party.

- 5 The [Local Authority] has a good and marketable title to the Site 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 Site for the Project or its intended development.
- 6 We confirm that there either is, or will be on completion, sufficient insurance in place for the Insurance Amount as set out above
- 7 The [Local Authority] is not subject to any other contractual obligations which will adversely affect its ability to carry out the Project or materially affect the cost of the Project.
- 8 Nothing has been revealed by our searches and enquiries which would prevent the Site being used for the Project.

[note – the Title Letter does not require confirmations in relation to the Wider Project but title letter should be amended where it is required to be confirmed that there are no title matters which could prevent delivery of the Wider Project and Outputs by a Site Owner – officer to confirm]

APPENDIX 4

Claim Form

Housing Infrastructure Fund (Marginal Viability Fund) Programme

To: Homes England

From: *[insert full name and address of Local Authority before Agreement is executed]*

Date: []

Funding Agreement dated *[insert date]* relating to *[insert description of the land]* (the Funding Agreement)

- 1 I refer to the Funding Agreement. This is a Claim Form. Terms defined in the Funding Agreement have the same meaning in this Claim Form.
- 2 I wish to claim the following amount of Funding:
 - 3.1 Funding amount for Development Costs: []
 - 3.2 Period of Claim: From *[insert start date]* to *[insert end date]*
 - 3.3 Date of claim: []
3. Payment Instructions for payment to Local Authority:
 - 3.1 Bank name: *[Complete before Agreement is executed]*
 - 3.2 Bank branch/address: *[Complete before Agreement is executed]*
 - 3.3 Bank sort code: *[Complete before Agreement is executed]*
 - 3.4 Bank account number: *[Complete before Agreement is executed]*
 - 3.5 Bank account name: *[Complete before Agreement is executed]*
4. Additional Information
 - 4.1 Total Commitment *[Complete before Agreement is executed]*
 - 4.2 Total Development Costs claimed and approved []
to date to date (excluding this claim):
 - 4.3 Total Development Costs claimed and approved []
to date to date (including this claim):
5. The Claim is made in accordance with the Funding Agreement.
6. I confirm that each condition specified in Schedule 4 of the Funding Agreement and paragraph 5.1 of the Standard Terms and Conditions of Funding 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 Schedule 4 of the Funding Agreement and paragraph 5.1 of the Standard Terms and Conditions of Funding 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 Funding Agreement.
8. I confirm that no Event of Default has occurred and is continuing or will occur as a result of the proposed draw down.
9. I confirm that the Funding to be provided pursuant to this Claim Form is in respect of Development Costs and will be used to meet the Development Costs and that no other Claim has been made in respect of such costs and that any supporting evidence required to be submitted with this Claim (to Homes England's satisfaction) provides evidence of the relevant expenditure incurred to date.
10. I confirm that:
 - 10.1 The Development Costs have been or will be incurred and constitute or will constitute capital expenditure in accordance with Regulations made under the Local Government Act 2003.
 - 10.2 We have not received and will not receive any specific grants, other support or contributions towards the expenditure for which payment is now being sought.
 - 10.3 The information in this form is true and correct.

By:

Section 151 Officer
for and on behalf of
[insert full name of Local Authority]

Name (Printed):

Position:

Dated:

-----**For Completion by Homes England Only**-----

| | | | | | |
|--------------------------------|---------------|----------------------|---------------------------------|---------------------------|----------------------|
| Department/Location | | | | | |
| Order/Contract No: | | Supplier Ref: | | EFIN/APTOS INV NO: | |
| Cost Centre | Account No | Activity | Job Code | Net Amount | Vat Code |
| | | | | | |
| | | | | | |
| | Creditor Code | Total Net | | Total VAT | Invoice Total |
| CERTIFIED BY & Date | | | AUTHORISED BY & Date | | |