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Homes and Communities Agency (trading as Homes England)

and

[Grant Recipient]

Grant Agreement (Local Authority)

in relation to the Rough Sleeping Accommodation Programme 2021 – 2024

Homes England

Housing.Contracts@homesengland.gov.uk

LARSAP2124004

OFFICIAL

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THIS AGREEMENT is dated

PARTIES

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

BACKGROUND

- (A) On 24 May 2020, MHCLG (as defined below) announced that funding was being made available to deliver longer-term, move-on accommodation and support services as part of MHCLG's Rough Sleeping response to ensure rough sleepers brought into emergency accommodation do not return to sleeping rough. The first year of allocations of funding was announced on 29 October 2020 (designated the Next Steps Accommodation Programme or NSAP). Thereafter, MHCLG has announced that further capital and revenue funding may be made available to deliver additional units of longer-term, move-on accommodation and support services as part of the same programme (the **Rough Sleeping Accommodation Programme** or **RSAP**).
- (B) The latest Prospectus issued by MHCLG in connection with the Rough Sleeping Accommodation Programme invites local authorities, registered providers and their local partners to engage with the RSAP co-production process and make a bid for the funding available pursuant to RSAP.
- (C) Pursuant to a consent letter dated 1 July 2020, MHCLG has provided consent to Homes England under section 19 of the Housing and Regeneration Act 2008 to make grants available to local authorities and registered providers under NSAP and RSAP.
- (D) Pursuant to the commissioning template of 20 August 2020 (and thereafter amended and updated on an annual basis), MHCLG has commissioned Homes England to act as a delivery partner for NSAP and subsequently RSAP and therefore Homes England is responsible for the administration of RSAP and dispersal of funding made available by MHCLG under RSAP within England (other than Greater London).
- (E) The Grant Recipient has submitted a bid to Homes England for grant funding to assist the Grant Recipient in meeting:
 - a. the capital costs of delivering long-term, national assets maintained in perpetuity in the form of supported move-on homes for people recovering from rough sleeping; and
 - b. where applicable, the revenue costs of the provision of support services to those individuals.
- (F) Pursuant to RSAP, Homes England has agreed in response to the Grant Recipient's bid to advance Capital Grant to the Grant Recipient to facilitate the delivery of those housing schemes and where applicable, to provide Revenue Grant to facilitate the provision of tenancy support to the residents of those schemes, in each case subject to and in accordance with the terms of this Agreement. Further Capital Grant and (where applicable) Revenue Grant may be made available to the Grant Recipient pursuant to RSAP to facilitate

the delivery and of similar housing schemes and associated support services subject to and in accordance with the terms of this Agreement.

- (G) The grant funding provided under this Agreement is (at its date) made in compliance with the United Kingdom Competition Requirement.
- (H) The purpose of the grant provided under this Agreement is to achieve the objectives set out in the sub-paragraphs to paragraph (E) above (*Background*).
- (I) In using the Capital Grant and (where applicable) Revenue Grant provided under this Agreement the Grant Recipient must comply with the applicable requirements of the Capital Funding Guide, the Recovery Determination and the information submitted and approved on IMS.

1 Definitions and interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

Acceptance Date means the date upon which Homes England accepts a scheme for:

(a) the Delivery of RSAP Housing in IMS pursuant to Clause 4.1 (*Capital Firm Schemes*); or

(b) the provision of Revenue Services in IMS pursuant to Clause 9.1 (*Revenue Firm Schemes*);

Acquisition Date means the date identified in IMS on which the Grant Recipient has acquired the Site;

Acquisition Tranche Grant means subject to Clause 4.3 (*Capital Firm Schemes*) and Clause 5.3.1(c) (*Changes to Capital Firm Schemes*) an amount equivalent to forty-five per centum (45%) of the Capital Firm Scheme Grant (or such other per centum as is approved by Homes England on IMS as payable following achievement of the Acquisition Date with respect to the relevant Capital Firm Scheme);

Actual Development Costs means in respect of each Capital Firm Scheme the amount of Development Costs actually incurred by the Grant Recipient in Delivering that Capital Firm Scheme as such amount is warranted and certified by the Grant Recipient pursuant to Clause 17.2.2(b) (*Capital Grant Claim Procedures*), Clause 17.4.1 (*Capital Grant Claim Procedures*) and Clause 17.6.2 (*Capital Grant Claim Procedures*);

Additional Scheme means (as the context so requires):

- (a) a scheme for the Delivery of RSAP Housing proposed by the Grant Recipient in addition to the RSAP Housing comprised within the Original Approved Capital Bid; or
- (b) a scheme for the provision of Revenue Services proposed by the Grant Recipient in addition to those Revenue Services comprised within the Original Approved Revenue Bid;

Additional Scheme Acceptance Date means (as the context so requires) the date upon which Homes England confirms acceptance of an Additional Scheme pursuant to Clause 8.11 (*Capital Firm Scheme substitution and additions*) or Clause 11.5 (*Revenue Firm Scheme additions*);

Affordable Rent means a rent which does not exceed eighty per centum (80%) of the market rent (inclusive of service charges) for an equivalent property of the relevant size and location such rent to be assessed and set in accordance with the applicable requirements of Legislation and of the Rent Standard;

Affordable Rent Dwelling means an RSAP Dwelling let or to be let at an Affordable Rent;

Agreed Principles means the terms set out in Part 1 of Schedule 1 (*Agreed Principles*);

Agreed Purposes means the purposes for which each of the RSAP Dwellings is to be used, being for the purposes of providing supported move-on housing for people recovering from, or at immediate risk of, rough sleeping and such purposes as are further described in the Capital Firm Scheme Details;

Agreement means this grant agreement (including its Schedules);

Agreement Funding means any funding given by Homes England to the Grant Recipient under the provisions of this Agreement;

Allocated Capital Grant means the maximum amount of capital grant payable by Homes England to the Grant Recipient in respect of the Approved Capital Bid and identified in IMS as the total "funding requested" within the latest approved version in the "Offerline Sub Product Profile" (as the same may be amended from time to time in accordance with the terms of this Agreement);

Allocated Revenue Grant means the maximum amount of revenue grant payable by Homes England to the Grant Recipient in respect of the Approved Revenue Bid and identified in IMS as the total "revenue contribution to tenancy support costs" within the latest approved version in the "Offerline Sub Product Profile" (as the same may be amended from time to time in accordance with the terms of this Agreement), such sum (in the event of any delay in the Capital Firm Scheme Completion Date (if any) to which the Approved Revenue Bid relates (if it does so relate)) to be revised to take account of the delay;

Allocation Change Notice means a notification submitted by Homes England under Clause 15.3 (*Review, Monitoring and Reporting*);

Applicable Tranche means:

- (a) with respect to a Single Claim Scheme, the Total Grant Tranche; and
- (b) with respect to any Capital Firm Scheme other than a Single Claim Scheme, the Tranche identified on IMS as payable once the Grant Recipient has achieved the Acquisition Date, the Start on Site Date or the Capital Firm Scheme Completion Date;

Approved Bid means an Approved Capital Bid or Approved Revenue Bid (as the context requires);

Approved Capital Bid means the Original Approved Capital Bid and the aggregate of the Capital New Schemes and Capital Indicative Schemes (if any) accepted by Homes England in IMS and identified from time to time on IMS as the approved "Offer Lines" (as the same may be amended, added to, supplemented, substituted or varied in accordance with the terms of this Agreement);

Approved Revenue Bid means the Original Approved Revenue Bid and the aggregate of the Revenue New Schemes accepted by Homes England in IMS and identified from time to time on IMS as the approved "Offer Lines" (as the same may be amended, added to, supplemented, substituted or varied in accordance with the terms of this Agreement);

Annual Return means a certificate in the form set out in Schedule 5 (*Annual Return*) (or in such other form as MHCLG may prescribe from time to time) signed by the Grant Recipient's Representative or such other person as may be agreed by MHCLG from time to time;

Auditor Guidance means the guidance for external auditors or accountants set out in Schedule 4 (*Guidance to external auditors or accountants*);

Balancing Sum means such sum as represents the amount by which Public Sector Funding in respect of a Capital Firm Scheme exceeds the Actual Development Costs incurred by the Grant Recipient in relation to that Capital Firm Scheme;

Bid Default means (as the context so requires):

- (a) Homes England determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Approved Capital Bid has not been made by the Grant Recipient in delivering the Approved Capital Bid; or
- (b) Homes England determines (acting reasonably) that proper progress against the Grant Recipient's projections in the Approved Revenue Bid has not been made by the Grant Recipient in delivering the Approved Revenue Bid;

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

Building Contract means a contract entered into between the Grant Recipient and a Building Contractor relating to the construction, repair, refurbishment, development and/or Rehabilitation of a Capital Firm Scheme;

Building Contractor means any building contractor or developer appointed or to be appointed by the Grant Recipient in respect of a Capital Firm Scheme;

Business Day means any day other than a Saturday, Sunday or a statutory Bank Holiday in England;

Capital Firm Scheme means each scheme for the Delivery of the RSAP Dwellings as has been fully detailed in IMS and accepted by Homes England through IMS;

- (a) as a Capital Firm Scheme as at the date hereof; or
- (b) in accordance with Clause 4.1 (*Capital Firm Schemes*); or
- (c) in accordance with Clause 8.4 (*Capital Firm Scheme substitution and additions*) or Clause 8.11 (*Capital Firm Scheme substitution and additions*);

Capital Firm Scheme Completion Date means the date set out in the Capital Firm Scheme Delivery Timetable by which:

- (a) with respect to a Single Claim Scheme, Completion must have been (and has been) achieved; or
- (b) with respect to any Firm Scheme other than a Single Claim Scheme, Practical Completion must have been (and has been) achieved;

Capital Firm Scheme Delivery Timetable means the timetable for the Delivery of each Capital Firm Scheme as agreed by Homes England through IMS (as the same may be amended from time to time in accordance with the terms of this Agreement);

Capital Firm Scheme Details means in respect of each Capital Firm Scheme (whether comprised within the Original Approved Capital Bid or otherwise) the descriptive and other details set out in IMS and as accepted by Homes England through IMS, as the same may be varied, supplemented or updated from time to time in accordance with the terms of this Agreement;

Capital Firm Scheme Grant means the amount of Capital Grant payable by Homes England in respect of a Capital Firm Scheme as set out in the relevant Capital Firm Scheme Details;

Capital Funding Guide means the guide of that name published on the GOV.UK website at <https://www.gov.uk/guidance/capital-funding-guide> or any successor guide so published subject to such amendments, variations or updates to the same as may be published from time to time;

Capital Grant has the meaning set out in the Recovery Determination;

Capital Grant Recoverable means such amount of Capital Grant and interest thereon as Homes England is entitled to Recover under the Recovery Determination;

Capital Indicative Allocation means in relation to each Capital Indicative Scheme the amount of the Allocated Capital Grant attributed to that scheme in the Capital Indicative Scheme Details;

Capital Indicative L&R Scheme means each prospective Capital L&R Scheme for the development of RSAP Housing (which meets the description in limb (a) of that definition);

Capital Indicative P&D Scheme means each prospective Capital P&D Scheme for the development of RSAP Housing (which meets the description in limb (b) of that definition);

Capital Indicative Scheme means a Capital Indicative L&R Scheme or a Capital Indicative P&D Scheme;

Capital Indicative Scheme Details means in respect of each Capital Indicative Scheme (whether comprised within the Original Approved Capital Bid or otherwise) the descriptive and other details set out in IMS and as accepted by Homes England through IMS (as the same may be varied from time to time in accordance with the terms of this Agreement);

Capital L&R Scheme means a Capital Firm Scheme in relation to which the Grant Recipient holds or will hold a Secure Legal Interest (L&R);

Capital New Scheme means a named scheme for the Delivery of RSAP Housing which forms part of the Original Approved Capital Bid;

Capital Original Bid Scheme means a named scheme for the Delivery of RSAP Housing which forms part of the Original Approved Capital Bid;

Capital Original Scheme means:

- (a) a Capital Original Bid Scheme; or
- (b) a named scheme for the Delivery of RSAP Housing agreed by Homes England in IMS in the period between the date of its acceptance of the Original Approved Capital Bid and the date of this Agreement;

Capital P&D Scheme means a Capital Firm Scheme in relation to which the Grant Recipient holds or will hold a Secure Legal Interest (P&D);

Capital Scheme Transition has the meaning given to such term in Clause 6.5 (*Capital Indicative Schemes*);

Capital Substitute Scheme has the meaning ascribed to it in Clause 8.1 (*Capital Firm Scheme substitution and additions*);

CDM Regulations means the Construction (Design and Management) Regulations 2015 S.I. No. 2015/51;

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means the Grant Recipient is or will be subject to a process of local government re-organisation approved by the Secretary of State which results in another local authority obtaining the legal capacity, power and authority to become a party to and to perform the obligations of the Grant Recipient under this Agreement;

CIPFA means the Chartered Institute of Public Finance and Accountancy;

Competent Authority means as the case may be

- (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 Subsidy or the United Kingdom Competition Requirement or otherwise authorised to recover any Unlawful Subsidy; or
- (b) the courts of England and Wales;

Completed Capital Firm Scheme means (without prejudice to the operation of Clause 23.2.13 (*Repayment of Grant*) a Capital Firm Scheme in respect of which:

- (a) Practical Completion has been achieved and recorded on IMS; and
- (b) Homes England has paid the total Capital Firm Scheme Grant;

Completion means that stage in the Delivery of a Capital Firm Scheme when:

- (a) the Grant Recipient holds a Secure Legal Interest in each RSAP Dwelling comprised within the Capital Firm Scheme; and
- (b) each RSAP Dwelling comprised within the Capital Firm Scheme is fit for beneficial occupation as a residential development in accordance with applicable NHBC, LABC or equivalent requirements current at the date of any required inspection and meets the Submitted Standards and the terms of this Agreement,

and **Complete** shall be construed accordingly;

Compliance Audit means the procedure (in a form advised by Homes England from time to time) by which an auditor independent of the Grant Recipient certifies (at the Grant Recipient's cost) whether the Capital Firm Schemes Delivered pursuant to this Agreement satisfy Homes England's procedural compliance requirements (as described in the Capital Funding Guide);

Condition Precedent means receipt by Homes England of the Legal Opinion;

Confidential Information means:

- (a) in respect of Homes England, all information relating to Homes England's business and affairs, its employees and suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which the Grant Recipient becomes aware in its capacity as a Party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information);
- (b) in respect of MHCLG, all information relating to MHCLG's business and affairs, its employees and suppliers including its systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which the Grant Recipient becomes aware in its capacity as a Party to this Agreement or which is received by the Grant Recipient in relation to this Agreement from either MHCLG or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from MHCLG or any of its advisors in whatever form in either case (including information given orally and any

document electronic file or other means of recording or representing information which includes derives or is copied from such information); and

- (c) in the case of the Grant Recipient, such specific information as the Grant Recipient shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means any necessary approval, authorisation, consent, exemption, licence, permit, permission or registration by or from any Relevant Authority;

Constitutional Change Notification means a written notification addressed to grant_notifications@homesengland.gov.uk by way of the relevant 'Notification of Constitutional Change Form' required by Homes England on the following website: <https://www.gov.uk/government/publications/homes-england-historical-grant-and-constitutional-changes-notifications> (as the same may be supplemented, amended or updated from time to time) or by any other method which Homes England may notify from time to time;

Continuing Capital Firm Scheme means a Capital Firm Scheme in respect of which:

- (a) the Acquisition Date has or will have occurred at the date of the expiry of the notice period referred to in Clause 24.4.2 (*Default Events and Termination*) or at the date of the expiry of the period referred to in Clause 24.6.2 (*Default Events and Termination*) (as applicable); and
- (b) the Acquisition Tranche Grant has been paid;

CORE means the national information source "Continuous Recording" that records information on new RSAP Housing occupiers and the properties they rent;

Data Controller has the meaning ascribed to it in the Data Protection Legislation;

Data Protection Legislation means (i) Data Protection Act 2018 (the DPA) and the UK General Data Protection Regulation (GDPR) (created by the Data Protection, Privacy and Electronic Communications (EU Exit) Regulations 2019), (ii) any successor legislation to the GDPR or the DPA and (iii) all applicable Legislation relating to the processing of personal data and privacy;

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

Default Event means any of a Scheme Default, a Specified Default, a Bid Default or a Fundamental Default;

Deficit Sum means (as the context requires) the difference (expressed as a positive sum) between:

- (a) the negative amount of the Practical Completion Tranche Grant referred to in Clause 5.5.1(b) (*Changes to Capital Firm Schemes*) and zero, or

- (b) the negative amount of the Practical Completion Tranche Grant referred to in Clause 21.2.2(b) (*Adjustments to Practical Completion Tranche Grant*) and zero;

Delivery means the acquisition, development, conversion, refurbishment, repair and/or Rehabilitation (as applicable) of the Site and/or the Firm Scheme and/or the Approved Bid and/or full delivery of the Revenue Services (as the context requires) and **Delivered** and/or **Delivering** shall be construed accordingly;

Development Costs means the costs relating to Site acquisition and/or Works in relation to a Capital Firm Scheme incurred or to be incurred in respect of such Capital Firm Scheme by the Grant Recipient in respect of the heads of expenditure set out in Part 1 to Schedule 2 (*Development Costs*) or such other heads of expenditure as Homes England may in its absolute discretion agree in respect of any Capital Firm Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 2 (*Costs which are not Development Costs*) shall not be capable of being treated as Development Costs;

Direction means a direction to the Regulator in relation to rent given by the Secretary of State from time to time pursuant to Section 197 of the HRA 2008;

Disposal means a transaction the effect of which is that the legal or beneficial interest in any RSAP Dwelling transfers to, becomes vested in, is leased to or reverts to another person;

Disposal Notification means a written notification addressed to grant_notifications@homesengland.gov.uk by way of the relevant 'Historical Grant Notification Form' required by Homes England on the following website: <https://www.gov.uk/government/publications/homes-england-historical-grant-and-constitutional-changes-notifications> (as the same may be supplemented amended or updated from time to time) or by any other method which Homes England may notify from time to time;

Duration means in relation each Firm Scheme, the period starting from the date on which the scheme becomes a Firm Scheme and ending on the date on which the Delivery of the Firm Scheme is completed in accordance with the relevant Firm Scheme Details;

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

Expert means:

- (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in the area of law from which is most relevant to the point of law or legal drafting in question (as applicable) being such Counsel as may be appointed by the Parties (acting unanimously) or, failing agreement, such

Counsel as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or

- (b) (where a matter concerns a financial dispute or difference) a qualified accountant from the Institute of Chartered Accountants in England and Wales may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such accountant as shall be appointed at the request of either or both of the Parties by or on behalf of the President of the ICAEW or CIPFA; or
- (c) (in the case of any other matter) a senior Chartered Surveyor having at least ten (10) years' post-qualification experience in the development and/or management of affordable housing in England as may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such surveyor as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors, such experience to be in relation to dealing with disputes of a kind of those which may be referred to them hereunder,

and "failing agreement" shall for these purposes mean failing any such joint appointment by the Parties of an Expert within five (5) Business Days of notice by one Parties to the other that the dispute or difference is to be referred to an Expert;

Financial Period means the period from 1 April to 31 March in each year during the Revenue Funding Period;

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;

Firm Scheme means Capital Firm Scheme or the Revenue Firm Scheme, as the context may require;

Firm Scheme Delivery Timetable means the timetable for the Delivery of each Firm Scheme as agreed by Homes England through IMS;

Firm Scheme Details means Capital Firm Scheme Details or the Revenue Firm Scheme Details, as the context may require;

Firm Scheme Grant means a Capital Firm Scheme Grant or a Revenue Firm Scheme Grant, as the context so requires;

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under such 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 means a public authority as defined by the FOIA and/or EIR;

FOIA Exemption means any applicable exemption to FOIA;

Fund Proceeds means those proceeds of the RCGF utilised by the Grant Recipient in meeting in whole or in part the Development Costs;

Fundamental Default means any of a Fundamental (A) Default or a Fundamental (B) Default;

Fundamental (A) Default means the occurrence of any of the following:

- (a) the Grant Recipient is subject to a Section 15 Direction which has or will have a Material Adverse Effect;
- (b) a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);
- (c) any Consent necessary to the Delivery of the Approved Capital Bid or the Approved Revenue Bid is withdrawn or revoked;
- (d) the Grant Recipient ceases operating or trading; or
- (e) the Grant Recipient's status as a Registered Provider is lost, removed or relinquished;

Fundamental (B) Default means the occurrence of any of the following:

- (a) the Grant Recipient's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that grant is not to be paid to the Grant Recipient; or
- (c) the Grant Recipient (either by its own actions or omissions, or those of its contractors or agents) harms Homes England's reputation or brings Homes England, MHCLG or RSAP into disrepute;

Fundamental Termination Amount means the amount calculated by deducting the aggregated amount of all Capital Firm Scheme Grant paid to the Grant Recipient pursuant to Clause 19.1 (*Payment of Capital Grant*) in relation to all Completed Capital Firm Schemes prior to the Notice Date from the aggregated amount of all Capital Firm Scheme Grant paid to the Grant Recipient pursuant to that Clause prior to such date;

Funding means the grant funding paid to the Grant Recipient by Homes England under the provisions of this Agreement;

General Withholding Event means a GW1 Event, GW2 Event or a GW3 Event;

Grant Recipient Affiliate means a third party whose relationship with the Grant Recipient falls within limb (b) of the definition of Grant Recipient Party;

Grant Recipient Party means:

- (a) the Grant Recipient, the Building Contractor, any member of the Professional Team, agent, employee or Subcontractor of the Grant Recipient and the Grant Recipient's Representative; and

- (b) any subsidiary, associate or joint venture in which a local authority has a material interest sufficient to require group financial statements to be prepared which account for these interests, in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom 2020/21 (as amended or updated) which is the Statement of Recommended Practice on local authority accounting or any code or other document which replaced it as the Statement of Recommended Practice;

Grant Recipient's Representative means the Grant Recipient's development director (or equivalent) or such other person agreed by Homes England to act as the Grant Recipient's representative from time to time for the purposes of this Agreement;

GW1 Event means the occurrence of any of the following:

- (a) a failure by the Grant Recipient to comply with any repayment or reporting obligation under this Agreement; or
- (b) a material breach by the Grant Recipient of any obligation under this Agreement (other than one listed in sub-paragraph (a) of this definition) and the Grant Recipient has not taken steps to remedy it to Homes England's satisfaction (acting reasonably);

GW2 Event means any of the following:

- (a) the Grant Recipient's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that Capital Grant or Revenue Grant is not to be paid to the Grant Recipient; or
- (c) the Grant Recipient fails to Deliver all the RSAP Housing which it was committed to deliver under this Agreement available for letting by the date identified in IMS (or such other date as Homes England may in its absolute discretion agree in writing (through IMS or otherwise)); or
- (d) a Section 114 Report has been made in relation to the Grant Recipient which in Homes England's opinion has or will have a Material Adverse Effect;

GW3 Event means any of the following:

- (a) a Section 15 Direction has been made in relation to the Grant Recipient which in Homes England's opinion has or will have a Material Adverse Effect;
- (b) a Prohibited Act has been committed by or on behalf of the Grant Recipient (in respect of which the Waiver Condition has not been satisfied);
- (c) the Grant Recipient ceases operating or trading;

- (d) the Grant Recipient's status as a Registered Provider is lost, relinquished or removed or Homes England becomes aware that such status will be or is likely to be lost, relinquished or removed;
- (e) any Consent necessary to deliver the Approved Capital Bid or the Approved Revenue Bid is withdrawn or revoked; or
- (f) the Grant Recipient (either by its own actions or omissions, or those of its contractors or agents) harms Homes England's reputation or brings Homes England or RSAP into disrepute;

Homes England's Representative means such person or persons as Homes England may nominate to act as its representative from time to time for the purposes of this Agreement;

Homes England Senior Officer means the Director of Affordable Housing Grants (or such officer fulfilling the equivalent role from time to time);

HRA 2008 means the Housing and Regeneration Act 2008;

HS Act means the Health and Safety at Work etc. Act 1974;

ICAEW means the Institute of Chartered Accountants in England and Wales;

IMS means Homes England's on-line investment management system from time to time or any successor system utilised by Homes England (as notified by Homes England in writing to the Grant Recipient);

Information has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by Homes England or the Grant Recipient (as appropriate) at the time of receipt of an RFI; and
- (b) EIR, given under the definition of environmental information in Regulation 2 of the EIR and which is held by Homes England or Grant Recipient (as appropriate) at the time of receipt of an RFI;

Information Commissioner has the meaning set out in the Data Protection Legislation;

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;

Investment Partner means an organisation which has been confirmed by Homes England as having "Investment Partner Status" under Homes England's Investment Partner qualification procedure from time to time;

Know Your Customer Information means the information identified in the Homes England "know your customer" documentation as pertaining to the Grant Recipient and Grant

Recipient's "Decision Makers or equivalent" or any other "know your customer" or comparable information identified by Homes England in connection with the Grant Recipient's Investment Partner application or status or the terms of this Agreement;

L&R means a lease and repair scheme type as further described in the Capital Funding Guide;

LABC means the Local Authority Building Control;

Lease Period means in relation to a Capital L&R Scheme the period set out in the "Lease Length" data field within the Capital Firm Scheme Details;

Lease Termination Date means in relation to a Capital L&R Scheme the date upon which the Grant Recipient's lease for whatever reason comes to an end;

Legal Opinion means a legal opinion in the form set out in Schedule 11 (*Legal Opinion*) given by the Grant Recipient's solicitor and dated on or prior to the date of this Agreement (or if applicable, pursuant to Clause 34.2 (*Further assurance*), the date of any amendment to or waiver of any term of this Agreement);

Legislation means:

- (a) any Act of Parliament;
- (b) any delegated or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;
- (d) rule of court or directives or requirements of any Regulatory Body, or notice of any Regulatory Body,
in each case in the United Kingdom; and
- (e) any regulations, orders, bye-laws, regulatory policy, guidance or codes of practice of any local or statutory or Competent Authority (as the case may be) having jurisdiction over the territory in which the Firm Scheme is situated;

Material Adverse Effect means the effect of any event or circumstance which in the reasonable opinion of Homes England, is reasonably likely to be materially adverse to the ability of the Grant Recipient to deliver the Approved Capital Bid or a Capital Firm Scheme or a Capital Indicative Scheme or the Approved Revenue Bid or a Revenue Firm Scheme (as the context requires) on the basis agreed under this Agreement and/or within the time limits (if any) for doing so;

MHCLG means the Ministry of Housing, Communities and Local Government (or any successor body with similar or equivalent jurisdiction or authority);

MCHLG's Representative means such person or persons as MHCLG may nominate to act as its representative from time to time for the purposes of this Agreement;

Milestone means each stage in the Delivery of the Capital Firm Scheme agreed by the Parties and set out in IMS (including as a minimum an Acquisition Date, a Start on Site Date and a Capital Firm Scheme Completion Date);

Milestone Date means the date agreed by Homes England through IMS by which the relevant Milestone must have been achieved (as the same may be varied by Homes England pursuant to Clause 7.1 (*Time extensions*));

Milestone Extension Event means any of the following:

- (a) exceptionally adverse weather conditions;
- (b) delay in receipt of any necessary permission or approval of any statutory body or other person which the Grant Recipient has taken all practicable steps to avoid or reduce;
- (c) the exercise after the date of this Agreement by the United Kingdom Government of any statutory power which directly affects the execution of the construction Works necessary to the Delivery of the Capital Firm Scheme by restricting the availability or use of labour which is essential to the proper carrying out of such Works or preventing the Grant Recipient from, or delaying in, securing such goods or materials or such fuel or energy as are essential to the proper carrying out of such Works or the Delivery of such Capital Firm Scheme;
- (d) the use or threat of terrorism and/or the activity of the Relevant Authorities in dealing with such use or threat;
- (e) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation, earthquakes, riot and civil commotion;
- (f) failure by any statutory undertaker, utility company or other like body to carry out works or provide services;
- (g) any accidental loss or damage to the development or any roads servicing it;
- (h) any failure or shortage of power, fuel or transport;
- (i) any blockade or embargo;
- (j) 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;

- (k) the appointment of the Building Contractor under the Building Contract has been terminated or the Building Contract has been terminated;
- (l) any material failure by the Building Contractor under the terms of the Building Contract which has the direct result of delaying the Grant Recipient's compliance with a Milestone Date and which did not result from the Grant Recipient's failure effectively to manage the Building Contract; or
- (m) 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 arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Grant Recipient or, save in respect of the event referred to in (k) above, any of its Subcontractors of any tier; or
- B in respect of the event referred to in (f) above, such event arises as a result of any failure by the Grant Recipient (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 Grant Recipient to complete the Capital Firm Scheme by the Capital Firm Scheme Completion Date;

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

Minimum Lease Duration means five (5) calendar years from the Start on Site Date;

MMC Scheme means a Capital Firm Scheme comprised of dwellings constructed using one of the Modern Methods of Construction;

MMC Stage means each such stage in the Delivery of a MMC Scheme which the Parties agree must be achieved pursuant to Clause 17.7 (*Capital Grant Claim Procedures*) before the Grant Recipient may submit a claim for Capital Firm Scheme Grant;

Modern Methods of Construction means the methods of construction identified in Section 3.5 (*Modern Methods of Construction (MMC) categories for schemes*) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme issues";

NHBC means the National House-Building Council;

Non-Compliance Notification Date means the date on which Homes England notifies the Grant Recipient that it has become aware that a Capital Firm Scheme in respect of which it has paid Capital Firm Scheme Grant does not meet the Capital Firm Scheme Details;

Notice Date means the date of the notice served in accordance with Clause 24.7 (*Default Events and Termination*);

Notification Failure means in relation to:

- (a) each of Clauses 5.3.1 (*Changes to Capital Firm Schemes*), 5.3.3 (*Changes to Capital Firm Schemes*), 5.5.1 (*Changes to Capital Firm Schemes*) and 5.5.3 (*Changes to Capital Firm Schemes*) a failure by the Grant Recipient to advise Homes England within the period specified in the relevant Clause as to whether it wishes to proceed with a Capital Firm Scheme or to withdraw it from the Agreement; and
- (b) each of Clauses 10.3.1 (*Changes to Revenue Firm Schemes*) and 10.3.3 (*Changes to Revenue Firm Schemes*), a failure by the Grant Recipient to advise Homes England within the period specified in the relevant Clause as to whether it wishes to proceed with a Revenue Firm Scheme or to withdraw it from the Agreement;

Open Book Basis means the full and transparent disclosure and declaration of all information which the Grant Recipient or a Grant Recipient Party is required to maintain, keep or disclose under this Agreement including all price components including profit margins, central office overheads, Site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services, apportionments of such items together with all and any books of accounts;

Original Allocated Capital Grant means £[] being the amount of Capital Grant agreed by Homes England prior to the date of this Agreement as payable to the Grant Recipient in respect of the Original Approved Capital Bid;

Original Allocated Revenue Grant means £[] being the amount of Revenue Grant agreed by Homes England prior to the date of this Agreement as payable to the Grant Recipient in respect of the Original Approved Revenue Bid;

Original Approved Capital Bid means the aggregate of the Capital New Schemes and Capital Indicative Schemes (if any) accepted by Homes England in IMS via the "Offer " screen of IMS prior to the date of this Agreement;

Original Approved Revenue Bid means the aggregate of the Revenue New Schemes accepted by Homes England in IMS via the "Offer" screen of IMS;

P&D means a purchase and development scheme type, being any scheme type other than L&R as further described in the Capital Funding Guide;

Party means a party to this Agreement;

Personal Data has the meaning ascribed to it in the Data Protection Legislation;

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

Post-Start Change means a change to a Capital Firm Scheme proposed by the Grant Recipient pursuant to Clause 5.1 (*Changes to Capital Firm Schemes*) in the period after the payment of the Acquisition Tranche Grant in relation to that Capital Firm Scheme but before the payment of the relevant Practical Completion Tranche Grant;

Practical Completion means that stage in the execution of a Capital Firm Scheme when the Works have been completed in accordance with the terms of the relevant Building Contract and/or the terms of this Agreement such that the RSAP Dwellings comprised within the Capital Firm Scheme are fit for beneficial occupation as a residential development in

accordance with applicable NHBC, LABC or equivalent requirements current at the date of inspection subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Capital Firm Scheme and which would be reasonable to include in a snagging list, and **Practically Complete** shall be construed accordingly;

Practical Completion Tranche Grant means subject to Clause 4.3 (*Capital Firm Schemes*) and Clause 5.3.1(c) (*Changes to Capital Firm Schemes*) an amount equivalent to five per centum (5%) of the Capital Firm Scheme Grant (or such other per centum as is approved by Homes England on IMS as payable following achievement of Practical Completion with respect to the relevant Capital Firm Scheme) together with that amount of the Acquisition Tranche Grant and the Start on Site Tranche Grant (if any) that has not been claimed prior to Practical Completion;

Pre-Start Change means a change to a Capital Firm Scheme proposed by the Grant Recipient pursuant to Clause 5.1 (*Changes to Capital Firm Schemes*) prior to the payment of the Acquisition Tranche Grant;

Previous Programme means any capital or revenue grant funding programme administered by Homes England or any of its statutory predecessors;

Process has the meaning ascribed to it in the Data Protection Legislation and **Processing** shall be construed accordingly;

Procurement Law means the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016 (insofar as the same are applicable) together with any statutory modification or replacement regulations or Legislation on procurement by public bodies;

Professional Team means (as applicable) the architect, civil & structural engineer, the mechanical & electrical engineer and any other consultant appointed by the Grant Recipient in connection with a Capital Firm Scheme;

Profit-making RP means a body entered on the Register as a profit-making organisation (as such term is defined in Section 115 of the HRA 2008);

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
 - i for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - ii for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement or any other agreement with Homes England relative to this Agreement 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 in writing to Homes England;

- (c) committing any offence:
 - i under Legislation creating offences in respect of fraudulent acts;
 - ii at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with Homes England relevant to this Agreement; or
 - iii under the Bribery Act 2010 or the Criminal Finances Act 2017; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England or the Regulator;

Projected Completion Date means the date set out in IMS by which a Capital Indicative Scheme is scheduled to reach Practical Completion (mutatis mutandis);

Proposed Capital Indicative Scheme means a scheme proposed by the Grant Recipient as a Capital Indicative Scheme which has not yet been accepted by Homes England on IMS;

Prospectus means the prospectus published by MHCLG entitled "Rough Sleeping Accommodation Programme: Prospectus and Guidance (outside of Greater London)" on 18 March 2021 and available for online access at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980232/RSAP_2021-24_Prospectus.pdf, as may be replaced, varied, revised or otherwise updated from time to time;

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

Public Sector Funding means all funding in relation to a Firm Scheme in money or money's worth (including the Firm Scheme Grant) received or receivable by the Grant Recipient from public sector bodies including for this purpose funding from government bodies (whether national or local), the European Union or bodies in receipt of lottery funds from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by Homes England not provided under this Agreement;

Quarter means the period between each Quarter Date;

Quarter Date means 31 March, 30 June, 30 September or 31 December;

RCGF means the Recycled Capital Grant Fund maintained by the Grant Recipient in accordance with the Recovery Determination;

Recover has the meaning set out in the Recovery Determination;

Recovery Determination means the Recovery of Capital Grants and Recycled Capital Grant Fund General Determination 2017 and any successor determination or other instrument;

Register means the register maintained by the Regulator pursuant to Section 111 of the HRA 2008;

Registered Provider means an English local authority entered on the Register pursuant to article 3 of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010;

Regulator means the Regulator of Social Housing established pursuant to Chapter 2 of Part 2 of the HRA 2008 or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

Regulatory Body means any 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, the RSAP Dwellings delivered pursuant to this Agreement or any other affairs of Homes England;

Rehabilitated or Rehabilitation or Rehabilitating shall have the meaning ascribed in sub-section 3.3 (*Rehabilitation requirements and Scheme Types*) of the section of the Capital Funding Guide entitled "Procurement and scheme issues";

Relevant Authority means any governmental or other authority, court with relevant jurisdiction, the local planning authority, landlord, funder, adjoining landowner or any other person whose consent is required to undertake the Works necessary to the Delivery of the Firm Scheme or perform the Grant Recipient's obligations under this Agreement;

Relevant Body means:

- (a) where a dispute or difference is on a point of law or legal drafting, the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) where a matter concerns a financial dispute or difference, the President of the Institute of Chartered Accountants in England and Wales (ICAEW) or Chartered Institute of Public Finance and Accountancy (CIPFA); or
- (c) in the case of any other matter, President for the time being (or the next most senior available officer) of the Royal Institution of Chartered Surveyors;

Relevant Claim Stage means the Acquisition Date, Start on Site Date, Capital Firm Scheme Completion Date and/or (in the case of any MMC Scheme, any applicable MMC Stage) identified on IMS which must be achieved prior to the Grant Recipient making a claim for the Applicable Tranche in relation to the relevant Capital Firm Scheme;

Relevant Event has the meaning attributed to it in the Recovery Determination;

Rent Standard means any standard set by the Regulator in relation to rent (including any associated explanatory notes or guidance) from time to time under the Section 194 HRA 2008 pursuant to any then applicable Direction;

Request for Information/RFI shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Capital Indicative Schemes, the Firm Schemes, this Agreement or any activities or business of MHCLG and/or Homes England;

Revenue Change means a change to a Revenue Firm Scheme proposed by the Grant Recipient pursuant to Clause 10.1 (*Changes to Revenue Firm Schemes*);

Revenue Eligible Expenditure means the expenditure incurred in relation to the Revenue Firm Scheme which is eligible in accordance with Clause 13 (*Revenue Eligible Expenditure*);

Revenue Firm Scheme means each scheme for the Delivery of Revenue Services as has been fully detailed in IMS and accepted by Homes England through IMS:

- (a) as a Revenue Firm Scheme as at the date hereof; or
- (b) in accordance with Clause 9.1 (*Revenue Firm Schemes*); or
- (c) in accordance with Clause 11.5 (*Revenue Firm Scheme additions*);

Revenue Firm Scheme Completion Date means the date set out in the Revenue Firm Scheme Delivery Timetable by which the Delivery of Revenue Services must have been achieved;

Revenue Firm Scheme Delivery Timetable means the timetable for the Delivery of each Revenue Firm Scheme as agreed by Homes England through IMS;

Revenue Firm Scheme Details means:

- (a) in respect of each Revenue Firm Scheme comprised within the Original Approved Revenue Bid, the descriptive and other details in respect of that scheme summarised in the Original Approved Revenue Bid but as more particularly described in IMS and as accepted by Homes England through IMS; or
- (b) in respect of any other Revenue Firm Scheme, the descriptive and other details in relation to that scheme set out (and as accepted by Homes England) in IMS,

in each case as the same may be varied, supplemented or updated from time to time in accordance with the terms of this Agreement;

Revenue Firm Scheme Grant means the amount of revenue grant payable by Homes England in respect of a Revenue Firm Scheme as set out in the relevant Revenue Firm Scheme Details;

Revenue Funding Period means the period from the date of Practical Completion until 31 March 2024 (or such later date as Homes England may in its absolute discretion agree in writing (through IMS or otherwise));

Revenue Grant means the amount of revenue grant payable by Homes England in connection with the Revenue Services, the maximum amount of which is as set out in the relevant Revenue Firm Scheme Details;

Revenue New Scheme means a named scheme for the provision of Revenue Services accepted by Homes England as part of the Original Approved Revenue Bid;

Revenue Original Bid Scheme means a named scheme for the provision of Revenue Services which forms part of the Original Approved Revenue Bid;

Revenue Original Scheme means:

- (a) a Revenue Original Bid Scheme; or
- (b) a named scheme for the provision of Revenue Services agreed by Homes England in IMS in the period between the date of its acceptance of the Revenue Original Approved Capital Bid and the date of this Agreement;

Revenue Quarterly Payment means a payment of Revenue Grant which can be claimed by the Grant Recipient each Quarter in arrears during the Revenue Funding Period for expenditure incurred in the previous Quarter where a claim for such payment:

- (a) may be any percentage of the Allocated Revenue Grant provided that the total Revenue Grant claimed by the Grant Recipient during the Revenue Funding Period does not exceed the Allocated Revenue Grant; and
- (b) may be claimed a maximum of four (4) times per Financial Year during each Revenue Funding Period;

Revenue Services means the support services to be provided to Tenants of the RSAP Dwellings;

Review Meeting means a meeting held pursuant to Clause 15.7 (*Review, Monitoring and Reporting*) and Clause 15.8 (*Review, Monitoring and Reporting*);

RIDDOR means Reporting of Injuries Diseases and Dangerous Occurrences Regulations 2013 (as amended from time to time);

RSAP has the meaning given to such term in the recitals;

RSAP Dwelling means a bedsit, house, flat, maisonette or bungalow which was developed with the benefit of grant payable under this Agreement and in relation to each relevant Capital Firm Scheme as more particularly described in the relevant Capital Firm Scheme Details;

RSAP Funds means grant funding made available pursuant to RSAP;

RSAP Housing means housing provided by the Grant Recipient pursuant to this Agreement that will be made available:

- (a) permanently at an Affordable Rent; or
- (b) permanently at a Social Rent;

RSAP Rent Dwelling means an Affordable Rent Dwelling and/or a Social Rent Dwelling;

Scheme Default means in relation to any Firm Scheme the occurrence of any of the following:

- (a) the Grant Recipient is unable to make the representations and give the warranties set out in Part 2 of Schedule 1 (*Representations and Warranties*) (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to that Firm Scheme;
- (b) the withdrawal or revocation of any Consent required to enable the Grant Recipient to Deliver that Firm Scheme;
- (c) a breach of the Grant Recipient's obligations under any of Clause 12 (*Delivery Obligations*) or Clause 14 (*Operational Obligations*) other than Clause 10.7 in relation to that Firm Scheme;
- (d) the exercise by Homes England of its rights under Clause 21.1.2 (*Adjustments to Practical Completion Tranche Grant*) or a failure by the Grant Recipient to agree any adjustment proposed by Homes England to the Capital Firm Scheme Grant pursuant to Clause 21.2 (*Adjustments to Practical Completion Tranche Grant*);
- (e) the Grant Recipient has breached or otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Firm Scheme;
- (f) a failure or inability by the Grant Recipient to comply with the requirements of Clauses 17.1 (*Capital Grant Claim Procedures*) to 17.6 (*Capital Grant Claim Procedures*) or Clauses 18.1 (*Revenue Grant Claim Procedures*) to 18.2 (*Revenue Grant Claim Procedures*) (as applicable);
- (g) in respect of:
 - i any Single Claim Scheme; or
 - ii the Acquisition Date and/or the Start on Site Date is not attained and, following discussions with the Grant Recipient, Homes England (acting reasonably) considers that the Capital Firm Scheme is unlikely to reach Practical Completion (or in respect of the Single Claim Scheme, Completion) by such date submitted, approved and identified for Practical Completion or Completion (as appropriate) in IMS (or as Homes England may in its absolute discretion otherwise agree in writing); or
- (h) a failure by the Parties to agree a revised Capital Firm Scheme Grant figure pursuant to Clause 23.3.3(a) (*Repayment of Grant*);

Scheme Termination Event means an event which would permit this Agreement to be terminated in relation to one or more particular Firm Schemes pursuant to Clause 24.1 (*Default Events and Termination*);

Scheme Withholding Event means in relation to any Firm Scheme the occurrence of any of a SW1 Event, SW2 Event or a SW3 Event;

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

Section 114 Report means a report made under Section 114(3) or Section 114A of the Local Government Finance Act 1988;

Secure Legal Interest means the Grant Recipient has in respect of the Site:

- (a) in the case of a Capital P&D Scheme, a Secure Legal Interest (P&D); and
- (b) in the case of a Capital L&R Scheme, a Secure Legal Interest (L&R);

Secure Legal Interest (L&R) means the Grant Recipient has in respect of the Site, a leasehold interest of the greater of:

- (a) the period set out in the "Lease Length" data field within the Capital Firm Scheme Details (and accepted by Homes England through IMS) registered with title absolute or registered with good leasehold title and in the latter case defective title indemnity insurance in favour of the Relevant Consortium Member with a limit of indemnity to at least the Capital Firm Scheme Grant for that Site; or
- (b) five (5) years unexpired duration;

Secure Legal Interest (P&D) means the Grant Recipient has in respect of the Site:

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has at least sixty (60) years unexpired duration;
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has at least sixty (60) years unexpired duration and, in each case defective title indemnity insurance in favour of the Grant Recipient with a limit of indemnity to at least the Capital Firm Scheme Grant for that Site; or
- (d) a binding contract with the owner of the legal and beneficial interest in the Site to secure one of the interests in limbs (a) to (c) and that securing that interest is conditional only upon the matters that are within the direct and unilateral control of the Grant Recipient;

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 a sale or lease and leaseback, a blocked account, set off or similar arrangement);

Service of Public Economic Interest means a Subsidy granted to economic actors assigned with particular tasks in the public interest as set out at Article 365 of the EU-UK Trade and Cooperation Agreement;

Shared Personal Data means Personal Data shared between Homes England and the Grant Recipient for Processing pursuant to this Agreement which is currently anticipated to be limited to Personal Data relating to Homes England employees such as email addresses and contact names;

Single Claim Scheme means a Capital Firm Scheme in respect of which the Grant Recipient may claim the Total Grant Tranche following the achievement of Completion;

Site means the site identified to Homes England as being the area of land, buildings or dwelling-houses comprised or to be comprised in a Capital Firm Scheme and/or the RSAP Dwellings and common areas developed as part of such Capital Firm Scheme;

Social Housing Dwelling means accommodation in the ownership of a local authority, a body entered on the Register as a non-profit organisation (as such term is defined in Section 115 of the HRA 2008), Profit-making RP, housing charity or almshouse and used (or available) to provide residential accommodation at a sub-market rent (or in the case of an almshouse a management and/or maintenance charge) to one or more individuals on the basis of a secure, introductory, assured shorthold, assured non shorthold, Rent Act 1977 tenancy or licence (or in the case of an almshouse such other form of occupancy arrangement as it is permitted by its constitution to grant);

Social Rent means a rent calculated in accordance with the formula for calculating social rents set out in in the Rent Standard (subject to contrary Legislation);

Social Rent Dwelling means an RSAP Dwelling let or to be let at a Social Rent;

Specified Default means the occurrence of any of the following:

- (a) a failure by the Grant Recipient to comply with its obligations in any of Clause 14.13 (*Operational Obligations*) or Clause 15 (*Review, Monitoring and Reporting*), Schedule 7 (*Anti-bribery and Anti-corruption*), and/or any information supplied in connection with its obligations in Clause 15 (*Review, Monitoring and Reporting*) is materially deficient, misleading or inaccurate;
- (b) the Grant Recipient is unable to make the representations and give the warranties set out in Part 2 of Schedule 1 (*Representations and Warranties*) (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to the Approved Capital Bid or the Approved Revenue Bid;
- (c) a failure by the Grant Recipient to comply with any obligation to pay or repay Homes England any amount due under this Agreement; or

- (d) the Grant Recipient has breached or otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Approved Capital Bid or the Approved Revenue Bid;

SPEI Allowable Costs means those costs incurred by the Grant Recipient in providing the RSAP Housing as specified in the Original Approved Capital Bid (calculated using generally acceptable accounting principles as follows:

- (a) the Development Costs;
- (b) all other direct costs of providing the RSAP Housing;
- (c) a proper proportion of costs (including for common infrastructure) if these are shared between RSAP Housing and other construction on Sites where the RSAP Housing is situated; and/or
- (d) other costs permitted under the United Kingdom Competition Requirement of operating the RSAP Housing as affordable housing;

SPEI Entrustment means the entrustment information required under Article 365.1 of the EU-UK Trade and Cooperation Agreement, an example template for which is set out at Schedule 12 (*SPEI Entrustment*) of this Agreement;

SPEI Information means such information about or relating to the SPEI Allowable Costs, the SPEI Revenue, the SPEI Necessary Subsidy and such other information as Homes England may reasonably request;

SPEI Necessary Subsidy means under the United Kingdom Competition Requirement the maximum amount of Subsidy which may be provided without Unlawful Subsidy arising;

SPEI Overpayment means the extent to which Public Sector Funding (including the Funding) exceeds the SPEI Necessary Subsidy;

SPEI Revenue means all income (including all Public Sector Funding but excluding Capital Firm Scheme Grant and Revenue Firm Scheme Grant) which the Grant Recipient or a Grant Recipient Affiliate receives for the purposes of or earns from the RSAP Housing;

SPEI Review means a review by Homes England of the provision of Agreement Funding to determine whether an SPEI Overpayment has arisen in relation to any Firm Scheme;

Start on Site Date means the date identified in IMS on which:

- (a) the Grant Recipient and Building Contractor have entered into the Building Contract;
- (b) the Building Contractor has taken possession of the Site; and
- (c) the Start on Site Works to the Site have commenced;

Start on Site Tranche Grant means subject to Clause 4.3 (*Capital Firm Schemes*) and Clause 5.3.1(c) (*Changes to Capital Firm Schemes*) an amount equivalent to fifty per centum (50%) of the Capital Firm Scheme Grant (or such other per centum as is approved

by Homes England on IMS as payable following achievement of Start on Site with respect to the relevant Capital Firm Scheme) together with that amount of the Acquisition Tranche Grant (if any) that has not been claimed prior to the Start on Site Date;

Start on Site Works means:

- (a) with respect to a Capital P&D Scheme:
 - i excavation for strip or trench foundations or for pad footings;
 - ii digging out and preparation of ground for raft foundations;
 - iii vibrofloatation, piling, boring for piles or pile driving;
 - iv drainage works specific for the buildings forming part of the Capital Firm Scheme;
 - v such works of demolition or service diversion as are expressly and strictly contemplated in the section of the Capital Funding Guide entitled "Finance – Grant Claims and Payments"; or
- (b) with respect to a Capital L&R Scheme, the physical Works to the Site; and
- (c) such other physical Works to the Site;

Statement of Grant Usage means the document in the form set out in Schedule 3 (*Form of Statement of Grant Usage*) or where so directed by Homes England, made available on IMS, as amended by Homes England from time to time;

Subcontractor means any subcontractor appointed by the Grant Recipient to undertake all or part of the Works;

Submitted Standards means in respect of each Firm Scheme the standards submitted by the Grant Recipient and referenced in the Firm Scheme Details in IMS;

Subsidy means any direct or indirect financial assistance which:

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
 - i a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
 - ii the forgoing of revenue that is otherwise due;
 - iii the provision of goods or services, or the purchase of goods or services; or
 - iv a measure analogous to these,
- (b) confers an economic advantage on one or more economic actors;

- (c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other country or countries which the United Kingdom has entered into a trade agreement with which has provisions in respect of public sector funding arrangements;

Substitute Scheme Acceptance Date means the date upon which Homes England confirms acceptance of a Capital Substitute Scheme pursuant to Clause 8.4 (*Capital Firm Scheme substitution and additions*);

SW1 Event means a failure by the Grant Recipient to Deliver the Firm Scheme (other than one comprised within an SW3 Event) in accordance with the Firm Scheme Details or to the Submitted Standards;

SW2 Event means the occurrence of any of the following:

- (a) the Grant Recipient is unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in Clause 17.2 (*Capital Grant Claim Procedures*), Clause 17.4 (*Capital Grant Claim Procedures*) or Clause 17.6 (*Capital Grant Claim Procedures*) or Clause 18.2 (*Revenue Grant Claim Procedures*) (in any case in whole or in part); or
- (b) a material breach by the Grant Recipient of any obligation under this Agreement in relation to a Firm Scheme (other than one comprised within an SW1 Event or SW3 Event in relation to that Firm Scheme) and which:
 - i the Grant Recipient has not taken steps to remedy it to Homes England's satisfaction (acting reasonably); or
 - ii is incapable of remedy; or
- (c) any Consent necessary to deliver the Firm Scheme is revoked or withdrawn;

SW3 Event means a failure by the Grant Recipient to Deliver a Firm Scheme in accordance with the Firm Scheme Delivery Timetable (in circumstances where Homes England did not agree revised Milestone Dates in accordance with Clause 7 (*Time extensions*));

Tenancy Standard means the tenancy standard published by the Regulator from time to time pursuant to its power under section 193 (*Standards relating to consumer matters*) of the HRA 2008;

Tenant means (as the context requires):

- (a) a tenant occupying an RSAP Rent Dwelling; or
- (b) a prospective tenant of an RSAP Rent Dwelling;

Total Grant Tranche means the total Capital Firm Scheme Grant identified on IMS as payable following achievement of Completion of the relevant Single Claim Scheme;

Total Termination Event means an event which would permit this Agreement to be terminated as a whole pursuant to Clause 24.3 (*Default Events and Termination*), Clause 24.5 (*Default Events and Termination*) or Clause 24.7 (*Default Events and Termination*);

Tranche means (as the context requires) any of the Acquisition Tranche Grant, the Start on Site Tranche Grant, the Practical Completion Tranche Grant or the Total Grant Tranche;

Transparency Code means the Code of Recommended Practice entitled "Local Government Transparency Code 2015" on data transparency for local authorities published by the Department for Communities and Local Government in February 2015 (or any other like or successor code or guidance published by any successor department);

Transparency Obligations means the obligations set out in Clause 16 (*Transparency Obligations*);

Undeliverable Scheme means a Firm Scheme in respect of which there is a material risk of a Milestone Failure arising otherwise than as a result of the occurrence of a Milestone Extension Event;

United Kingdom Competition Requirement means the provisions of Chapter 3 (Subsidy Control) of Title XI (Level Playing Field for Open and Fair Competition and Sustainable Development) of the EU-UK Trade and Cooperation Agreement (as incorporated into the laws of England and Wales, Scotland and Northern Ireland by Section 29 of the European Union (Future Relationship) Act 2020) and/or such other Legislation and/or regulations and/or guidance issued by the Secretary of State and/or approved by Parliament which is in force and/or applies in England which regulates Subsidy;

Unlawful Subsidy means a Subsidy found by a Competent Authority to be in contravention of or an infringement of the United Kingdom Competition Requirement;

Uplift Amount means an amount of the type described in the Recovery Determination and calculated for the purposes of Clause 23.11 (*Repayment of Grant*) in accordance with the methodology set out from time to time in the Capital Funding Guide;

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

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

- (a) an employee acting independently of the Grant Recipient;
- (b) a Subcontractor of any tier (or any employee of a Subcontractor not acting independently of the Subcontractor);
- (c) an employee of a Subcontractor of any tier acting independently of such Subcontractor; or
- (d) any person not specified in parts (a), (b) or (c),

and Homes England is satisfied that the Grant Recipient and/or the Subcontractor (as applicable) has taken such action as is appropriate taking in to account the nature and the circumstances of the relevant Prohibited Act. "Acting independently" for these purposes means not acting with the authority or knowledge of any one or more of the directors of the Grant Recipient or relevant Subcontractor;

Withdrawn Scheme means (as the context so requires):

- (a) a Capital Firm Scheme withdrawn by the Grant Recipient pursuant to Clause 5.3.1 or Clause 5.3.3 (*Changes to Capital Firm Schemes*); or
- (b) a Revenue Firm Scheme withdrawn by the Grant Recipient pursuant to Clause 10.3.1 or Clause 10.3.3 (*Changes to Capital Firm Schemes*);

Withholding Event means a General Withholding Event or a Scheme Withholding Event; and

Works means in relation to each Capital Firm Scheme all of the works (including the Start on Site Works, the design, infrastructure works and all other works necessary for obtaining access to the RSAP Dwellings) (if any) to be undertaken in order to ensure that the RSAP Dwellings meet the Submitted Standards and are developed, repaired, converted, refurbished and/or Rehabilitated (as applicable) in accordance with the Capital Firm Scheme Details.

1.2 Interpretation

- 1.2.1 Words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any clause, sub-clause, paragraph, schedule or section heading is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document or publication shall include (except where expressly stated otherwise) any variation, amendment or supplement to or restatement of such document or publication to the extent that such variation, amendment or supplement or restatement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any Act of Parliament, enactment, order, regulation, statutory instrument, determination, guidance or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination, guidance 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 corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 The words **includes** or **including** are to be construed without limitation.

- 1.2.9 Where any discretion is granted by this Agreement to any Party, that Party shall be entitled to exercise that discretion freely and without fetter (implied or otherwise).
- 1.2.10 A paragraph in a Schedule shall be construed as reference to a paragraph in that particular Schedule.
- 1.2.11 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the Parties or which were otherwise provided for in this Agreement.
- 1.2.12 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as may be specified by Homes England by notice in writing to the Grant Recipient.
- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 The terms "Site", "Capital Firm Scheme" and "Revenue Firm Scheme" include each and every part of it.
- 1.2.16 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.
- 1.2.17 Save where a contrary intention is shown, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner and any reference to the exercise of a discretion by Homes England shall be construed as permitting Homes England to exercise its discretion freely and without constraint of any kind.
- 1.2.18 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.19 The Grant Recipient shall in relation to the delivery of its obligations under this Agreement be responsible as against Homes England for the acts or omissions of any Grant Recipient Party as if they were the acts or omissions of the Grant Recipient.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve the Grant Recipient of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England

in respect of or in connection with the matter to or in relation to which such approval, consent, examination or acknowledgement was given or review made.

- 1.2.21 In the event of any conflict between the Capital Firm Scheme Details summarised in the Original Approved Capital Bid and the Capital Firm Scheme Details set out in IMS (and accepted by Homes England through IMS), the Capital Firm Scheme Details in IMS shall prevail.
- 1.2.22 In the event of any conflict between the Revenue Firm Scheme Details summarised in the Original Approved Revenue Bid and the Revenue Firm Scheme Details set out in IMS (and accepted by Homes England through IMS), the Revenue Firm Scheme Details in IMS shall prevail.
- 1.2.23 In the event of any conflict between the Original Allocated Capital Grant figure set out in IMS (and accepted by Homes England through IMS) and the Original Allocated Capital Grant figure set out in the definition of Original Allocated Capital Grant in this Agreement, the Original Allocated Capital Grant figure set out in IMS shall prevail.
- 1.2.24 In the event of any conflict between the Original Allocated Revenue Grant figure set out in IMS (and accepted by Homes England through IMS) and the Original Allocated Revenue Grant figure set out in the definition of Original Allocated Revenue Grant in this Agreement, the Original Allocated Revenue Grant figure set out in IMS shall prevail.
- 1.2.25 Where this Agreement refers to information set out in IMS, this Agreement shall be construed as incorporating such information into its terms.
- 1.2.26 The terms "Allocated Capital Grant", "Original Allocated Capital Grant" and "Capital Firm Scheme Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.
- 1.2.27 The terms "Allocated Revenue Grant", "Original Allocated Revenue Grant" and "Revenue Firm Scheme Grant" shall (unless the context precludes such interpretation) include every payment of grant funding in relation to that Revenue Firm Scheme.
- 1.2.28 Any reference to a Section and/or a Chapter of the Capital Funding Guide in this Agreement shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.
- 1.2.29 Any terms used in the definition of "Subsidy" shall, unless the context requires otherwise, be construed as having the meaning given to them in the EU-UK Trade and Cooperation Agreement.

2 Purpose

- 2.1 MHCLG has agreed to make the Allocated Capital Grant available to Homes England and Homes England has agreed to make the Allocated Capital Grant available to the Grant Recipient to provide the RSAP Dwellings subject to and in accordance with the terms and conditions of this Agreement.

2.2 MHCLG has agreed to make the Allocated Revenue Grant available to Homes England and Homes England has agreed to make the Allocated Revenue Grant available to the Grant Recipient to help reimburse revenue costs incurred by the Grant Recipient in providing and/or securing the provision of Revenue Services subject to and in accordance with the terms and conditions of this Agreement.

2.3 Under no circumstances may the Revenue Grant be applied towards the purchase or acquisition of equipment or other assets or expended for other capital purposes.

2.4 Each Party undertakes to co-operate with the other to facilitate the proper performance of this Agreement and the Delivery of the Capital Indicative Schemes, the Capital Firm Schemes and the Revenue Firm Schemes.

3 **Acknowledgements, Representations and Warranties**

3.1 Without prejudice to any other term of this Agreement, the Parties acknowledge for the purposes of the record that Homes England agreed in response to the Grant Recipient's initial bid under RSAP to advance grant funding to the Grant Recipient in an initial amount equal to:

3.1.1 the Original Allocated Capital Grant to facilitate the Delivery of the Original Approved Capital Bid; and

3.1.2 the Original Allocated Revenue Grant to facilitate the Delivery of the Original Approved Revenue Bid.

3.2 Without prejudice to any other term of this Agreement, the Grant Recipient:

3.2.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;

3.2.2 represents and warrants in the terms set out in Part 2 of Schedule 1 (*Representations and Warranties*) to Homes England and MHCLG on the date hereof and on each day during the currency of this Agreement; and

3.2.3 acknowledges and agrees that each of Homes England and MHCLG is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

3.3 Homes England has no obligation to make any payment of Funding to the Grant Recipient in relation to anything other than a Capital Firm Scheme or a Revenue Firm Scheme.

4 **Capital Firm Schemes**

4.1 The Grant Recipient must:

4.1.1 not less than five (5) Business Days prior to the projected Acquisition Date ensure that such details of each Capital Original Scheme (other than a Capital Indicative Scheme) as are required by Homes England have been accurately uploaded onto IMS; and

- 4.1.2 (subject to Clauses 6.4.1 (*Capital Indicative Schemes*) to 6.7 (*Capital Indicative Schemes*) (inclusive) upload onto IMS (or amend through IMS) such details of each Capital Indicative Scheme as are required in order for Homes England to consider the conversion of such Capital Indicative Scheme to a Capital Firm Scheme for the Delivery of RSAP Housing,

and where in either case the relevant scheme is accepted by Homes England through IMS, it will become a Capital Firm Scheme for the purposes of this Agreement with effect from the Acceptance Date.

4.2 The Grant Recipient represents and warrants to Homes England in relation to each Capital Firm Scheme that:

4.2.1 the Capital Firm Scheme:

- (a) is in its opinion (acting reasonably) deliverable in accordance with the Capital Firm Scheme Delivery Timetable and is consistent with the Submitted Standards; and
- (b) comprises no Public Sector Funding beyond that identified in the Capital Firm Scheme Details;

4.2.2 the Grant Recipient:

- (a) possesses or, in the case of a Capital L&R Scheme, will possess a Secure Legal Interest which:
 - i with respect to a Capital P&D Scheme, is a Secure Legal Interest (P&D); or
 - ii with respect to a Capital L&R Scheme, is a Secure Legal Interest (L&R) where the lease is not (and will not be) capable of being terminated (save in the case of material breach) by the landlord prior to the expiry of the Lease Period;
- (b) has obtained all Planning Permissions necessary for the lawful Delivery of the Capital Firm Scheme to the Submitted Standards and for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details as are then required;
- (c) has obtained all Consents necessary for the lawful development and/or Rehabilitation of the Capital Firm Scheme to the Submitted Standards and for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details as are then required;
- (d) has complied with all applicable requirements of the Capital Funding Guide in relation to the Capital Firm Scheme;
- (e) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued;

- (f) has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report; and
- (g) no Site comprised in any Capital L&R Scheme is a Social Housing Dwelling or already owned by the Grant Recipient or a Grant Recipient Affiliate.

4.3 Homes England may at its absolute discretion vary the percentages attributed to the Acquisition Tranche Grant, the Start on Site Tranche Grant and/or Practical Completion Tranche Grant (as applicable) from time to time save that no such variation will take effect in relation to any Tranche which has already been paid.

4.4 Under no circumstances shall Homes England be obliged to accept any Capital Firm Scheme if Homes England (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under RSAP or other programme commitments) to provide Capital Firm Scheme Grant in relation to the relevant scheme.

5 **Changes to Capital Firm Schemes**

5.1 The Grant Recipient may propose changes to any Capital Firm Scheme at any time prior to the Capital Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Tranche already received by the Grant Recipient.

5.2 Where a Pre-Start Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the procedure set out in Clause 5.3 (*Changes to Capital Firm Schemes*) below.

5.3 If Homes England:

5.3.1 accepts the Pre-Start Change in principle, it shall be entitled to recalculate the Capital Firm Scheme Grant allocated to the Capital Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Capital Firm Scheme Grant figure than that set out in the Capital Firm Scheme Details, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Capital Firm Scheme from this Agreement or proceed with it on the basis of the recalculated Capital Firm Scheme Grant figure or to withdraw the proposed Pre-Start Change. If:

- (a) the Capital Firm Scheme is withdrawn by the Grant Recipient, Homes England will (subject to any invocation by the Grant Recipient of Clause 8.1 (*Capital Firm Scheme substitution and additions*)) and any resulting operation of Clause 8 (*Capital Firm Scheme substitution and additions*) withdraw the Capital Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately and the Grant Recipient must repay Homes England a sum equivalent to the Acquisition Tranche Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;

- (b) the proposed Pre-Start Change is withdrawn by the Grant Recipient, the Grant Recipient shall reinstate in IMS the Capital Firm Scheme Details ante the date of the Pre-Start Change and, following Homes England's approval of such reinstated details in IMS, the Capital Firm Scheme shall proceed on the basis of those reinstated Capital Firm Scheme Details;
 - (c) the Grant Recipient wishes to proceed with the Capital Firm Scheme, it must immediately amend the Capital Firm Scheme Details in IMS to reflect the Pre-Start Change, the recalculated Capital Firm Scheme Grant figure and any Acquisition Tranche Grant already received. The amended Capital Firm Scheme Details (together with any adjustments to the sum and percentages of the subsequent Tranches due as a result of the recalculated Capital Firm Scheme Grant figure being lower than the original Capital Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and
 - (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Capital Firm Scheme from this Agreement;
- 5.3.2 accepts the Pre-Start Change (including any change to the Capital Firm Scheme Grant figure) as proposed by the Grant Recipient, it will accept the change through IMS and the relevant Capital Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;
- 5.3.3 rejects the Pre-Start Change, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether it wishes to proceed with the Capital Firm Scheme on the original basis or to withdraw it. If:
 - (a) the Capital Firm Scheme is withdrawn by the Grant Recipient, Homes England will permanently withdraw the Capital Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately and the Grant Recipient must repay Homes England a sum equivalent to the Acquisition Tranche Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or
 - (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Capital Firm Scheme from this Agreement.
- 5.4 Where a Post-Start Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the procedure set out in Clause 5.5 (*Changes to Capital Firm Schemes*) below.
- 5.5 If Homes England:
 - 5.5.1 accepts the Post-Start Change in principle, it shall be entitled to recalculate the Capital Firm Scheme Grant allocated to the Capital Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Capital

Firm Scheme Grant figure than that set out in the Capital Firm Scheme Details, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Capital Firm Scheme from this Agreement, proceed with the Capital Firm Scheme on the basis of the recalculated Capital Firm Scheme Grant figure or to retract the Post-Start Change. If:

- (a) the Grant Recipient wishes to withdraw the Capital Firm Scheme, Homes England will permanently withdraw the balance of the Capital Firm Scheme Grant allocated to such scheme and the Grant Recipient must repay Homes England a sum equivalent to such part of the Capital Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (b) the Grant Recipient wishes to proceed with the Capital Firm Scheme, it must immediately amend the Capital Firm Scheme Details in IMS to reflect both the Post-Start Change and the recalculated Capital Firm Scheme Grant figure and the amended Capital Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS). The remaining Tranches due to be paid to the Grant Recipient in respect of the Firm Scheme (each a **Remaining Tranche**) will be adjusted to take account of the recalculated Firm Scheme Grant figure in such proportions as Homes England shall determine. If such adjustment would result in any Remaining Tranches being a negative figure (and being therefore an overpayment of Firm Scheme Grant), the Grant Recipient must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative figure and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (c) the Grant Recipient wishes to retract the Post-Start Change, it must do so immediately via IMS and the Capital Firm Scheme will proceed as contemplated ante the Grant Recipient's submission of the Post-Start Change; and
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Capital Firm Scheme from this Agreement;

5.5.2 accepts the Post-Start Change (including any change to the Capital Firm Scheme Grant figure) as proposed by the Grant Recipient, it will accept the change through IMS and the relevant Capital Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

5.5.3 rejects the Post-Start Change, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether it wishes to proceed with the Capital Firm Scheme on the original basis or to withdraw it. If:

- (a) the Grant Recipient wishes to withdraw the Capital Firm Scheme, Homes England will permanently withdraw the balance of the Capital Firm Scheme Grant allocated to such scheme and the Grant Recipient must repay Homes England a sum equivalent to such part of the Capital Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Capital Firm Scheme from this Agreement.

- 5.6 Homes England will not be obliged to pay any Tranche to the Grant Recipient in relation to any Capital Firm Scheme unless any changes required to the Capital Firm Scheme Details by Clause 5.3 (*Changes to Capital Firm Schemes*) or Clause 5.5 (*Changes to Capital Firm Schemes*) have been made and have been accepted by Homes England in IMS.
- 5.7 Homes England will take reasonable steps to contact the Grant Recipient during the period specified in each of Clauses 5.3.1 (*Changes to Capital Firm Schemes*), 5.3.3 (*Changes to Capital Firm Schemes*), 5.5.1 (*Changes to Capital Firm Schemes*) and 5.5.3 (*Changes to Capital Firm Schemes*) to remind the Grant Recipient of the need for the appropriate notification, but any failure on Homes England's part to do so will not preclude Homes England from treating a Capital Firm Scheme as withdrawn where there has been a Notification Failure under any of those Clauses.
- 5.8 Under no circumstances will Homes England be required to accept any Pre-Start Change or Post-Start Change which would have the result of increasing the amount of the Allocated Capital Grant or the Capital Firm Scheme Grant in relation to the relevant Capital Firm Scheme.
- 5.9 Where pursuant to Clause 5.5.1(b) (*Changes to Capital Firm Schemes*) any Tranche must be adjusted to take account of the recalculated Capital Firm Scheme Grant figure, nothing shall preclude the Parties from agreeing the proportion of such adjustment but in default of agreement the proportion determined by Homes England shall prevail.
- 5.10 Any change to the Capital Firm Scheme Details and/or the Approved Capital Bid resulting from the application of this Clause 5 (*Changes to Capital Firm Schemes*) shall be implemented by the Grant Recipient amending the Capital Firm Scheme Details in IMS and confirmed by Homes England's electronic acceptance of that amendment through IMS and in default of agreement the Parties will be bound by the Capital Firm Scheme Details as they existed prior to the change proposed.

6 **Capital Indicative Schemes**

- 6.1 The Grant Recipient confirms that such details of each Capital Indicative Scheme comprised within the Original Approved Capital Bid as Homes England requires have been uploaded onto IMS by the date of this Agreement.
- 6.2 The Grant Recipient shall be entitled to submit Proposed Capital Indicative Schemes to Homes England after the date of this Agreement and where it wishes to do so, it must submit to Homes England through IMS such details of such Proposed Capital Indicative Schemes as Homes England may require.

- 6.3 Homes England shall be entitled to accept or reject the details submitted for any Proposed Capital Indicative Scheme. Where Homes England accepts a Proposed Capital Indicative Scheme into the Approved Capital Bid pursuant to Clause 6.1 (*Capital Indicative Schemes*), it shall confirm its acceptance to the Grant Recipient through IMS.
- 6.4 If a Proposed Capital Indicative Scheme is accepted by Homes England in IMS, pursuant to Clause 6.3 (*Capital Indicative Schemes*) then with effect from the date of that acceptance:
- 6.4.1 such scheme shall be deemed to be a Capital Indicative Scheme and becomes subject to the processes set out in Clauses 6.4 to 6.10 (inclusive) (*Capital Indicative Schemes*) and Clause 4.1.2 (*Capital Firm Schemes*);
 - 6.4.2 any details set out by the Grant Recipient with respect to such Capital Indicative Scheme in IMS and as confirmed by Homes England in IMS shall be deemed to be the relevant Capital Indicative Scheme Details for the purposes of this Agreement; and
 - 6.4.3 the Allocated Capital Grant shall be deemed to be adjusted by the amount of the Capital Indicative Allocation agreed by Homes England in IMS in relation to the new Capital Indicative Scheme.
- 6.5 The Grant Recipient must use all reasonable endeavours to ensure that each Capital Indicative Scheme:
- 6.5.1 is worked up so that it is capable of being brought forward as a Capital Firm Scheme in line with any requirements, deadlines and/or timescales set out by Homes England (acting in its absolute discretion) (**Capital Scheme Transition**); and
 - 6.5.2 is uploaded onto IMS in accordance with the procedure and timescale set out in Clause 4.1 (*Capital Firm Schemes*).
- 6.6 The Grant Recipient must notify Homes England in writing immediately upon becoming aware of any matter or circumstance which is likely to prejudice the Grant Recipient's ability to comply with its obligations under Clause 6.4.1 (*Capital Indicative Schemes*).
- 6.7 On receipt of a notice under Clause 6.6 (*Capital Indicative Schemes*) or on otherwise becoming aware of any likely delay to bringing forward a Capital Indicative Scheme as a Capital Firm Scheme, Homes England (acting reasonably) shall be entitled either:
- 6.7.1 to extend or modify any relevant dates, deadlines or other requirements mandated by Homes England (acting in its absolute discretion), as it considers to be appropriate for bringing forward such Capital Indicative Scheme having regard to the circumstance giving rise to the anticipated delay; or
 - 6.7.2 to withdraw the Capital Indicative Allocation,

and in determining which option to pursue Homes England shall be entitled to take into account such factors as it considers appropriate including:

- (a) the likely availability of Homes England resources in relation to any delayed Delivery of the Proposed Capital Firm Scheme resulting from any

extension to the relevant timescales mandated by Homes England (acting in its absolute discretion); and

- (b) the adequacy of the Grant Recipient's performance to date in respect of other Capital Indicative Schemes and Capital Firm Schemes.

6.8 The Grant Recipient shall be entitled to propose changes to any Capital Indicative Scheme at any point prior to any relevant date (if applicable) determined by Homes England (acting in its absolute discretion) as the date by which the relevant Capital Scheme Transition must occur. Any such changes must be communicated to Homes England in writing or by the Grant Recipient proposing changes to the Capital Indicative Scheme Details through IMS. Homes England shall consider the proposal and respond to the Grant Recipient. Homes England shall be entitled at its discretion to:

6.8.1 accept the proposed changes, in which case the Grant Recipient must ensure that the accepted changes are correctly logged in IMS. The changes shall be deemed to be effective from the point at which they are formally accepted by Homes England in IMS; or

6.8.2 reject the proposed changes, in which case the Grant Recipient shall have a period of twenty (20) Business Days (from the point of notification of Homes England's rejection of the proposed changes) to notify Homes England as to whether it wishes to proceed with the Capital Indicative Scheme on the basis originally submitted or to withdraw the Capital Indicative Scheme from the Approved Capital Bid.

6.9 If the Grant Recipient:

6.9.1 withdraws the Capital Indicative Scheme from the Approved Capital Bid; or

6.9.2 fails to notify Homes England within the period prescribed in Clause 6.8.2 (*Capital Indicative Schemes*) as to which option it wishes to pursue,

Homes England shall be entitled permanently to withdraw the Capital Indicative Allocation and the Allocated Capital Grant figure shall be reduced commensurately.

6.10 Notwithstanding any other term of this Agreement, all Capital Indicative Schemes must (unless otherwise agreed) either have achieved Capital Firm Scheme status or have been withdrawn from the Approved Capital Bid by any date or deadline determined by Homes England (acting in its absolute discretion) as the date by which the relevant Capital Scheme Transition must occur. If a Capital Indicative Scheme has failed to achieve Capital Firm Scheme status by such date Homes England shall be entitled permanently to withdraw the Capital Indicative Allocation and the Allocated Capital Grant figure shall be reduced commensurately.

7 Time extensions

7.1 Where a Milestone Failure occurs or is in the opinion of Homes England reasonably likely to occur (having regard to the information supplied pursuant to Clause 14.3 (*Operational Obligations*) or Clause 15 (*Review, Monitoring and Reporting*) and such failure is directly caused by a Milestone Extension Event, Homes England may at its sole discretion elect to, subject always to Clause 7.3 (*Time extensions*), extend the relevant Milestone Date and

associated Capital Firm Scheme Completion 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.

7.2 Homes England shall not be obliged to consider an extension to a Milestone Date:

7.2.1 unless a Milestone Extension Event exists; or

7.2.2 in circumstances where such extension would (when taken individually or together with other extensions in relation to the Grant Recipient) in Homes England's reasonable opinion materially and adversely affect the Delivery of the Approved Capital Bid or (when taken individually or together with other extensions in relation to the Grant Recipient or other grant recipients of RSAP) materially and adversely affect Homes England's projected expenditure profile in relation to any year of RSAP and in particular (but without limitation) such expenditure profile in relation to the last Quarter of the relevant Financial Year.

7.3 Homes England shall not under any circumstances be required or obliged to extend a Capital Firm Scheme Completion Date beyond the date so specified in IMS within the latest approved version in the "Offer Line Sub Product Profile" upon the "Scheme Forecast" tab but may at its absolute discretion elect to do so in writing (through IMS or otherwise).

7.4 Homes England shall not under any circumstances be required or obliged to extend a Revenue Firm Scheme Completion Date beyond 31 March 2024 but may at its sole discretion elect to do so in writing (through IMS or otherwise).

8 **Capital Firm Scheme substitution and additions**

8.1 The Grant Recipient may request Homes England to accept the substitution of a different scheme (a **Capital Substitute Scheme**) in place of an Undeliverable Scheme or a Withdrawn Scheme.

8.2 If the Grant Recipient wishes to submit a Capital Substitute Scheme, it must submit to Homes England through IMS such details of the relevant Capital Substitute Scheme as Homes England may require. In submitting the details of the Capital Substitute Scheme, the Grant Recipient is deemed to make and give the same representations and warranties in relation to the Capital Substitute Scheme as it gives pursuant to Clause 4.2 (*Capital Firm Schemes*) in relation to a Capital Firm Scheme.

8.3 Homes England shall consider the submitted details and if Homes England is satisfied (a) with the information provided, (b) the level of grant funding requested and (c) that:

8.3.1 the Capital Substitute Scheme is consistent with the Agreed Purposes;

8.3.2 the Capital Substitute Scheme offers value for money;

8.3.3 the Capital Substitute Scheme is consistent with the Approved Capital Bid (including the scheme cost information and information in relation to the level of the Grant Recipient's contribution);

8.3.4 the Grant Recipient's performance in respect of other Capital Firm Schemes has satisfied the terms of this Agreement;

- 8.3.5 the Acquisition Date for the Capital Substitute Scheme will occur on or before the date submitted, approved and identified in IMS and the Capital Substitute Scheme can be fully delivered by such date as may be agreed by Homes England and set out in IMS;
- 8.3.6 no Bid Default, Fundamental Default nor Specified Default subsists; and
- 8.3.7 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory.

Homes England shall be entitled (but not obliged) to accept the Capital Substitute Scheme as a Capital Firm Scheme.

- 8.4 Where Homes England accepts a Capital Substitute Scheme into the Approved Capital Bid pursuant to Clause 8.3 (*Capital Firm Scheme substitution and additions*) it will confirm its acceptance of such scheme to the Grant Recipient through IMS.
- 8.5 With effect from the Substitute Scheme Acceptance Date:
 - 8.5.1 the Capital Substitute Scheme shall constitute a Capital Firm Scheme and shall be immediately subject to the whole terms and conditions of this Agreement; and
 - 8.5.2 the details set out by the Grant Recipient in respect of the Capital Substitute Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Capital Firm Scheme Details for the purposes of this Agreement.
- 8.6 It is agreed by the Parties that any Capital Firm Scheme Grant received by the Grant Recipient in relation to the Undeliverable Scheme shall be deemed to have been received by the Grant Recipient in relation to the Capital Substitute Scheme.
- 8.7 The Grant Recipient acknowledges and agrees that an Undeliverable Scheme constitutes a "project" for the purposes of and falls within Paragraph 7(e) of the Recovery Determination.
- 8.8 The Parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Capital Bid.
- 8.9 Where Clause 8.8 (*Capital Firm Scheme substitution and additions*) applies, the Grant Recipient shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In submitting such details, the Grant Recipient makes the same representations and warranties in relation to the proposed Additional Scheme as it makes to Homes England pursuant to Clause 5.2 (*Changes to Capital Firm Schemes*).
- 8.10 Homes England shall consider the Additional Scheme and if Homes England is satisfied that:
 - 8.10.1 the Additional Scheme is consistent with the Agreed Purposes;
 - 8.10.2 the Additional Scheme offers value for money;

- 8.10.3 the Grant Recipient's performance in respect of other Capital Firm Schemes comprised within the Approved Capital Bid has been of an acceptable standard and has satisfied the terms of this Agreement;
- 8.10.4 the Acquisition Date for the Additional Scheme will occur on or before the date submitted, approved and identified in IMS and the Additional Scheme can be fully delivered by such date as may be agreed by Homes England and set out in IMS;
- 8.10.5 no Bid Default, Fundamental Default nor Specified Default subsists; and
- 8.10.6 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory.

Homes England shall be entitled (but not obliged) to accept the Additional Scheme into the Approved Capital Bid.

- 8.11 Where Homes England accepts an Additional Scheme into the Approved Capital Bid pursuant to Clause 8.10 (*Capital Firm Scheme substitution and additions*) it shall confirm such acceptance to the Grant Recipient through IMS.

- 8.12 With effect from the Additional Scheme Acceptance Date:

- 8.12.1 the Additional Scheme shall be deemed to be a Capital Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;
- 8.12.2 the details set out by the Grant Recipient in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Capital Firm Scheme Details for the purposes of this Agreement; and
- 8.12.3 the Grant Recipient must ensure that it complies with all of its obligations under this Agreement as they apply to such new Capital Firm Scheme.

- 8.13 If Homes England agrees to make available any grant funding in relation to a Substitute Scheme or Additional Scheme, the Allocated Capital Grant will (subject to Clause 8.6 (*Capital Firm Scheme substitution and additions*)) be deemed to be increased or decreased (as appropriate) by the Capital Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Capital Firm Scheme.

9 Revenue Firm Schemes

- 9.1 The Grant Recipient must not less than five (5) Business Days prior to Practical Completion upload such details of each Revenue New Scheme comprised within the Approved Revenue Bid as are required onto Homes England's IMS, and if the relevant scheme is accepted by Homes England through IMS, it will become a Revenue Firm Scheme for the purposes of this Agreement with effect from the Acceptance Date.

- 9.2 The Grant Recipient represents and warrants to Homes England in relation to each Revenue Firm Scheme that:

- 9.2.1 the Revenue Firm Scheme:

- (a) is in its opinion (acting reasonably) deliverable in accordance with the Revenue Firm Scheme Delivery Timetable and is consistent with the Submitted Standards; and
- (b) comprises no Public Sector Funding beyond that identified in the Revenue Firm Scheme Details; and

9.2.2 the Grant Recipient:

- i has obtained all Consents necessary for the Delivery of the Revenue Firm Scheme in accordance with the Revenue Firm Scheme Details as are then required;
- ii is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- iii has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report.

9.3 Under no circumstances shall Homes England be obliged to accept any Revenue Firm Scheme if Homes England (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under RSAP or other programme commitments) to provide Revenue Firm Scheme Grant in relation to the relevant scheme.

10 Changes to Revenue Firm Schemes

10.1 The Grant Recipient may propose changes to any Revenue Firm Scheme at any time prior to the Revenue Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Revenue Firm Scheme Grant already received by the Grant Recipient.

10.2 Where a Revenue Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the procedure set out in Clause 10.3 (*Changes to Revenue Firm Schemes*) below.

10.3 If Homes England:

10.3.1 accepts the Revenue Change in principle, it shall be entitled to recalculate the Revenue Firm Scheme Grant allocated to the Revenue Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Revenue Firm Scheme Grant figure than that set out in the Revenue Firm Scheme Details, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Revenue Firm Scheme from this Agreement or proceed with it on the basis of the recalculated Revenue Firm Scheme Grant figure or to withdraw the proposed Revenue Change. If:

- (a) the Revenue Firm Scheme is withdrawn by the Grant Recipient, Homes England will withdraw the Revenue Firm Scheme Grant allocated to such

scheme and the Allocated Revenue Grant figure will be reduced commensurately and the Grant Recipient must repay Homes England a sum equivalent to the Revenue Firm Scheme Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;

- (b) the proposed Revenue Change is withdrawn by the Grant Recipient, the Grant Recipient shall reinstate in IMS the Revenue Firm Scheme Details ante the date of the Revenue Change and, following Homes England's approval of such reinstated details in IMS, the Revenue Firm Scheme shall proceed on the basis of those reinstated Revenue Firm Scheme Details;
- (c) the Grant Recipient wishes to proceed with the Revenue Firm Scheme, it must immediately amend the Revenue Firm Scheme Details in IMS to reflect the Revenue Change, the recalculated Revenue Firm Scheme Grant figure and any Revenue Firm Scheme Grant already received. The amended Revenue Firm Scheme Details (together with any adjustments due as a result of the recalculated Revenue Firm Scheme Grant figure being lower than the original Revenue Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Revenue Firm Scheme from this Agreement;

10.3.2 accepts the Revenue Change (including any change to the Revenue Firm Scheme Grant figure) as proposed by the Grant Recipient, it will accept the change through IMS and the relevant Revenue Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

10.3.3 rejects the Revenue Change, Homes England will notify the Grant Recipient and the Grant Recipient will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether it wishes to proceed with the Revenue Firm Scheme on the original basis or to withdraw it. If:

- (a) the Revenue Firm Scheme is withdrawn by the Grant Recipient, Homes England will permanently withdraw the Revenue Firm Scheme Grant allocated to such scheme and the Allocated Revenue Grant figure will be reduced commensurately and the Grant Recipient must repay Homes England a sum equivalent to the Revenue Firm Scheme Grant received by it, such payment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Revenue Firm Scheme from this Agreement.

10.4 Homes England will not be obliged to pay any Revenue Firm Scheme Grant to the Grant Recipient in relation to any Revenue Firm Scheme unless any changes required to the

Revenue Firm Scheme Details by Clause 10.3 (*Changes to Revenue Firm Schemes*) have been made and have been accepted by Homes England in IMS.

10.5 Homes England will take reasonable steps to contact the Grant Recipient during the period specified in each of Clauses 10.3.1 (*Changes to Revenue Firm Schemes*) and 10.3.3 (*Changes to Revenue Firm Schemes*) to remind the Grant Recipient of the need for the appropriate notification, but any failure on Homes England's part to do so will not preclude Homes England from treating a Revenue Firm Scheme as withdrawn where there has been a Notification Failure under any of those Clauses.

10.6 Under no circumstances will Homes England be required to accept any Revenue Change which would have the result of increasing the amount of the Allocated Revenue Grant or the Revenue Firm Scheme Grant in relation to the relevant Revenue Firm Scheme.

10.7 Any change to the Revenue Firm Scheme Details and/or the Approved Revenue Bid resulting from the application of this Clause 10 (*Changes to Revenue Firm Schemes*) shall be implemented by the Grant Recipient amending the Revenue Firm Scheme Details in IMS and confirmed by Homes England's electronic acceptance of that amendment through IMS and in default of agreement the Parties will be bound by the Revenue Firm Scheme Details as they existed prior to the change proposed.

11 **Revenue Firm Scheme additions**

11.1 The Grant Recipient confirms that such details of each Revenue Original Scheme comprised within the Original Approved Revenue Bid as Homes England requires have been uploaded onto IMS by the date of this Agreement.

11.2 The Parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Revenue Bid.

11.3 Where Clause 11.1 (*Revenue Firm Scheme additions*) applies, the Grant Recipient shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In submitting such details, the Grant Recipient makes the same representations and warranties in relation to the proposed Additional Scheme as it makes to Homes England pursuant to Clause 9.2 (*Revenue Firm Schemes*).

11.4 Homes England shall consider the Additional Scheme and if Homes England is satisfied that:

11.4.1 the Additional Scheme is consistent with the Agreed Purposes;

11.4.2 the Additional Scheme offers value for money;

11.4.3 the Grant Recipient's performance in respect of other Revenue Firm Schemes comprised within the Approved Revenue Bid has been of an acceptable standard and has satisfied the terms of this Agreement;

11.4.4 the Additional Scheme can be fully delivered by the date submitted, approved and identified in IMS;

11.4.5 no Bid Default, Fundamental Default nor Specified Default subsists; and

- 11.4.6 the Submitted Standards submitted in respect of such scheme by the Grant Recipient are satisfactory.

Homes England shall be entitled (but not obliged) to accept the Additional Scheme into the Approved Revenue Bid.

- 11.5 Where Homes England accepts an Additional Scheme into the Approved Revenue Bid pursuant to Clause 11.4 (*Revenue Firm Scheme additions*) it shall confirm such acceptance to the Grant Recipient through IMS.

- 11.6 With effect from the Additional Scheme Acceptance Date:

- 11.6.1 the Additional Scheme shall be deemed to be a Revenue Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;

- 11.6.2 the details set out by the Grant Recipient in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Revenue Firm Scheme Details for the purposes of this Agreement; and

- 11.6.3 the Grant Recipient must ensure that it complies with all of its obligations under this Agreement as they apply to such new Revenue Firm Scheme.

- 11.7 If Homes England agrees to make available any grant funding in relation to an Additional Scheme, the Allocated Revenue Grant will (subject to Clause 11.1 (*Revenue Firm Scheme additions*)) be deemed to be increased or decreased (as appropriate) by the Revenue Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Revenue Firm Scheme.

12 **Delivery Obligations**

- 12.1 The Grant Recipient must in relation to each Capital Firm Scheme:

- 12.1.1 carry out the acquisition of the Site, procure and diligently pursue the completion of the Works so that:

- (a) the Capital Firm Scheme is (subject to Clause 7.1 (*Time extensions*)) constructed, delivered and/or Rehabilitated (as applicable) in accordance with the Capital Firm Scheme Delivery Timetable;
- (b) when delivered, the Capital Firm Scheme fully complies with the Capital Firm Scheme Details and meets the Submitted Standards; and
- (c) any applicable requirements of Procurement Law and of the Consents are satisfied; and

- 12.1.2 promptly notify Homes England in writing of any failure or likely failure to comply with Clause 12.1.1(a) (*Delivery Obligations*);

- 12.1.3 procure that prior to any RSAP Dwelling comprised in such Capital Firm Scheme being occupied, all certification required in respect of the Capital Firm Scheme (or any part thereof) is obtained (including certification that such RSAP

Dwelling has passed “Gateway 3” when implemented) under any building safety legislation arising out of the Building Safety Bill 2021; and

- 12.1.4 where any RSAP Dwelling forms part of a building that is above either 18 metres or 7 storeys in height (whichever is the lower), register as a signatory to the Building a Safer Future Charter.

12.2 The Grant Recipient must in relation to each Revenue Firm Scheme:

12.2.1 deliver the Revenue Services so that:

- (a) the Revenue Firm Scheme is delivered in accordance with the Revenue Firm Scheme Delivery Timetable;
- (b) when delivered, the Revenue Firm Scheme fully complies with the Revenue Firm Scheme Details and meets the Submitted Standards; and
- (c) any applicable requirements of Procurement Law and of the Consents are satisfied;

12.2.2 promptly notify Homes England in writing of any failure or likely failure to comply with Clause 12.2.1(a) (*Delivery Obligations*); and

12.2.3 comply with Clause 15.21 (*Review, Monitoring and Reporting*) to submit a Statement of Grant Usage in order to provide Homes England with satisfactory evidence that the Revenue Grant will reimburse expenditure incurred in providing the Revenue Services.

13 **Revenue Eligible Expenditure**

13.1 Subject to Clause 13.2 (*Revenue Eligible Expenditure*) below, Revenue Eligible Expenditure consists of payments made by the Grant Recipient during the Revenue Funding Period in providing and/or securing the provision of Revenue Services.

13.2 The following costs shall not be regarded as Revenue Eligible Expenditure for the purposes of this Agreement:

13.2.1 activities of a political or exclusively religious nature;

13.2.2 services that the Grant Recipient has a statutory duty to provide;

13.2.3 payments reimbursed or to be reimbursed by other public or private sector grants;

13.2.4 depreciation, amortisation or impairment of fixed assets owned by the Grant Recipient;

13.2.5 the acquisition or improvement of fixed assets by the Grant Recipient;

13.2.6 interest payments (including service charge payments for finance leases);

13.2.7 gifts to individuals other than promotional items with a value no more than £10 a year to any one individual;

- 13.2.8 entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
 - 13.2.9 statutory fines, criminal fines or penalties;
 - 13.2.10 any goods or other assets;
 - 13.2.11 costs of building, land acquisition or other costs of development itself; and
 - 13.2.12 costs related to non-residential elements of the Revenue Services.
- 13.3 For the purpose of this Agreement, a payment shall be regarded as made by the Grant Recipient when and only when, money passes out of the Grant Recipient's control. Money will be assumed to have passed out of the Grant Recipient's control at the moment when a letter is posted to a supplier, contractor or consultant containing a cheque, or an electronic instruction is sent to a bank to make a payment to such person by direct credit or bank transfer.
- 13.4 The Grant Recipient may claim for a Revenue Grant pursuant to this Agreement against Revenue Eligible Expenditure incurred in making payments to a subcontractor under a contract which secures the provision of the Revenue Services in accordance with this Agreement.
- 13.5 The Grant Recipient must not deliberately incur liabilities for Revenue Eligible Expenditure before there is an operational need for it to do so and must not pay for Revenue Eligible Expenditure sooner than the due date for payment.
- 13.6 The Grant Recipient acknowledges that Revenue Eligible Expenditure may only be claimed in accordance with Clause 17.7 (*Capital Grant Claim Procedures*).
- 14 **Operational Obligations**
- 14.1 In Delivering the Capital Firm Scheme and in operating and administering the Capital Firm Scheme after Practical Completion, the Grant Recipient must observe and comply with Legislation, the applicable terms of the Capital Funding Guide and the Recovery Determination and the Consents.
- 14.2 The Grant Recipient shall procure that Homes England's Representative (or any person nominated by them) shall have at all reasonable times and upon giving reasonable notice the right to enter onto the Site and to take such action as he considers appropriate to inspect the progress of the Capital Firm Scheme and to monitor compliance by the Grant Recipient with its obligations under this Agreement.
- 14.3 The Grant Recipient must agree in advance with Homes England any significant changes to the Approved Capital Bid or the Approved Revenue Bid or to any of the outputs, activities, targets and/or indicative dates as set out in the Approved Capital Bid or the Approved Revenue Bid.
- 14.4 The Grant Recipient shall provide such evidence as Homes England may reasonably require to enable Homes England to satisfy itself:
- 14.4.1 with the progress against the Approved Capital Bid and the Approved Revenue Bid (if any) including, without limitation, progress against the delivery Milestones

agreed in relation to such Approved Capital Bid or Approved Revenue Bid (as applicable); and

- 14.4.2 that the Grant Recipient is complying with the terms and conditions of this Agreement.
- 14.5 The Grant Recipient must notify Homes England in writing (save in respect of Clause 14.5.1 and Clause 14.5.2 (*Operational Obligations*) where, in each case, notification is required to be given through IMS):
 - 14.5.1 immediately once the Acquisition Date has occurred;
 - 14.5.2 immediately once the Start on Site Date has occurred;
 - 14.5.3 immediately, in the event of the receipt by it of any other Public Sector Funding or guarantees of it, or the offer of the same, in respect of the Capital Firm Scheme (or any part of it) beyond any amount of Public Sector Funding notified to Homes England by the Grant Recipient pursuant to Clause 4.1 (*Capital Firm Schemes*), Clause 8.2 (*Capital Firm Scheme substitution and additions*) or Clause 8.9 (*Capital Firm Scheme substitution and additions*) or in respect of the Revenue Firm Scheme (or any part of it) beyond any amount of Public Sector Funding notified to Homes England by the Grant Recipient pursuant to Clause 9.1 (*Revenue Firm Schemes*), Clause 11.1 (*Revenue Firm Scheme additions*) or Clause 11.3 (*Revenue Firm Scheme additions*);
 - 14.5.4 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect; and
 - 14.5.5 of any other event or circumstance in relation to the Firm Scheme as Homes England may reasonably require from time to time and within such timeframes as Homes England may reasonably require.
- 14.6 Without prejudice to Clause 14.1 (*Operational Obligations*), the Grant Recipient must in operating and administering the Capital Firm Scheme after Practical Completion:
 - 14.6.1 subject to Clause 23.1 (*Repayment of Grant*) not use the RSAP Dwellings for any purpose other than the Agreed Purposes without Homes England's prior written consent;
 - 14.6.2 not charge a higher initial rent in relation to a RSAP Rent Dwelling than set out in the relevant Capital Firm Scheme Details;
 - 14.6.3 subject to any contrary requirement of Legislation comply with the Rent Standard in respect of the RSAP Rent Dwellings;
 - 14.6.4 comply with the Tenancy Standard in respect of the RSAP Rent Dwellings;
 - 14.6.5 observe and comply with the requirements of the Capital Funding Guide in relation to:
 - (a) the letting, management or Disposal of RSAP Rent Dwellings; and

- (b) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement;
- 14.6.6 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
- 14.6.7 in relation to RSAP Housing, participate in the CORE system from time to time (including recording any lettings made);
- 14.6.8 in relation to each RSAP Rent Dwelling use the most appropriate form of tenancy (as set out in the Capital Funding Guide) having regard to the terms of the Tenancy Standard and the efficient use of public funds;
- 14.6.9 ensure that each RSAP Rent Dwelling which is not a new-build development is made available as an RSAP Rent Dwelling for a period of not less than thirty (30) years from the point at which it first becomes available for letting;
- 14.6.10 ensure that each RSAP Rent Dwelling which is a new-build development is made available as an RSAP Rent Dwelling for a period of not less than sixty (60) years from the point at which it first becomes available for letting;
- 14.6.11 provide Homes England with a completed Disposal Notification no less than ten (10) Business Days prior to a Disposal taking place in accordance with any applicable requirements of the Capital Funding Guide, and procure on any Disposal a written acknowledgement from the donee in favour of Homes England that may be required by Homes England; and
- 14.6.12 provide Homes England or MHCLG (as applicable) with such information (and within such timescales) as Homes England or MHCLG (as applicable) may reasonably require to enable Homes England or MHCLG (as applicable) to monitor compliance by the Grant Recipient with its obligations under this Agreement.
- 14.7 The Grant Recipient will:
- 14.7.1 ensure that that any Disposal Notification, Constitutional Change Notification or any other notifications or certificates from the Grant Recipient to Homes England (the **Grant Recipient Notifications**) are provided by the Grant Recipient's Representative and must further ensure that such Grant Recipient Representative has access to the information and knowledge needed accurately to give the information required; and
- 14.7.2 notify Homes England if it becomes aware that the Grant Recipient Notifications are erroneous in any material respect.
- 14.8 Without prejudice to Clause 14.1 (*Operational Obligations*), the Grant Recipient must in operating and administering the Revenue Firm Scheme, secure the best value for money in all purchases of services where the costs of such purchases is or would be paid for by the Revenue Grant.
- 14.9 Subject to Clause 14.8 (*Operational Obligations*), the Grant Recipient must obtain quotes for the provision of all services with a cost of £500 or more, and where the cost is £5,000 or

more, it must, obtain at least 3 written tenders (unless otherwise agreed by Homes England in its absolute discretion). If required to do so by Homes England, it must produce documentary evidence of compliance with this Clause 14.7 (*Operational Obligations*).

14.10 If:

- 14.10.1 the Grant Recipient follows a single tender procedure, for example, where the value of a contract is very low; or
- 14.10.2 the Grant Recipient has an existing panel of service providers in place who have previously been through a tendering process; or
- 14.10.3 where there is only one supplier capable of providing to the Grant Recipient the goods or services concerned,

the Grant Recipient must keep a record of the reasons why that procedure was thought to be appropriate.

14.11 The Grant Recipient shall comply with all relevant Legislation in relation to the supply of goods and services including Procurement Law.

14.12 The Grant Recipient shall ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Grant Recipient from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.

14.13 In discharging its obligations or making any representation or warranty under this Agreement, the Grant Recipient must act at all times with the utmost good faith, with the intent to deliver the Approved Capital Bid and (if applicable) the Approved Revenue Bid and with proper regard to the need for efficiency in the use of public funds.

14.14 Where the Grant Recipient is aware that it is in breach of an obligation under this Clause 14 (*Operational Obligations*), it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

14.15 If the Grant Recipient has any grounds for suspecting financial irregularity in the use of any Funding, it must notify Homes England immediately, explain what steps are being taken to investigate the suspicion and keep Homes England informed about the progress of the investigation. For these purposes "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of Capital or Revenue Grant for purposes other than the purposes permitted under this Agreement.

14.16 The Grant Recipient shall comply with the notifications regime set out in the Recovery Determination and promptly inform Homes England if any change is made to its constitution or structure which causes or is reasonably likely to cause a Relevant Event and provide a copy to Homes England of any document relating to such change.

15 **Review, Monitoring and Reporting**

15.1 The Grant Recipient shall comply fully with the contract management and reporting obligations set out in this Clause 15 (*Review, Monitoring and Reporting*).

- 15.2 The Grant Recipient acknowledges the high importance to Homes England of it being promptly advised when any circumstance occurs which may:
- 15.2.1 impact on the Grant Recipient's ability to Deliver any Capital Firm Scheme or Revenue Firm Scheme in accordance with the terms of this Agreement;
 - 15.2.2 change any assumptions in relation to the Approved Capital Bid or any Capital Firm Scheme which would provide an opportunity for the Grant Recipient to deliver more RSAP Dwellings with the Allocated Capital Grant or with the Capital Firm Scheme Grant (as applicable);
 - 15.2.3 change any assumptions in relation to the Approved Revenue Bid or any Revenue Firm Scheme which would provide an opportunity for the Grant Recipient to provide more Revenue Services with the Allocated Revenue Grant or with the Revenue Firm Scheme Grant (as applicable);
 - 15.2.4 indicate that Homes England is making available more grant than is required to Deliver the Approved Capital Bid, a Capital Firm Scheme, the Approved Revenue Bid or Revenue Firm Scheme;
 - 15.2.5 give rise to the making of a Section 114 Report or the issue of a Section 15 Direction;
 - 15.2.6 constitute a breach of Clause 14 (*Operational Obligations*); or
 - 15.2.7 constitute a Default Event,
- (collectively the **Contract Monitoring Outputs**).
- 15.3 Where Homes England becomes aware either via the Contract Monitoring Outputs or through other monitoring, that the Delivery of the Approved Capital Bid or the Approved Revenue Bid has not been secured in accordance with the requirements of this Agreement, or is unlikely to be so secured (a **Delivery Failure**), Homes England may in order to address such Delivery Failure, issue an Allocation Change Notice requiring:
- 15.3.1 a reduction, increase or other change to the number of RSAP Dwellings to be delivered;
 - 15.3.2 a reduction or other adjustment to the Allocated Capital Grant or to any Capital Firm Scheme Grant or the Allocated Revenue Grant or to any Revenue Firm Scheme Grant; and/or
 - 15.3.3 any other change to the Approved Capital Bid or the Approved Revenue Bid that Homes England deems reasonably necessary,
- and such Allocation Change Notice shall be discussed as soon as reasonably practicable by the Parties and in any event within fifteen (15) Business Days of the date of issue of the Allocation Change Notice.
- 15.4 Nothing in Clause 15.3 (*Review, Monitoring and Reporting*) shall preclude the Parties from agreeing an alternative means of dealing with the Delivery Failure to that set out in the Allocation Change Notice **save that** unless such alternative is agreed and reflected in IMS by the end of the then current Financial Year, the change required by Homes England in the

Allocation Change Notice shall take effect on the next following 1 April and Homes England shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Allocation Change Notice.

- 15.5 The Grant Recipient shall submit such:
- 15.5.1 information as is specified in the RSAP chapter of the Capital Funding Guide entitled "Letting Accommodation Guidance" at least once every calendar month (or such other frequency as Homes England may in its absolute discretion agree) beginning on the date of this Agreement; and
 - 15.5.2 other information in relation to this Agreement, the Approved Bid and/or its Delivery of the Firm Schemes as may be requested on reasonable notice by Homes England from time to time.
- 15.6 The Grant Recipient's Representative (or, where agreed with Homes England in advance, such other member of the Grant Recipient's executive management team) shall attend a review meeting when requested to do so by Homes England with reasonable prior written notice.
- 15.7 Homes England shall attend a review meeting reasonably requested by the Grant Recipient provided that:
- 15.7.1 the date of such meeting is agreed by Homes England; and
 - 15.7.2 the Grant Recipient provides an agenda for such meeting at the time of request.
- 15.8 At each Review Meeting Homes England and the Grant Recipient shall meet to discuss or review (without limitation):
- 15.8.1 all changes made to any Capital Firm Scheme, any Revenue Firm Scheme or to the Approved Capital Bid or the Approved Revenue Bid in the period since the immediately preceding Review Meeting or anticipated by the Grant Recipient to be requested during the current Financial Year;
 - 15.8.2 all withdrawals and reductions of Capital Indicative Schemes;
 - 15.8.3 the capacity of the Grant Recipient to bring forward additional housing supply under RSAP;
 - 15.8.4 the Grant Recipient's performance in delivering the Approved Capital Bid (including the conversion of Capital Indicative Schemes into Capital Firm Schemes);
 - 15.8.5 progress in relation to each Capital Indicative Scheme and Capital Firm Scheme including Delivery forecasts, lettings forecasts and progress against previous such forecasts;
 - 15.8.6 progress in relation to each Revenue Firm Scheme;
 - 15.8.7 the Contract Monitoring Outputs;

- 15.8.8 any Change in Control which is anticipated in the then current or upcoming Financial Year;
- 15.8.9 any Pre-Start Changes or Post-Start Changes made during the immediately preceding Quarter or anticipated by the Grant Recipient to be requested during the current Quarter; and
- 15.8.10 such other matters in relation to the performance or subject matter 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 Review Meeting.
- 15.9 Homes England's Representative and the Grant Recipient's Representative (or, where agreed with Homes England in advance, such other member of the Grant Recipient's executive management team) shall attend all Review Meetings until the date of Practical Completion. The Parties agree that MHCLG's Representative shall also be entitled to attend such meetings.
- 15.10 Save as otherwise agreed between the Parties, any meeting under this Clause 15 (*Review, Monitoring and Reporting*) shall be minuted by the Grant Recipient and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England, MHCLG and any other attendee.
- 15.11 The Grant Recipient shall:
- 15.11.1 provide Homes England and MHCLG with such information as Homes England and/or MHCLG shall reasonably require to support or facilitate the discussions and monitoring referred to in this Clause 15 (*Review, Monitoring and Reporting*); and
- 15.11.2 take all reasonable steps to ensure that any information provided to Homes England and MHCLG pursuant to this Clause 15 (*Review, Monitoring and Reporting*) is accurate in all material aspects.
- 15.12 The Grant Recipient shall, as and when requested by Homes England and/or MHCLG (as required in connection with this Agreement, the Approved Capital Bid, the Approved Revenue Bid or any Capital Indicative Scheme or Capital Firm Scheme or Revenue Firm Scheme) promptly provide to Homes England and MHCLG hard and/or electronic copies of:
- 15.12.1 any and 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 (including where the source was created by and/or is held by a Grant Recipient Party (or its consultants)) for the purposes of or in connection with this Agreement; and
- 15.12.2 the elemental breakdown of the construction costs in relation to each Capital Firm Scheme.
- 15.13 On the expiry of this Agreement or (if earlier) upon its termination, the Grant Recipient shall if requested to do so deliver up to Homes England or MHCLG (as directed) or procure the delivery to Homes England or MHCLG (as directed) of all the data, materials, documents and accounts referred to in this Clause 15 (*Review, Monitoring and Reporting*).

- 15.14 The Grant Recipient must for a period of ten (10) years from the date upon which it receives the Capital Firm Scheme Grant retain all of the data, documents, materials and accounts referred to in this Clause 15 (*Review, Monitoring and Reporting*) and the Grant Recipient may retain such data, documents, materials and accounts in electronic form only.
- 15.15 The Grant Recipient agrees that each of MHCLG's and Homes England's auditors (including the Comptroller and Auditor General) shall have unrestricted rights of access to any and all information to which Homes England or MHCLG (as applicable) is entitled under this Agreement or to which each of MHCLG's and Homes England's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.
- 15.16 The Grant Recipient shall promptly and fully co-operate with any request for information or evidence from time to time of:
- 15.16.1 any auditor (whether internal or external) of Homes England and/or MHCLG;
 - 15.16.2 MHCLG; and/or
 - 15.16.3 Homes England, to the extent such request relates to this Agreement (or any matter associated with it), or to SPEI Information and which Homes England is required to provide to any third party pursuant to Legislation or by any Competent Authority.
- 15.17 The Grant Recipient shall ensure that for each Firm Scheme it and each Grant Recipient Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the RSAP Housing which identify items of SPEI Revenue, the Capital Firm Scheme Grant, the Revenue Firm Scheme Grant, SPEI Allowable Costs and such other items required under this Clause 15 (*Review, Monitoring and Reporting*).
- 15.18 The Grant Recipient shall upon Homes England's or MHCLG's written request:
- 15.18.1 make available upon reasonable notice for Homes England's inspection (and that of any person referred to in this Clause 15 (*Review, Monitoring and Reporting*) or in Clause 27 (*Information and Confidentiality*) or any person appointed pursuant to Clause 25 (*Subsidy*) the books of account referred to in Clause 15.17 (*Review, Monitoring and Reporting*) (together with, if specified, such supporting correspondence, agreements, orders, invoices, receipts and other documents) and shall submit a report in relation to the same to Homes England or MHCLG (as applicable) as and when requested to do so; and
 - 15.18.2 procure that a representative of Homes England or MHCLG (as applicable) (or any of each of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this Clause 15 (*Review, Monitoring and Reporting*) are held or maintained and examine such records or information.
- 15.19 The Grant Recipient shall ensure that it and any Grant Recipient Affiliate (at its or their cost) co-operates with Homes England during an SPEI Review and it shall if requested promptly provide Homes England with SPEI Information and such other information, evidence and/or explanation as Homes England may reasonably require.

- 15.20 The Grant Recipient shall with effect from and including Practical Completion submit a signed and dated Annual Return to MHCLG within five (5) Business Days of the date falling annually (or such other frequency as MHCLG may otherwise agree in its full discretion) from Practical Completion together with such other information as may have been requested on reasonable notice by MHCLG.
- 15.21 Within thirty (30) Business Days of the end of any Financial Period (or such other frequency as Homes England may otherwise agree in its full discretion) in which the Grant Recipient requests any payment of Revenue Grant, the Grant Recipient must complete and submit a Statement of Grant Usage to Homes England in respect of such Financial Period. The Statement of Grant Usage must be, signed by either a company secretary or director of the Grant Recipient or a person occupying an equivalent post and certified by its external auditor or accountant including whether the entries in the statement are in accordance with the Grant Recipient's underlying records.
- 15.22 Any manuscript alterations to the Statement of Grant Usage must be initialled by the original signatories/y.
- 15.23 The Grant Recipient must ensure that their external auditor or accountant for the purposes of certification under Clause 15.21 (*Review, Monitoring and Reporting*) above complies with Auditor Guidance including (but without limitation) entering into a tripartite letter of engagement as referred to therein.
- 15.24 The Grant Recipient must:
- 15.24.1 maintain and operate effective monitoring and financial management systems in order to control expenditure and to ensure that the costs of achieving the objectives and activities as set out in any Approved Capital Bid or Approved Revenue Bid can be clearly identified; and
 - 15.24.2 keep a record of Revenue Eligible Expenditure and retain all accounting records relating to that expenditure and income for a period of at least 10 years after the end of Revenue Grant funding; and
 - 15.24.3 make the accounting records available at any reasonable time for inspection by Homes England's Representative and MHCLG's Representative.
- 15.25 For the purposes of Clause 15.24 (*Review, Monitoring and Reporting*), the accounting records shall include original invoices, receipts, accounts and deeds, whether in writing or electronic form.
- 15.26 The Grant Recipient shall provide Homes England with a completed Constitutional Change Notification (in accordance with the requirements of Clause 14.7 (*Operational Obligations*)) at least ten (10) Business Days prior to any Change in Control.
- 15.27 The Grant Recipient will promptly notify Homes England if any Know Your Customer Information becomes inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request.
- 15.28 The Parties acknowledge and agree that Homes England may review whether the Grant Recipient continues to meet the requirements for Investment Partner status pursuant to Clauses 15.26 (*Review, Monitoring and Reporting*) or 15.27 (*Review, Monitoring and*

Reporting) or otherwise and the Grant Recipient will co-operate with such review and will provide Homes England with such further information, evidence and/or explanation with respect to any such review as Homes England may request.

16 **Transparency Obligations**

16.1 The Grant Recipient must comply with the Transparency Code.

16.2 If the Transparency Code is not binding upon it, the Grant Recipient acknowledges that:

16.2.1 where the Allocated Capital Grant (itself or if aggregated with other RSAP Funds or funds made available under (i) any subsequent Homes England capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, the Grant Recipient must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Capital Firm Schemes by such means as ensures that such details can be accessed by the general public; and

16.2.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Grant Recipient hereby consents for each of Homes England and MHCLG to publish such information as it considers appropriate in relation to RSAP, including, but not limited to, details of the Approved Capital Bid, Development Costs, other costs and funding for Capital Firm Schemes, details of the Approved Revenue Bid, Revenue Eligible Expenditure, other costs and funding for Revenue Firm Schemes, including from time to time agreed changes to this information.

16.3 Homes England or MHCLG (as applicable) shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:

16.3.1 following consultation with the Grant Recipient and having taken (or not taken, as the case may be) its views into account; or

16.3.2 without consulting the Grant Recipient.

16.4 The Grant Recipient shall assist and co-operate with Homes England or MHCLG (as applicable) to enable Homes England or MHCLG (as applicable) to publish the information referred to in Clause 16.2.2 (*Transparency Obligations*).

17 **Capital Grant Claim Procedures**

17.1 Subject to the Acceptance Date having passed, the Grant Recipient may apply to Homes England for the Acquisition Tranche Grant payable in respect of that Capital Firm Scheme to be paid to it (the **AT Claim**). The Grant Recipient must make its AT Claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

17.2 In submitting an AT Claim pursuant to Clause 17.1 (*Capital Grant Claim Procedures*), the Grant Recipient:

17.2.1 is deemed to repeat the representations and warranties set out in Clause 4.2 (*Capital Firm Schemes*) other than Clause 4.2.2(b) (*Capital Firm Schemes*) and for the purposes of this Clause 17.2.1 (*Capital Grant Claim Procedures*) the Parties acknowledge and agree that:

- (a) limb (d) of the definition of Secure Legal Interest (P&D) shall be disregarded and of no effect; and
- (b) in the case of a Capital L&R Scheme, the Grant Recipient must possess a Secure Legal Interest (L&R) in relation to the Site where the lease granted to it may not be capable of being terminated (save in the case of material breach) by the landlord prior to the expiry of the Lease Period;

17.2.2 represents and warrants to Homes England that:

- (a) prior to submitting its AT Claim, the Grant Recipient has incurred capital expenditure in acquiring the Site at least to the value of the Acquisition Tranche Grant claimed;
- (b) all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Capital Firm Scheme have been, are or will be correct in all material respects;
- (c) the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;
- (d) no Withholding Event or Default Event has occurred or arisen (excluding any which has either been waived in writing by Homes England or remedied to the satisfaction of Homes England (in its absolute discretion) and Homes England has confirmed this in writing);
- (e) it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 14.6.12 (*Operational Obligations*) in respect of any Disposal of the relevant Site;
- (f) any Change in Control which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 15.26 (*Review, Monitoring and Reporting*);
- (g) the Acquisition Date is scheduled to occur on or before the date submitted in IMS;
- (h) all information provided to Homes England pursuant to Clause 15 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the Delivery of the Approved Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- (i) it has obtained all Consents necessary for the lawful Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details as are then required;

- (j) the Capital Firm Scheme will be or has been acquired, procured, designed, constructed and/or delivered (as applicable) in accordance with the Submitted Standards, the Capital Firm Scheme Details and the requirements of this Agreement;
- (k) it is not in breach of any term of this Agreement and that the amounts claimed in the AT Claim, if paid, will not result in any breach of this Agreement;
- (l) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (m) no Section 114 Report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making or any such report.

17.3 Subject to a Capital Firm Scheme having reached the Start on Site Date, the Grant Recipient may apply to Homes England for the Start on Site Tranche Grant payable in respect of that Capital Firm Scheme to be paid to it (the **SS Claim**). The Grant Recipient must make its SS Claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

17.4 In submitting an SS Claim pursuant to Clause 17.3 (*Capital Grant Claim Procedures*), the Grant Recipient:

17.4.1 is deemed to repeat the representations and warranties set out in Clause 4.2 (*Capital Firm Schemes*) and Clause 17.2.2(b) (*Capital Grant Claim Procedures*) and for the purposes of this Clause 17.4.1 (*Capital Grant Claim Procedures*) the Parties acknowledge and agree that:

- (a) limb (d) of the definition of Secure Legal Interest shall be disregarded and of no effect; and
- (b) in the case of a Capital L&R Scheme, the Grant Recipient must possess a Secure Legal Interest (L&R) in relation to the Site where the lease granted to it may not be capable of being terminated (save in the case of material breach) by the landlord prior to the expiry of the Lease Period;

17.4.2 represents and warrants to Homes England that:

- (a) the Start on Site Date has been reached and that such date is no later than that submitted in IMS;
- (b) all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Capital Firm Scheme have been, are or will be correct in all material respects;
- (c) the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;

- (d) no Withholding Event or Default Event has occurred or arisen (excluding any which has either been waived in writing by Homes England or remedied to the satisfaction of Homes England (in its absolute discretion) and Homes England has confirmed this in writing);
- (e) it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 14.6.12 (*Operational Obligations*) in respect of any Disposal of the relevant Site;
- (f) any Change in Control which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 15.26 (*Review, Monitoring and Reporting*);
- (g) all information provided to Homes England pursuant to Clause 15 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the Delivery of the Approved Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- (h) it has obtained all Consents necessary for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details and the Submitted Standards as are then required or to the extent that they are not obtained that the Grant Recipient has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;
- (i) the Capital Firm Scheme will be or has been acquired, procured, designed, constructed and/or delivered (as applicable) in accordance with the Submitted Standards, the Capital Firm Scheme Details and the requirements of this Agreement;
- (j) it is not in breach of any term of this Agreement and that the amounts claimed in the SS Claim will not, if paid, result in any breach of this Agreement;
- (k) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (l) no Section 114 Report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making or any such report.

17.5 Subject to a Capital Firm Scheme having reached Practical Completion (or in respect of a Single Claim Scheme, having reached Completion) by the Capital Firm Scheme Completion Date, the Grant Recipient may apply to Homes England for the Practical Completion Tranche Grant (or in respect of a Single Claim Scheme the Total Grant Tranche) payable in respect of that Capital Firm Scheme to be paid to it (the **PC Claim**). The Grant Recipient must make its PC Claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.

- 17.6 In submitting an application pursuant to Clause 17.5 (*Capital Grant Claim Procedures*), the Grant Recipient is deemed to represent and warrant to Homes England that:
- 17.6.1 the Capital Firm Scheme has reached Practical Completion (or in respect of a Single Claim Scheme, Completion);
 - 17.6.2 all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Capital Firm Scheme have been are or will be correct in all material respects;
 - 17.6.3 the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;
 - 17.6.4 no Withholding Event or Default Event has occurred or arisen (excluding any which has either been waived in writing by Homes England or remedied to the satisfaction of Homes England (in its absolute discretion) and Homes England has confirmed this in writing);
 - 17.6.5 it has provided Homes England with a Disposal Notification in accordance with the requirements of Clause 14.6.12 (*Operational Obligations*) in respect of any Disposal of the relevant Site;
 - 17.6.6 any Change in Control which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 15.26 (*Review, Monitoring and Reporting*);
 - 17.6.7 all information provided to Homes England pursuant to Clause 15 (*Review, Monitoring and Reporting*) and/or set out on IMS in relation to progress of the Delivery of the Approved Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
 - 17.6.8 it has obtained all Consents necessary for the Delivery of the Capital Firm Scheme in accordance with the Capital Firm Scheme Details and the Submitted Standards as are then required or to the extent that they are not obtained that the Grant Recipient has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;
 - 17.6.9 the Capital Firm Scheme has been procured, designed, constructed and delivered in accordance with the Submitted Standards, the Capital Firm Scheme Details and the requirements of this Agreement;
 - 17.6.10 it is not in breach of any term of this Agreement and that the amounts claimed in the PC Claim will not, if paid, result in any breach of this Agreement;
 - 17.6.11 where revenue funding (in addition to the Revenue Firm Scheme Grant) is required to permit the Grant Recipient to provide the Revenue Services, such funding is and will remain available to support the provision of the Revenue Services in accordance with the terms of the Approved Capital Bid;

- 17.6.12 it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- 17.6.13 no Section 114 Report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making of any such report.
- 17.7 Where any Capital Firm Scheme is identified on IMS as being an MMC Scheme, the Parties may agree alternative Relevant Claim Stages and/or Milestones (which better reflect the nature and characteristics of Modern Methods of Construction) in IMS or in such other medium as Homes England may specify and where this Clause 17.7 (*Capital Grant Claim Procedures*) applies Homes England reserves the right to require that the Grant Recipient makes additional representations and warranties as a condition of any claim for Capital Firm Scheme Grant.
- 18 **Revenue Grant Claim Procedures**
- 18.1 Subject to Practical Completion having passed, the Grant Recipient may make a claim to draw down a Revenue Quarterly Payment in respect of a Revenue Firm Scheme. The Grant Recipient must make its claim through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.
- 18.2 In submitting a claim pursuant to Clause 18.1 (*Revenue Grant Claim Procedures*), the Grant Recipient:
- 18.2.1 is deemed to repeat the representations and warranties set out in Clause 9.2 (*Revenue Firm Schemes*);
- 18.2.2 represents and warrants to Homes England that:
- (a) the related Capital Firm Scheme has reached Practical Completion;
 - (b) prior to submitting its claim, all amounts claimed have been incurred by the Grant Recipient in respect of the Revenue Services;
 - (c) all amounts claimed consist of Revenue Eligible Expenditure only;
 - (d) all confirmations and certifications made or to be made by the Grant Recipient in IMS in relation to the Revenue Firm Scheme have been, are or will be correct in all material respects;
 - (e) the Grant Recipient is a Registered Provider and retains its status as an Investment Partner;
 - (f) no Withholding Event or Default Event has occurred or arisen (excluding any which has either been waived in writing by Homes England or remedied to the satisfaction of Homes England (in its absolute discretion) and Homes England has confirmed this in writing);
 - (g) it has obtained all Consents necessary for the Delivery of the Revenue Firm Scheme in accordance with the Revenue Firm Scheme Details as are then required;

- (h) any Change in Control which has taken place since the date of the Agreement has been notified to Homes England pursuant to Clause 15.26 (*Review, Monitoring and Reporting*);
- (i) it is not in breach of any term of this Agreement and that the amount claimed will not, if paid, result in any breach of this Agreement;
- (j) it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (k) no Section 114 Report has been made nor is the Grant Recipient aware of any circumstances that would give rise to the making or any such report.

19 **Payment of Capital Grant**

19.1 Subject to:

- 19.1.1 Homes England (acting reasonably) being satisfied with the Grant Recipient's claim for payment including the information warranted pursuant to Clauses 17.2 (*Capital Grant Claim Procedures*), 17.4 (*Capital Grant Claim Procedures*) and 17.6 (*Capital Grant Claim Procedures*);
- 19.1.2 Clause 5.6 (*Changes to Capital Firm Schemes*), Clause 19.3 (*Payment of Capital Grant*), Clause 21 (*Adjustments to Practical Completion Tranche Grant*) and Clause 22 (*Withholding of Grant*); and
- 19.1.3 the Condition Precedent having been satisfied,

Homes England shall (resources permitting) pay the Acquisition Tranche Grant, Start on Site Tranche Grant or the Practical Completion Tranche Grant (as applicable) to the Grant Recipient within fifteen (15) Business Days of receipt of a relevant satisfactory claim.

- 19.2 If Homes England is not satisfied with the Grant Recipient's claim for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the claim for payment identifying the reason for its dissatisfaction. Homes England must allow the Grant Recipient a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its claim accordingly in which case the provisions of Clause 17 (*Capital Grant Claim Procedures*) and this Clause 19 (*Payment of Capital Grant*) (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended claim for payment.

19.3 Homes England shall not be obliged to pay the Grant Recipient:

- 19.3.1 the Acquisition Tranche Grant before the Acquisition Date (and the actions contemplated thereby) (as confirmed by Homes England through IMS) has occurred;
- 19.3.2 the Start on Site Tranche Grant before the Start on Site Date (as confirmed by Homes England through IMS) has occurred;
- 19.3.3 the Practical Completion Tranche Grant before the Capital Firm Scheme Completion Date (as confirmed by Homes England through IMS) has occurred;

- 19.3.4 the Total Grant Tranche before the Completion Date (as confirmed by Homes England through IMS) has occurred; and/or
- 19.3.5 any Tranche if the Capital Firm Scheme has not been accepted by Homes England through IMS.
- 19.4 Where Homes England pays Capital Firm Scheme Grant to the Grant Recipient, the Allocated Capital Grant shall be reduced by a commensurate amount.
- 19.5 The payment of Capital Firm Scheme Grant or any part thereof hereunder by Homes England to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.
- 20 **Payment of Revenue Grant**
- 20.1 Subject to:
- 20.1.1 Homes England (acting reasonably) being satisfied with the Grant Recipient's claim for payment including the information warranted pursuant to Clause 18.2 (*Revenue Grant Claim Procedures*); and
- 20.1.2 Clause 10.4 (*Changes to Revenue Firm Schemes*), Clause 20.3 (*Payment of Revenue Grant*), Clause 20.4 (*Payment of Revenue Grant*) and Clause 22 (*Withholding of Grant*),
- Homes England shall (resources permitting) pay a Revenue Quarterly Payment to the Grant Recipient within fifteen (15) Business Days of receipt of a relevant satisfactory claim.
- 20.2 If Homes England is not satisfied with the Grant Recipient's claim for payment, it must notify the Grant Recipient in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the claim for payment identifying the reason for its dissatisfaction. Homes England must allow the Grant Recipient a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its claim accordingly in which case the provisions of Clause 17.7 (*Capital Grant Claim Procedures*) and this Clause 20 (*Payment of Revenue Grant*) (as applicable) will be reapplied to the Grant Recipient's resubmitted or amended claim for payment.
- 20.3 Homes England shall not be obliged to pay the Grant Recipient a Revenue Quarterly Payment:
- 20.3.1 unless the related Capital Firm Scheme has reached Practical Completion;
- 20.3.2 if the Revenue Firm Scheme has not been accepted by Homes England through IMS; and
- 20.3.3 beyond the end of the Revenue Funding Period.
- 20.4 Homes England shall not be obliged to make any payment by way of a Revenue Quarterly Payment or otherwise in respect of any Revenue Firm Scheme:
- 20.4.1 where the related Capital Firm Scheme has not reached Practical Completion by the date so specified in IMS (and in any event by 31 March 2024 (subject to any extension to such date pursuant to Clause 7.4 (*Time extensions*)); or

- 20.4.2 where a Scheme Default, a Specified Default, a Bid Default and/or a Fundamental Default has occurred in respect of the related Capital Firm Scheme irrespective of whether or not Homes England or MHCLG has exercised its rights under Clause 24 (*Default Events and Termination*).
- 20.5 Where Homes England pays a Revenue Firm Scheme Grant to the Grant Recipient, the Allocated Revenue Grant shall be reduced by a commensurate amount.
- 20.6 The payment of Revenue Firm Scheme Grant or any part thereof hereunder by Homes England to the Grant Recipient shall be regarded as inclusive of any VAT chargeable thereon.
- 21 **Adjustments to Practical Completion Tranche Grant**
- 21.1 If Homes England becomes aware (whether prior to or following receipt of the Grant Recipient's application for payment pursuant to Clause 17.5 (*Capital Grant Claim Procedures*)) that the Grant Recipient has failed to deliver the relevant Capital Firm Scheme in accordance with the agreed Capital Firm Scheme Details (including the Submitted Standards), Homes England shall be entitled (at its discretion) either:
- 21.1.1 to recalculate the Capital Firm Scheme Grant allocated to the Capital Firm Scheme by reference to the Capital Firm Scheme that has actually been delivered; or
- 21.1.2 to:
- (a) withhold and cancel the Practical Completion Tranche Grant payment in relation to the relevant Capital Firm Scheme;
- (b) reallocate or redirect an amount equivalent to such Practical Completion Tranche Grant to such other person or purpose as Homes England in its discretion considers appropriate; and
- (c) recover from the Grant Recipient a sum equivalent to any Capital Firm Scheme Grant already paid to it in relation to the relevant Capital Firm Scheme.
- 21.2 If Homes England exercises its right under Clause 21.1.1 (*Adjustments to Practical Completion Tranche Grant*), Homes England will notify the Grant Recipient and the Grant Recipient will have ten (10) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether it wishes to withdraw the Capital Firm Scheme from this Agreement or to proceed with the Capital Firm Scheme on the basis of the recalculated Capital Firm Scheme Grant figure. If:
- 21.2.1 the Grant Recipient wishes to withdraw the Capital Firm Scheme, Homes England will permanently withdraw the Practical Completion Tranche Grant allocated to such scheme and the Grant Recipient must repay Homes England a sum equivalent to such part of the Capital Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- 21.2.2 the Grant Recipient wishes to proceed with the Capital Firm Scheme:

- (a) it must immediately amend the Capital Firm Scheme Details in IMS to the recalculated Capital Firm Scheme Grant figure and any Tranche already received. The amended Capital Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS); and
- (b) the Practical Completion Tranche Grant figure will be deemed to have been adjusted to take account of the recalculated Capital Firm Scheme Grant figure and of any change to the sum and percentage amount necessitated by the recalculated Capital Firm Scheme Grant figure being lower than the original Capital Firm Scheme Grant figure. If such adjustment would result in Practical Completion Tranche Grant being a negative figure, the Grant Recipient must pay Homes England the Deficit Sum within fifteen (15) Business Days of receipt of Homes England's written demand for the same; and
- (c) Homes England will (resources permitting) pay the adjusted Practical Completion Tranche Grant due (subject to it being a positive amount) to the Grant Recipient within fifteen (15) Business Days of the date of Homes England's acceptance of the Grant Recipient's amendments to the Capital Firm Scheme Details referred to in Clause 21.2.2(a) (*Adjustments to Practical Completion Tranche Grant*).

21.3 If the Grant Recipient fails to provide a definitive response to Homes England within the period prescribed in Clause 21.2 (*Adjustments to Practical Completion Tranche Grant*), Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Grant Recipient to withdraw the Capital Firm Scheme from this Agreement and the provisions of Clause 21.2.1 (*Adjustments to Practical Completion Tranche Grant*) shall take effect.

21.4 Under no circumstances will Homes England be required to accept or implement any recalculation pursuant to Clause 21.2 (*Adjustments to Practical Completion Tranche Grant*) which would have the result of increasing the amount of the Allocated Capital Grant or the Capital Firm Scheme Grant in relation to the relevant Capital Firm Scheme as reflected in the Capital Firm Scheme Details ante the amendments referred to in Clause 21.2.2(a) (*Adjustments to Practical Completion Tranche Grant*).

21.5 If Homes England exercises its rights under Clause 21.1.2 (*Adjustments to Practical Completion Tranche Grant*), the Grant Recipient must repay Homes England all sums due thereunder in accordance with the provisions of Clause 23.5 (*Repayment of Grant*).

22 **Withholding of Grant**

22.1 Notwithstanding any other term of this Agreement:

22.1.1 on or following the occurrence of a GW1 Event, Homes England:

- (a) shall be entitled to suspend any payment due to the Grant Recipient (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise);

- (b) shall, as soon as reasonably practicable, notify the Grant Recipient of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the GW1 Event (the **GW1 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the GW1 Failure has been remedied, notify the Grant Recipient to that effect and shall (subject to Clause 22.3 (*Withholding of Grant*)) make such payment of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant or Revenue Quarterly Payment as may then be due to the Grant Recipient (assuming no other General Withholding Event subsists). Such payment shall be made within ten (10) Business Days of the date of Homes England's notification under this Clause 22.1.1(c) (*Withholding of Grant*); and
- (d) shall be entitled, if the GW1 Failure has not been remedied within the period prescribed pursuant to Clause 22.1.1(b) (*Withholding of Grant*) or it is or becomes apparent that the GW1 Failure is incapable of remedy either within such period or at all, to exercise the same rights as are set out in Clauses 22.1.2(a) (*Withholding of Grant*) to 22.1.2(c) (*Withholding of Grant*) (inclusive);

22.1.2 on or following the occurrence of a GW2 Event, Homes England:

- (a) shall not be obliged to make any payment to the Grant Recipient (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise);
- (b) shall (on giving the Grant Recipient not less than ten (10) Business Days written notice) be entitled to cancel any further payment of Allocated Capital Grant or Allocated Revenue Grant due to the Grant Recipient under this Agreement; and
- (c) shall be entitled to reallocate or redirect such part of the Allocated Capital Grant or Allocated Revenue Grant as 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;

22.1.3 on or following the occurrence of a GW3 Event, Homes England:

- (a) shall not be obliged to make any payment to the Grant Recipient (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise);
- (b) shall (on giving the Grant Recipient not less than ten (10) Business Days written notice) be entitled to cancel any further payment of Allocated Capital Grant or Allocated Revenue Grant due to the Grant Recipient under this Agreement; and

- (c) shall be entitled to reallocate or redirect such part of the Allocated Capital Grant or Allocated Revenue Grant as 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;

22.1.4 on or following the occurrence of a SW1 Event, Homes England:

- (a) shall not be obliged to make any payment to the Grant Recipient in relation to the relevant Revenue Firm Scheme;
- (b) shall not be obliged to make any payment to the Grant Recipient in relation to the relevant Capital Firm Scheme pending the outcome of the procedure described in Clause 21 (*Adjustments to Practical Completion Tranche Grant*);
- (c) shall be entitled to exercise its rights under Clause 21 (*Adjustments to Practical Completion Tranche Grant*); and
- (d) shall where the provisions of Clause 21.2.1 (*Adjustments to Practical Completion Tranche Grant*) have effect, be entitled to reallocate or redirect such part of the Capital Firm Scheme Grant (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;

22.1.5 on or following the occurrence of a SW2 Event, Homes England:

- (a) shall be entitled to suspend any payment due to the Grant Recipient (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise) in relation to the relevant Capital Firm Scheme or Revenue Firm Scheme;
- (b) shall, as soon as reasonably practicable, notify the Grant Recipient of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the SW2 Event (the **SW2 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the SW2 Failure has been remedied, notify the Grant Recipient to that effect and shall (subject to Clause 22.3 (*Withholding of Grant*) and Clause 22.4 (*Withholding of Grant*)) make such payment of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant or Revenue Quarterly Payment as may then be due to the Grant Recipient (assuming no other General Withholding Event or Scheme Withholding Event (in relation to that Capital Firm Scheme) subsists). Such payment shall be made within ten (10) Business Days of the date of Homes England's notification under this Clause 22.1.5(c) (*Withholding of Grant*); and
- (d) shall be entitled, if the SW2 Failure has not been remedied within the period prescribed pursuant to Clause 22.1.5(b) (*Withholding of Grant*) or it is or becomes apparent that the SW2 Failure is incapable of remedy

either within such period or at all, to exercise the same rights as are set out in Clauses 22.1.6(a) to 22.1.6(c) (inclusive) (*Withholding of Grant*);

22.1.6 on or following the occurrence of a SW3 Event, Homes England:

- (a) shall not be obliged to make any payment to the Grant Recipient (whether by way of Acquisition Tranche Grant, Start on Site Tranche Grant, Practical Completion Tranche Grant, Revenue Quarterly Payment or otherwise) in relation to the relevant Capital Firm Scheme or Revenue Firm Scheme;
- (b) shall (on giving the Grant Recipient not less than ten (10) Business Days written notice) be entitled to cancel any Tranche available to the Grant Recipient in relation to the relevant Capital Firm Scheme or Revenue Firm Scheme Grant available to the Grant Recipient in relation to the Revenue Firm Scheme; and
- (c) shall be entitled to reallocate or redirect such part of the Capital Firm Scheme Grant or Revenue Firm Scheme Grant (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.

22.2 Homes England shall incur no liability of any description to the Grant Recipient in or as a result of exercising its rights under this Clause 22 (*Withholding of Grant*).

22.3 Homes England shall not be obliged to make any payment of Acquisition Tranche Grant, Start on Site Tranche Grant or Practical Completion Tranche Grant or otherwise to the Grant Recipient where the due date for such payment falls after the date so specified in IMS.

22.4 Homes England shall not be obliged to make any payment of Revenue Quarterly Payment or otherwise to the Grant Recipient where the due date for such payment falls after 31 March 2024 unless Homes England has in its absolute discretion permitted an extension to that date pursuant to Clause 7.4 (*Time extensions*).

23 **Repayment of Grant**

23.1 The Parties acknowledge and agree that notwithstanding any other term of this Agreement:

- 23.1.1 the Recovery Determination has effect (mutatis mutandis) in respect of grant paid under this Agreement and that each Party has the respective rights and obligations described in such determination;
- 23.1.2 for the purposes of the Recovery Determination, the terms of this Agreement represent the conditions attached to the making of Capital Grant; and
- 23.1.3 on the occurrence of a Relevant Event, the Grant Recipient must recycle or repay (as applicable) the Capital Grant Recoverable in each case in accordance with the terms of the Recovery Determination.

23.2 Without prejudice to any other term of this Agreement, Homes England reserves the right whether following termination of this Agreement or otherwise (which right the Grant Recipient expressly acknowledges and agrees) at its discretion to recover from the Grant

Recipient the Capital Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with Clause 23.3 (*Repayment of Grant*) (the **Recoverable Amount**) in circumstances where:

- 23.2.1 a Prohibited Act has occurred and the Grant Recipient has not satisfied the Waiver Condition in respect of such Prohibited Act;
- 23.2.2 the relevant Tranche has been paid to the Grant Recipient on the basis of a misrepresentation made by or on behalf of the Grant Recipient other than in the circumstances specified in Clause 23.2.5 (*Repayment of Grant*);
- 23.2.3 Homes England has made an overpayment in relation to a Capital Firm Scheme or has made a payment in error to the Grant Recipient;
- 23.2.4 a Balancing Sum has arisen;
- 23.2.5 the relevant Tranche has been paid to the Grant Recipient but Homes England becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Grant Recipient has failed to Deliver the relevant Capital Firm Scheme in accordance with the agreed Capital Firm Scheme Details;
- 23.2.6 the Grant Recipient has breached its obligations under any of Clauses 12 (*Delivery Obligations*), Clause 14 (*Operational Obligations*) or Clause 15 (*Review, Monitoring and Reporting*);
- 23.2.7 a Scheme Termination Event has occurred;
- 23.2.8 a Total Termination Event has occurred;
- 23.2.9 Homes England has exercised its rights under:
 - (a) Clause 22.1.1 (*Withholding of Grant*) (and the GW1 Failure has not been remedied within the period prescribed in Clause 22.1.1(b) (*Withholding of Grant*); or
 - (b) Clause 22.1.2 (*Withholding of Grant*);
- 23.2.10 Homes England has exercised its rights under or Clause 22.1.3 (*Withholding of Grant*);
- 23.2.11 Homes England has exercised its rights under:
 - (a) Clause 22.1.5 (*Withholding of Grant*) (and the SW2 Failure has not been remedied within the period prescribed in Clause 22.1.5(b) (*Withholding of Grant*); or
 - (b) under Clause 22.1.6 (*Withholding of Grant*);
- 23.2.12 Homes England has exercised its rights under Clause 21.1.2 (*Adjustments to Practical Completion Tranche Grant*) or Clause 21.3 (*Adjustments to Practical Completion Tranche Grant*);

- 23.2.13 the Acquisition Date (including the actions contemplated thereby) for the relevant Capital Firm Scheme has not been achieved by the date identified in the Capital Firm Scheme Details as the forecast Acquisition Date;
- 23.2.14 revenue funding (in addition to the Revenue Firm Scheme Grant) is required to permit the Grant Recipient to provide the Revenue Services in accordance with the terms of the Approved Capital Bid and/or the Capital Firm Scheme Details and such revenue funding ceases or becomes unavailable such that any RSAP Dwellings are prevented from being used as RSAP Housing; or
- 23.2.15 in relation to a Capital L&R Scheme, the Grant Recipient's lease is terminated or otherwise comes to an end prior to the date set out in the Capital Firm Scheme Details for lease expiry.

23.3 In the circumstances set out in:

- 23.3.1 Clauses 23.2.1 (*Repayment of Grant*), 23.2.2 (*Repayment of Grant*), 23.2.6 (*Repayment of Grant*), 23.2.7 (*Repayment of Grant*) or 23.2.14 (*Repayment of Grant*), the Recoverable Amount shall be a sum equivalent to the Capital Firm Scheme Grant for any affected Capital Firm Scheme;
- 23.3.2 Clauses 23.2.3 (*Repayment of Grant*) and 23.2.4 (*Repayment of Grant*), the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the Balancing Sum as applicable;
- 23.3.3 Clause 23.2.5 (*Repayment of Grant*), subject always to Clause 23.4 (*Repayment of Grant*) the Recoverable Amount shall be determined in accordance with the following procedure:

- (a) the Parties (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non-Compliance Notification Date a revised figure for the Capital Firm Scheme Grant figure reflecting the changed nature of the delivered Capital Firm Scheme as against that described in the Capital Firm Scheme Details;
- (b) where a revised figure for Capital Firm Scheme Grant is agreed, the Recoverable Amount shall be the product of the following calculation:

$$RA = FSG - RFSG$$

where

RA is the Recoverable Amount;

FSG is the Capital Firm Scheme Grant paid pursuant to Clause 19.1 (*Payment of Capital Grant*) in respect of the relevant Capital Firm Scheme; and

RFSG is the revised Capital Firm Scheme Grant figure agreed pursuant to Clause 23.3.3(a) (*Repayment of Grant*);

- (c) the Grant Recipient shall immediately amend the relevant information on IMS to reflect any agreement reached made pursuant to Clause 23.3.3(a) (*Repayment of Grant*);
- (d) where the Parties are unable to agree a revised Capital Firm Scheme Grant figure in accordance with Clause 23.3.3(a) (*Repayment of Grant*) Homes England shall be entitled to terminate this Agreement in accordance with Clause 24.1 (*Default Events and Termination*) and the Recoverable Amount shall be an amount equal to the Capital Firm Scheme Grant paid pursuant to Clause 19.1 (*Payment of Capital Grant*) in respect of the relevant Capital Firm Scheme.

Under no circumstances will Homes England be required to make any payment to the Grant Recipient if the application of the calculation in Clause 23.3.3(b) (*Repayment of Grant*) results in RA being a negative figure;

23.3.4 Clause 23.2.8 (*Repayment of Grant*), the Recoverable Amount shall:

- (a) where termination has arisen pursuant to a Fundamental (A) Default, be a sum equal to the aggregated amount of all Capital Firm Scheme Grant already paid by Homes England to the Grant Recipient under this Agreement; and
- (b) where the termination has arisen pursuant to a Specified Default, a Bid Default or a Fundamental (B) Default, be a sum equal to the Fundamental Termination Amount;

23.3.5 Clause 23.2.9 (*Repayment of Grant*), the Recoverable Amount shall be a sum equal to the Fundamental Termination Amount;

23.3.6 Clause 23.2.10 (*Repayment of Grant*), the Recoverable Amount shall be a sum equal to the aggregated amount of all Capital Firm Scheme Grant already paid by Homes England to the Grant Recipient under this Agreement;

23.3.7 Clause 23.2.11 (*Repayment of Grant*), the Recoverable Amount shall be a sum equal to any Capital Firm Scheme Grant already paid to the Grant Recipient in relation to the relevant Capital Firm Scheme;

23.3.8 Clause 23.2.12 (*Repayment of Grant*), the Recoverable Amount shall be a sum equivalent to any Capital Firm Scheme Grant already paid in relation to the relevant Capital Firm Scheme;

23.3.9 Clause 23.2.13 (*Repayment of Grant*), the Recoverable Amount shall be a sum equivalent to the Acquisition Tranche Grant; and

23.3.10 Clause 23.2.15 (*Repayment of Grant*), the Recoverable Amount shall:

- (a) where the Minimum Lease Duration has not been reached, be an amount equal to the Capital Firm Scheme Grant paid pursuant to Clause 19.1 (*Payment of Capital Grant*) in respect of the relevant Capital Firm Scheme; or

- (b) where the Minimum Lease Duration has been achieved, be an amount equal to the product of the following calculation:

$$RA = FSG - \text{Utilised Grant (UG)}$$

where

RA is the Recoverable Amount;

FSG is the Capital Firm Scheme Grant paid pursuant to Clause 19.1 (*Repayment of Grant*) in respect of the relevant Capital Firm Scheme;

$$UG = (FSG/A) \times B$$

A is the Lease Period expressed as a number of months; and

B is the number of complete months elapsed under the lease between the Start on Site Date and the Lease Termination Date.

- 23.4 Where Homes England (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Capital Firm Scheme Grant for the relevant Capital Firm Scheme, such claim shall be deemed to be a Prohibited Act and Homes England will not be bound by the terms of Clause 23.3.3 (*Repayment of Grant*).
- 23.5 The Grant Recipient must pay the Recoverable Amount to Homes England within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Capital Firm Scheme Grant (or relevant part thereof) overpayment or payment in error was paid to the Grant Recipient until the date upon which Homes England receives the repayment required from the Grant Recipient under this Clause 23 (*Repayment of Grant*).
- 23.6 The Grant Recipient acknowledges and agrees for the benefit of Homes England and MHCLG that the Disposal or letting of an RSAP Dwelling to any person for any purpose other than the relevant Agreed Purpose constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 23.7 The Parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.
- 23.8 Notwithstanding any other term of this Clause 23 (*Repayment of Grant*), where a payment has been made following an administrative error by Homes England, the Grant Recipient shall not be liable for interest on the amount repayable under Clause 23.5 (*Repayment of Grant*).
- 23.9 The Grant Recipient will:
- 23.9.1 provide to Homes England a projection of the anticipated income and costs in relation to the Revenue Services for each Financial Period:

- (a) within twenty (20) Business Days of entering into this Agreement in relation to the first Financial Period in which the Grant Recipient will receive Revenue Grant; and
 - (b) within ten (10) Business Days of each claim of Practical Completion;
 - (c) within ten (10) Business Days of the end of each Quarter prior to the first day of each subsequent Financial Period; and
- 23.9.2 reconcile the projected costs referred to in Clause 23.9.1 (*Repayment of Grant*) above with the actual income and costs for the applicable Financial Period and provide details of the same to Homes England within thirty (30) days of the end of the applicable Financial Period.
- 23.10 Without prejudice to the generality of Clause 23 (*Repayment of Grant*), if as a result of the reconciliation referred to in Clause 23.9.2 (*Repayment of Grant*) above the income in relation to the Revenue Services exceeds the costs in relation to the same by more than six per centum (6%) then the Grant Recipient will be deemed to have received too much Revenue Grant and:
 - 23.10.1 the Grant Recipient must notify Homes England; and
 - 23.10.2 Homes England will be entitled to either:
 - (a) recover any such overpayment; or
 - (b) set off any such overpayment against any Revenue Grant payable to the Grant Recipient over the subsequent Financial Period.
- 23.11 Save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Grant Recipient to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.
- 23.12 Where in respect of any Capital Firm Scheme the Grant Recipient has already repaid a sum equivalent to the Acquisition Tranche Grant pursuant to Clause 23.2.13 (*Repayment of Grant*) (the **ATG Sum**) the Grant Recipient shall (subject to Clause 23.13 (*Repayment of Grant*)) be entitled to net off the ATG Sum against any amount it is subsequently required to repay in relation to that Capital Firm Scheme under any of Clauses 23.3.1 (*Repayment of Grant*), 23.3.3(d) (*Repayment of Grant*) and Clauses 23.3.5 to 23.3.8 (inclusive) (*Repayment of Grant*);
- 23.13 The Parties agree that:
 - 23.13.1 the Grant Recipient's entitlement to net off the ATG Sum may only be invoked once in respect of the Capital Firm Scheme in relation to which it arose; and
 - 23.13.2 under no circumstances will Homes England be required to make any payment to the Grant Recipient if the application of Clause 23.9 (*Repayment of Grant*) would result in the Recoverable Amount being a negative figure.
- 23.14 Where Homes England has required the Grant Recipient to repay any amount, Homes England may recover that amount by withholding, or deducting the amount from, any sum

due to the Grant Recipient from Homes England under this Agreement or any other arrangement, scheme or programme.

24 Default Events and Termination

- 24.1 On the occurrence of a Scheme Default, Homes England and/or MHCLG shall (subject to Clause 24.2 (*Default Events and Termination*)) be entitled (without any liability to the Grant Recipient) immediately upon serving written notice to:
- 24.1.1 terminate this Agreement insofar as it relates to the Firm Scheme to which the Scheme Default relates;
 - 24.1.2 withhold and cancel any further payment of Capital Firm Scheme Grant or Revenue Scheme Grant (as applicable) due to the Grant Recipient in relation to the Firm Scheme; and
 - 24.1.3 reallocate or redirect such part of the Capital Firm Scheme Grant or Revenue Scheme Grant (as applicable) which has not yet been paid to the Grant Recipient to such other person or for such purpose as Homes England or MHCLG in its discretion considers appropriate.
- 24.2 Where the Scheme Default is of a type described in limb (a), (c) or (e) of the definition of "Scheme Default", Homes England and/or MHCLG:
- 24.2.1 must notify the Grant Recipient of the Scheme Default and of the period within which it (acting reasonably) requires the Scheme Default to be remedied; and
 - 24.2.2 shall be entitled, if the Scheme Default has not been remedied within the period prescribed pursuant to Clause 24.2.1 (*Default Events and Termination*) or it is or becomes apparent that the Scheme Default is incapable of remedy either within such period or at all, to exercise the rights set out in Clause 24.1 (*Default Events and Termination*).
- 24.3 On the occurrence of a Specified Default, Homes England and/or MHCLG shall (subject to Clause 24.4 (*Default Events and Termination*)) and Clause 24.8 (*Default Events and Termination*)) be entitled and without any liability to the Grant Recipient to:
- 24.3.1 terminate this Agreement in its entirety;
 - 24.3.2 withhold and cancel any further payment of Allocated Capital Grant or Allocated Revenue Grant due to the Grant Recipient under this Agreement (other than any payments payable in relation to Continuing Capital Firm Schemes); and
 - 24.3.3 reallocate or redirect such part of the Allocated Capital Grant or Allocated Revenue Grant (which has not yet been paid to the Grant Recipient and which is not payable in relation to Continuing Capital Firm Schemes) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 24.4 Homes England and/or MHCLG's entitlement to exercise the rights set out in Clause 24.3 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

24.4.1 Homes England or MHCLG (as applicable) must serve written notice on the Grant Recipient requiring the Grant Recipient to remedy the Specified Default;

24.4.2 If within a period of thirty (30) Business Days following service of such notice:

- (a) the Specified Default has not been remedied; or
- (b) where so permitted by Homes England or MHCLG (as applicable), the Grant Recipient has not given an undertaking to remedy the Specified Default on terms satisfactory to Homes England or MHCLG (as applicable); or
- (c) it becomes apparent that the Specified Default is incapable of remedy either within such period or at all,

Homes England or MHCLG (as applicable) shall be entitled immediately and without any liability to the Grant Recipient to exercise its rights under Clause 24.3 (*Default Events and Termination*).

24.5 On the occurrence of a Bid Default, Homes England and/or MHCLG shall (subject to Clause 24.6 (*Default Events and Termination*) and Clause 24.8 (*Default Events and Termination*)) be entitled and without any liability to the Grant Recipient to:

- 24.5.1 terminate this Agreement in its entirety;
- 24.5.2 withhold and cancel any further payment of Allocated Capital Grant or Allocated Revenue Grant due to the Grant Recipient under this Agreement (other than any payments payable in relation to Continuing Capital Firm Schemes); and
- 24.5.3 reallocate or redirect such part of the Allocated Capital Grant or Allocated Revenue Grant (which has not yet been paid to the Grant Recipient and which is not payable in relation to Continuing Capital Firm Schemes) to such other person or for such purpose as Homes England or MHCLG in its discretion considers appropriate.

24.6 Homes England and/or MHCLG's entitlement to exercise the rights set out in Clause 24.5 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

- 24.6.1 Homes England or MHCLG (as applicable) must notify the Grant Recipient in writing of its intention to call a Bid Default and to exercise its rights under Clause 24.5 (*Default Events and Termination*);
- 24.6.2 the Parties (acting in good faith) shall meet within ten (10) Business Days of the date of the notice referred to in Clause 24.6.1 (*Default Events and Termination*) to seek to agree adjustments to the Approved Capital Bid and/or the Allocated Capital Grant or the Approved Revenue Bid and/or the Allocated Revenue Grant to reflect any demonstrable underperformance by the Grant Recipient against its Delivery projections as set out in the Approved Capital Bid or the Approved Revenue Bid (as applicable);

- 24.6.3 where adjustments are agreed, the Grant Recipient shall promptly (and in any event within fifteen (15) Business Days of the date of the above meeting) make all such amendments to the information contained in IMS in respect of the Approved Capital Bid or the Approved Revenue Bid (as applicable) as are necessary to reflect the agreement made pursuant to Clause 24.6.2 (*Default Events and Termination*) and in that case Homes England's rights under Clause 24.5 (*Default Events and Termination*) shall lapse in respect of that Bid Default which gave rise to the implementation of the procedure under this Clause 24.6 (*Default Events and Termination*); and
- 24.6.4 if the Parties are unable to agree adjustments to the Approved Capital Bid or the Approved Revenue Bid (as applicable) pursuant to Clause 24.6.2 (*Default Events and Termination*) within fifteen (15) Business Days of the date of the meeting or the Grant Recipient fails correctly to amend the information contained in IMS in accordance with Clause 24.6.3 (*Default Events and Termination*), Homes England shall be entitled immediately and without any liability to the Grant Recipient to exercise its rights under Clause 24.5 (*Default Events and Termination*).
- 24.7 On the occurrence of a Fundamental Default, Homes England or MHCLG (as applicable) shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to:
- 24.7.1 terminate this Agreement in its entirety;
- 24.7.2 withhold and cancel any further payment of Allocated Capital Grant or Allocated Revenue Grant due to the Grant Recipient under this Agreement; and
- 24.7.3 reallocate or redirect such part of the Allocated Capital Grant or Allocated Revenue Grant (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.
- 24.8 Where Clause 24.3 (*Default Events and Termination*) or Clause 24.5 (*Default Events and Termination*) applies and:
- 24.8.1 there are no Continuing Capital Firm Schemes, Homes England or MHCLG (as applicable) may terminate this Agreement in its entirety in accordance with the terms of Clause 24.3 (*Default Events and Termination*) or Clause 24.5 (*Default Events and Termination*) (as applicable);
- 24.8.2 there are Continuing Capital Firm Schemes, Homes England or MHCLG (as applicable) may terminate this Agreement in relation to all but the Continuing Capital Firm Schemes, such termination to take effect in accordance with the timescales specified in Clause 24.4 (*Default Events and Termination*) or Clause 24.6 (*Default Events and Termination*) as applicable.
- 24.9 Without prejudice to the other provisions of this Clause 24 (*Default Events and Termination*), where Homes England or MHCLG (acting reasonably) considers that the Grant Recipient acted fraudulently or dishonestly in claiming the Revenue Grant for the relevant Capital Firm Scheme, such claim shall be deemed to be a Prohibited Act and Homes England or MHCLG

(as applicable) shall on the service of written notice be entitled forthwith and without any liability to the Grant Recipient to:

24.9.1 terminate this Agreement in its entirety; and

24.9.2 require repayment in full of any Allocated Revenue Grant which has been paid to the Grant Recipient.

25 **Subsidy**

25.1 The Parties acknowledge that they have structured this Agreement with the objective that it is lawful and complies with the requirements of the United Kingdom Competition Requirement.

25.2 Notwithstanding anything in this Agreement:

25.2.1 Homes England shall only provide Firm Scheme Grant to the extent that such does not give rise to Unlawful Subsidy; and

25.2.2 the Grant Recipient must comply with the requirements of the United Kingdom Competition Requirement (where applicable) in respect of any Firm Scheme Grant paid.

25.3 Notwithstanding Parties acknowledge the initial transfer of the Firm Scheme Grant from Homes England to the Grant Recipient shall not constitute a Subsidy as a public to public non-economic award. When the Grant Recipient directs the Firm Scheme Grant towards its delivery of the RSAP Housing activity then it:

25.3.1 shall assess whether a Subsidy arises and if so, shall meet the relevant requirements for a Service of Public Economic Interest under the United Kingdom Competition Requirement, including but not limited to putting in place an appropriate SPEI Entrustment;

25.3.2 agrees to allow Homes England to conduct an SPEI Review and to recover any SPEI Overpayment within ten (10) Business Days of notice being served; and

25.3.3 shall collect and retain documents which record that an appropriate assessment has been made.

25.4 If any Firm Scheme Grant is found to constitute Unlawful Subsidy and/or is not capable of being restructured so as to be compliant then the Grant Recipient must repay the Unlawful Subsidy plus such interest as is prescribed by the United Kingdom Competition Requirement to Homes England within ten (10) Business Days of Homes England issuing the Grant Recipient with a written demand for payment.

26 **Anti-Bribery and Anti-Corruption**

26.1 The Grant Recipient must comply with the terms of Schedule 7 (*Anti-bribery and Anti-corruption*).

27 **Information and Confidentiality**

The Grant Recipient must comply with the terms of Schedule 8 (*Information and Confidentiality*).

28 **Data Protection**

The Grant Recipient must comply with the terms of Schedule 9 (*Data Protection*).

29 **Intellectual Property**

The Grant Recipient must comply with the terms of Schedule 10 (*Intellectual Property*).

30 **Health and Safety**

30.1 The Grant Recipient will comply in all material respects with all relevant Legislation including but not limited to Legislation relating to health and safety, welfare at work, equality and diversity, modern slavery and other relevant employment matters and will use reasonable endeavours to procure that all Grant Recipient Parties engaged in the Delivery of the Approved Capital Bid and the Revenue Services do likewise.

30.2 The Grant Recipient confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 or which is made on any other unjustifiable basis is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.

30.3 The Grant Recipient shall have due regard to the public sector equality duty under Part 11 of the Equality Act 2010 insofar as its activities under this Agreement could reasonably be deemed to be functions of a public nature for the purposes of that Part.

30.4 To the extent that Homes England is a 'client' for the purposes of the CDM Regulations:

30.4.1 where the Grant Recipient is engaging consultants and a contractor or contractors as Subcontractors to Deliver the Capital Firm Scheme the Grant Recipient elects to be the only client in relation to such Capital Firm Scheme; or

30.4.2 where the Grant Recipient is contracting with a developer as a Subcontractor to Deliver a Capital Firm Scheme the Grant Recipient shall procure that such developer shall elect to be the only client in relation to the Capital Firm Scheme on or before the date that such scheme becomes a Capital Firm Scheme;

and Homes England hereby agrees to such election.

30.5 The Grant Recipient shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to Clause 30.4.1 (*Health and Safety*) or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to Clause 30.4.2 (*Health and Safety*) without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.

30.6 The Grant Recipient shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.

- 30.7 The Grant Recipient shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 30.8 The Grant Recipient shall at all times maintain and procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with each Capital Firm Scheme or Revenue Firm Scheme in the form set out in Schedule 6 (*Form of Health and Safety Report*) to this Agreement.
- 30.9 Without prejudice to any other provision of this Agreement, the Grant Recipient shall notify Homes England's Safety Health and Environmental (SHE) Team on 0300 1234 500 or enquiries@homesengland.gov.uk within five (5) Business Days of the occurrence of any of the following events which arise out of or in connection with a Capital Firm Scheme or Revenue Firm Scheme:
- 30.9.1 any specified (major) injuries, requiring reporting under RIDDOR;
 - 30.9.2 a fatal accident to any worker or a member of the public;
 - 30.9.3 any injury to a member of the public requiring reporting under RIDDOR;
 - 30.9.4 any dangerous occurrence, as defined by RIDDOR;
 - 30.9.5 any enforcement action taken by the Health and Safety Executive, Local Fire Authority, the Police and Statutory Environmental Regulators (including the serving of enforcement, warning, improvement or prohibition notices);
 - 30.9.6 any incident having health, safety or environmental implications which attracts the attention of the police and/or the media;
 - 30.9.7 the commencement of any criminal prosecution under health and safety or environmental legislation; and
 - 30.9.1 any environmental incident that may be brought to the attention of the regulatory authorities, either directly or indirectly, which has the potential to give rise to a formal warning or prosecution, either as a single occurrence or as a contributory occurrence in a series of events.
- 30.10 The Grant Recipient will procure that all its Subcontractors and Professional Team comply at all times with the HS Act and the CDM Regulations and will procure that the Grant Recipient and each Subcontractor and member of the Professional Team shall at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

31 **Construction Industry Scheme**

- 31.1 In this Clause 31 (*Health and Safety*), the following definitions shall apply:

CIS means the provisions of chapter 3 of part 3 of the Finance Act 2004 together with any regulations made pursuant to those provisions including (without limitation) the Income Tax (Construction Industry Scheme) Regulations 2005;

Construction Contract has the same meaning as in section 57(2) of the Finance Act 2004; and

HMRC means HM Revenue & Customs.

31.2 The Grant Recipient warrants to Homes England that it holds gross payment status for the purposes of the CIS (pursuant to paragraph CISR13040 of the Construction Industry Scheme Reform manual or otherwise) such that the Grant Recipient is entitled to receive payments under Construction Contracts without any deduction under the CIS. The Grant Recipient undertakes to notify Homes England within two (2) Business Days of ceasing to hold gross payment status.

31.3 The Grant Recipient will, on demand, pay to Homes England an amount equal to any tax liability, interest or penalties imposed on Homes England under the CIS as a result of, or in connection with, any payments made by Homes England pursuant to this Agreement, together with any reasonable costs incurred by Homes England in connection with such tax liability, interest or penalty

32 **Assignment and sub-contracting**

32.1 Homes England shall be entitled to transfer or assign all or part of this Agreement at any time without the consent of the Grant Recipient.

32.2 This Agreement is personal to the Grant Recipient and the Grant Recipient shall not be entitled to transfer, assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement without the prior written consent of Homes England.

33 **Dispute resolution**

33.1 All disputes and differences arising out of or in connection with this Agreement including in relation to any non-contractual obligation (a **Dispute**) shall be resolved pursuant to the terms of this Clause 33 (*Dispute resolution*).

33.2 **Negotiation**

33.2.1 In the event that a Party considers 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 Grant Recipient's Representative and Homes England Senior Officer (Senior Officers) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this Clause 33.2 (*Negotiation*).

33.2.2 If there has been no resolution of the dispute within thirty (30) days of the referral to Senior Officers, the Dispute shall be referred to directors of the Grant Recipient and the chief executive officer of Homes England (together, **the Chief Executives**).

- 33.2.3 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the Parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the Parties agree otherwise.

33.3 Referral to Expert

- 33.3.1 If there has been no resolution of the Dispute within twenty (20) days of the referral to Chief Executives either Party may give to the other written notice referring the dispute to a suitably qualified independent Expert for determination in accordance with this Clause 33.3 (*Referral to Expert*).
- 33.3.2 The Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the Parties within a maximum of three (3) months of the matter being referred to the Expert.
- 33.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this Clause 33.3 (*Referral to Expert*) then:
- (a) either Party may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and
 - (b) this Clause 33.3 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.
- 33.3.4 All matters under this Clause 33.3 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.
- 33.3.5 The Parties shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 33.3.6 To the extent not provided for by this Clause 33.3 (*Referral to Expert*), the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their determination.
- 33.3.7 Each Party shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other Party reasonably requires to make a submission under this Clause 33.3 (*Referral to Expert*).
- 33.3.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute (which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them or their terms of reference). The Expert's written decision on the matters referred to them shall be final and binding on the Parties in the absence of manifest error or fraud.

33.3.9 Each Party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by them in arriving at their determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct.

33.4 Submission to Courts

Notwithstanding the foregoing, at any time Homes England, at its sole discretion, may choose to submit any Dispute to the courts of England. If a process pursuant to either Clause 33.2 (*Negotiation*) and/or 33.3 (*Referral to Expert*) has been initiated, at the time that Homes England chooses to submit the matter to the courts of England and Wales, then it is agreed that such process is to be immediately discontinued without any binding determination being made. Each Party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

33.5 Continued Performance

No reference of any dispute to an Expert pursuant to this Clause 33 (*Dispute resolution*) shall relieve any Party from any liability for the due and punctual performance of its obligations under this Agreement.

34 Further assurance

34.1 At any time upon the written request of Homes England, the Grant Recipient:

34.1.1 shall 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:

- (a) obtaining for Homes England the full benefit of this Agreement and of the rights and powers herein granted and the Grant Recipient hereby irrevocably appoints Homes England as its attorney solely for that purpose; and/or
- (b) reflecting any Change in Control which has or will occur in relation to the Grant Recipient; and

34.1.2 shall perform and use its reasonable endeavours to procure that any third party performs such acts as may be reasonably required for the purposes of giving full effect to this Agreement.

34.2 If Homes England (in its absolute discretion) so requires, the Grant Recipient must also provide a Legal Opinion to Homes England upon any amendment to or waiver of any term of this Agreement.

35 No fetter on statutory functions

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

36 **No agency**

36.1 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.

36.2 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 employees shall at any time hold itself or themselves out to be an employee of Homes England.

37 **Publicity**

The Grant Recipient shall ensure that Homes England's requirements in relation to public relations as notified to the Grant Recipient from time to time are observed and implemented in respect of any funding provided under this Agreement.

38 **Exclusion of third party rights**

38.1 Save as specified in Clause 38.2 (*Exclusion of third party rights*):

38.1.1 nothing in this Agreement will confer any rights or obligations on any person who has not executed this Agreement nor will the consent of any person who has not so executed this Agreement be needed to make any modification, amendment, variation or release of its terms; and

38.1.2 the Parties agree for the purposes of the Contracts (Rights of Third Parties) Act 1999 that they do not intend any person other than a Party to be able to enforce any term of this Agreement.

38.2 The Parties acknowledge that MHCLG may in its own right enforce the following provisions of this Agreement as a beneficiary of its terms in accordance with the Contracts (Rights of Third Parties Act) 1999:

38.2.1 Clause 3 (*Acknowledgements, Representations and Warranties*);

38.2.2 Clause 15 (*Review, Monitoring and Reporting*);

38.2.3 Clause 16 (*Transparency Obligations*)

38.2.4 Clause 23 (*Repayment of Grant*);

38.2.5 Clause 24 (*Default Events and Termination*);

38.2.6 Clause 27 (*Information and Confidentiality*);

38.2.7 Clause 28 (*Data Protection*); and

38.2.8 Clause 29 (*Intellectual Property*).

39 **Entire agreement**

39.1 This Agreement and the conditions herein contained together with the Schedules constitute the entire agreement between the Parties and this Agreement may only be varied or modified in writing by deed.

39.2 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.

40 **Severability**

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.

41 **Cumulative rights and enforcement**

41.1 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.

41.2 The Parties acknowledge that money damages alone may not properly compensate Homes England for any breach of the Grant Recipient's obligations hereunder and the Parties hereby expressly agree that in the event of the breach or threatened breach of any such obligation in addition to any other rights or remedies Homes England may have in law, in equity or otherwise Homes England shall be entitled to seek injunctive or other equitable relief compelling specific performance of and other compliance with the terms of such obligations.

42 **Waiver**

42.1 Neither the failure of any Party at any one time to enforce any provision of this Agreement nor the payments by Homes England of Capital Firm Scheme Grant under Clause 19.1 (*Payment of Capital Grant*) nor the payments by Homes England of Revenue Firm Scheme Grant under Clause 20.1 (*Adjustments to Practical Completion Tranche Grant*) in any way affects the relevant Party's 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.

42.2 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.

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

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

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

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

43 **VAT**

43.1 All payments made by Homes England under or in connection with this Agreement are inclusive of any VAT, including for the avoidance of doubt, payments of grant funding under or in connection with this Agreement to the Grant Recipient.

43.2 The Grant Recipient considers that the payment of grant funding under or in connection with this Agreement is outside the scope of VAT. In the event that Homes England is the recipient of a supply or supplies of specified services (as such term is defined in the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (the **Order**) under or in connection with this Agreement, Homes England confirms that the requirements specified in article (8)(1)(b) of the Order are satisfied in respect of the supply or supplies with the result that section 55A(6) of the Value Added Tax Act 1994 will not apply to such supply or supplies. The Grant Recipient acknowledges that it will account for and pay any VAT on any taxable supply or supplies it makes to Homes England under or in connection with this Agreement.

43.3 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Agreement for any supply by Homes England is to be treated as exclusive of any VAT and if Homes England (or the representative member of any VAT group of which it is a member) is required to account for VAT on a supply, the Grant Recipient shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of any VAT upon the earlier of:

43.3.1 the time for payment or provision of the consideration; and

43.3.2 the time of the supply for VAT purposes,

and within ten (10) Business Days of receipt of such payment Homes England shall issue a VAT invoice in respect of that VAT.

43.4 Notwithstanding any other provision in this Agreement, Homes England is entitled to deduct any amount from a payment it is required to make under this Agreement where such deduction is required by law.

44 **Survival of this Agreement**

44.1 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.

44.2 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.

44.3 Without limitation the provisions of Clauses 2 (*Purpose*), 3 (*Acknowledgements, Representations and Warranties*), 4 (*Capital Firm Schemes*), 5 (*Changes to Capital Firm Schemes*), 8.7 (*Capital Firm Scheme substitution and additions*), 9 (*Revenue Firm*

Schemes), 10 (*Changes to Revenue Firm Schemes*), 11 (*Revenue Firm Scheme additions*), 12 (*Delivery Obligations*), 14 (*Operational Obligations*), 15 (*Review, Monitoring and Reporting*), 16 (*Transparency Obligations*), 17 (*Capital Grant Claim Procedures*), 18 (*Revenue Grant Claim Procedures*), 19 (*Payment of Capital Grant*), 20 (*Payment of Revenue Grant*), 21 (*Adjustments to Practical Completion Tranche Grant*), 22 (*Withholding of Grant*), 23 (*Repayment of Grant*), 24 (*Default Events and Termination*), 26 (*Anti-Bribery and Anti-Corruption*), 27 (*Information and Confidentiality*), 28 (*Data Protection*), 29 (*Intellectual Property*), 33 (*Dispute resolution*), 41 (*Cumulative rights and enforcement*), 42 (*Waiver*), 47 (*Governing law*), Schedule 7 (*Anti-bribery and Anti-corruption*), Schedule 8 (*Information and Confidentiality*), Schedule 9 (*Data Protection*), Schedule 10 (*Intellectual Property*), Schedule 11 (*Legal Opinion*) and this Clause 44 (*Survival of this Agreement*) and such other provisions of this Agreement as are necessary to give effect to such Clauses are expressly agreed by the Parties to survive the termination or expiry of this Agreement.

45 **Notices**

45.1 Any notice to be given hereunder shall be in writing addressed to Homes England Senior Officer (in the case of notices to be given to Homes England) or the Grant Recipient's Representative (in the case of notices to be given to the Grant Recipient) and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by recorded delivery and addressed in the case of any Party to the other Party's registered office as set out at the beginning of this Agreement or to such other addresses a Party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

45.2.1 if delivered by hand, when delivered to the recipient; or

45.2.2 if delivered by recorded delivery, three (3) Business Days after and including the date of postage,

provided that if the delivery or receipt is:

45.2.3 on a day which is not a Business Day; or

45.2.4 is after 4.00pm

it will be deemed to have been received at 9.00am on the following Business Day.

46 **Execution**

This Agreement may be executed:

46.1 by the electronic application of a Party's authorised signatory's signature and provision of an electronic copy of the same; and

46.2 in any number of counterparts and each counterpart will when executed be an original of this Agreement and all counterparts together will constitute one instrument.

47 **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 33 (*Dispute resolution*) the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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Schedule 1

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which Homes England makes the Allocated Capital Grant and the Allocated Revenue Grant available to the Grant Recipient for the purposes of Section 19 (*Financial assistance*) and Section 31 (*Duties in relation to social housing*) of HRA 2008;
- 2 The Allocated Capital Grant is being made available by Homes England on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of RSAP Dwellings which are to be let to individuals as RSAP Housing to be used for the Agreed Purposes;
- 3 All Fund Proceeds identified in the Capital Firm Scheme Details must be applied solely for the purposes of funding the Development Costs in respect of the relevant Capital Firm Scheme;
- 4 The Public Sector Funding in respect of a Capital Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Grant Recipient in respect of the Delivery of that Capital Firm Scheme nor may the Public Sector Funding in respect of the Approved Capital Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the Delivery of the Approved Capital Bid;
- 5 All Capital Firm Scheme Grant paid under this Agreement is:
 - a. social housing assistance as defined in Section 32(13) (Recovery etc. of social housing assistance) of the HRA 2008; and
 - b. subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 6 The provisions of Clause 23 (*Repayment of Grant*) represent events and principles determined by Homes England for the purposes of Sections 32-34 of the HRA 2008;
- 7 All Fund Proceeds used for the purposes of funding (in whole or in part) the Development Costs constitute social housing assistance for the purposes of Section 32 (Recovery etc. of social housing assistance) of the HRA 2008 and are subject to the terms of the Recovery Determination;
- 8 Any failure by the Grant Recipient to comply with the terms of this Agreement or the occurrence of a Default Event or Withholding Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 9 The terms of the Capital Funding Guide are incorporated within this Agreement (*mutatis mutandis*).
- 10 The Grant Recipient must hold Registered Provider status at the point at which any RSAP Rent Dwelling provided pursuant to this Agreement is made available for rent.

- 11 The RSAP Rent Dwellings provided pursuant to a Capital P&D Scheme with the benefit of the Allocated Capital Grant shall be deemed to have been provided with public money for the purposes of Section 180 (Right to acquire) of HRA 2008.
- 12 Without prejudice to any other terms of this Agreement, the Lease Period in relation to each Capital L&R Scheme must equal or exceed the Minimum Lease Duration.

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Part 2

Representations and Warranties

1. Powers, vires and consents

- (a) It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement.
- (b) 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 in relation to the Approved Capital Bid or any Capital Firm Scheme or the Approved Revenue Bid or any Revenue Firm Scheme.
- (c) Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- (d) The execution, delivery and performance by it of this Agreement do not:
 - i. insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - ii. 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
 - iii. contravene or conflict with its standing orders or other constitutional documents binding upon it (as applicable) from time to time.
- (e) Every authorisation of, or registration with, governmental or public bodies or courts required by the Grant Recipient in connection with the execution, delivery, performance, validity, enforceability or admissibility in evidence of this Agreement has been obtained or made and is in full force and effect and there has been no default in the observance of any conditions imposed in connection therewith.
- (f) So far as it is aware, it is not in breach of or in default under any agreement to which it is a party, or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- (g) To the best of its knowledge, 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 in relation to the Approved Capital Bid, the Approved Revenue Bid or any Firm Scheme.
- (h) It has not committed any Prohibited Act.

2. Deliverability

- (a) It has obtained or will by Practical Completion of a Capital Firm Scheme obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- (b) 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.
- (c) No Default Event has occurred and is continuing.

- (d) 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 grant funding or in the course of the subsequent discussions 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.
- (e) It has informed Homes England of any material change that has occurred since:
 - i. the date of submission of the Approved Capital Bid and (if any) the Approved Revenue Bid prior to the date of this Agreement; and
 - ii. the Approved Capital Bid and (if any) the Approved Revenue Bid, as each of the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation 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 including without limitation the provision or offer of any additional Public Sector Funding.
- (f) 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.
- (g) All data or other information submitted on IMS in respect of the Approved Bid, any Indicative Scheme, Substitute Scheme, Additional Scheme and each Firm Scheme is accurate and the Grant Recipient is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate.
- (h) All data or other information supplied to Homes England in connection with, or related to the Approved Bid, any Firm Scheme (including that submitted pursuant to Clause 15 (*Review, Monitoring and Reporting*)) any Disposal Notification and/or Constitutional Change Notification is complete and accurate;
- (i) It is not in breach of its Transparency Obligations.
- (j) It has issued any Disposal Notification and/or Constitutional Change Notification in accordance with the requirements of this Agreement where required to do so under this Agreement.

3. Application of Approved Capital Bid Capacity

- (a) All financial capacity generated by the Grant Recipient through the terms of the Approved Capital Bid is being and will be applied by the Grant Recipient to the Delivery of new RSAP Rent Dwellings under this Agreement.
- (b) None of the RSAP Dwellings to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England nor have they been included amongst the projected units to be delivered under any Previous Programme.

4. Application of Revenue Firm Scheme Grant

- (a) All financial capacity generated by the Grant Recipient through the terms of the Approved Revenue Bid is being and will be applied by the Grant Recipient to the provision of Revenue Services under this Agreement.
- (b) None of the Revenue Services to be provided pursuant to this Agreement have received or are intended to receive funding from Homes England under any Previous Programme.

5. Authority of Grant Recipient's Representative

The Grant Recipient's Representative is empowered to act on behalf of the Grant Recipient for all purposes connected with this Agreement.

6. Propriety

- (a) No member, employee, agent or consultant of the Grant Recipient or of any partner organisation of the Grant Recipient has any personal, proprietary or pecuniary interest in:
 - i. any person from whom the Grant Recipient is purchasing land or property for the purposes of or in connection with this Agreement;
 - ii. any contractor engaged or to be engaged by the Grant Recipient in connection with this Agreement; or
 - iii. any land or other property to be acquired or developed refurbished or improved by the Grant Recipient for the purposes of or in connection with this Agreement.
- (b) No member, employee, agent or consultant of the Grant Recipient or any partner organisation of the Grant Recipient is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:
 - i. access to properties developed, Rehabilitated or, disposed of pursuant to this Agreement; or
 - ii. the prices at which such properties are let or disposed of.

7. Local Government Act 1999

The Grant Recipient is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued.

8. Local Government Finance Act 1988

No Section 114 Report has been made nor is the Grant Recipient aware of any circumstances which would give rise to the making of a Section 114 Report.

Schedule 2

Development Costs

Part 1

Development Costs

Heads of expenditure

1. Acquisition

- (a) Purchase price of land/Site/buildings.
- (b) Stamp Duty Land Tax on the purchase price of land/Site.

2. Works Costs

- (a) Main works contract costs (excluding any costs defined as on costs).
- (b) Major Site development works (where applicable). These include piling, soil stabilisation, road/sewer construction, major demolition.
- (c) Statutory agreements, associated bonds and party wall agreements (including all fees and charges directly attributable to such works) where applicable.
- (d) Additional costs associated with complying with archaeological works and party wall agreement awards (including all fees, charges and claims attributable to such works) where applicable.
- (e) Irrecoverable VAT on the above (where applicable).

3. On costs

- (a) Legal fees and disbursements.
- (b) Net gains/losses via interest charges on development period loans.
- (c) Building society or other valuation and administration fees.
- (d) Fees for building control and Planning Permission.
- (e) Fees and charges associated with compliance with European Community directives, and Homes England's requirements relating to energy rating of dwellings and Eco-Homes certification.
- (f) In-house or external consultants' fees, disbursements and expenses (where the development contract is a design and build contract) (see note below).
- (g) Insurance premiums including building warranty and defects/liability insurance (except contract insurance included in Works costs).
- (h) Contract performance bond premiums.
- (i) Borrowing administration charges (including associated legal and valuation fees).

- (j) An appropriate proportion of the Grant Recipient's development and administration costs.
- (k) Irrecoverable VAT on the above.

4. Other costs

White goods and furnishings for use in the RSAP Dwelling.

Note 1

Where the development contract is a design and build contract, the on-costs are deemed to include the builder's design fee element of the contract sum. The amount included by the builder for design fees should be deducted from the Works cost element referred to above, as should other non-works costs that may be submitted by the builder such as fees for building and Planning Permission, building warranty, defects liability insurance, contract performance bond and energy rating of dwellings.

Note 2

Some items will not qualify as Development Costs unless the Grant Recipient can clearly demonstrate that such costs are properly chargeable to the housing development, i.e. for the sole use of the residents or to comply with any statutory obligations that may have been imposed.

Examples of these are as follows:

- works to any roads which do not exclusively serve the housing development;
- landscaping to areas of land which lie outside the boundaries of the Site;
- district heating systems;
- trunk sewers and sewage disposal works;
- special refuse treatment buildings;
- public conveniences; and
- community halls, club rooms, recreation rooms.

Note 3

Subject to the above, where any cost incurred or to be incurred by the Grant Recipient is common both to the development of the RSAP Dwellings within any Capital Firm Scheme and to any other activity, asset or property of the Grant Recipient, only such part of that cost as is attributable to the development of the RSAP Dwellings may be treated as a cost in respect of which grant under this Agreement may be paid.

Part 2

Costs which are not Development Costs

- (a) Capital costs incurred which are not eligible for social housing assistance as defined in Section 32(13) of the HRA 2008;
- (b) on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Capital Firm Scheme;
- (c) on estate offices, factories, letting offices;
- (d) on stores;
- (e) on medical or dental surgeries, clinics;
- (f) on police stations, public libraries, bus shelters;
- (g) on shops, restaurants, public houses, offices;
- (h) on transformer and other related buildings;
- (i) on maintenance depots, tools, plant and vehicles;
- (j) on garages (other than integral garages on market purchase scheme types) and greenhouses; and
- (k) on separate commercial laundry blocks and related equipment.

Schedule 3

Form of Statement of Grant Usage

[Insert name of Grant Recipient]

STATEMENT OF GRANT USAGE

Year ended 31 March [XXXX]

All figures in £s

ELIGIBLE EXPENDITURE	AMOUNT & SUPPORTING DETAILS
Details and amount of expenditure	
What has this expenditure procured?	
Total	
SOURCES OF FUNDING	
Received from this grant	
This organisation's own contribution	
Other	
Total	

To: **[Insert contact name or post]**.

To the best of my knowledge and belief:

The Eligible Expenditure shown in this Statement of Grant Usage is a complete and accurate record of the payments made exclusively for the purposes set out in the grant offer, and does not include any amounts described as ineligible in the grant offer.

Signed on behalf of the organisation's accountant.

.....

Name

Address

.....

Qualifications

Date

Telephone number

Email:

DRAFT

Schedule 4

Guidance to external auditors or accountants

Definition of reporting accountant

A reporting accountant is an accountant or firm of accountants appointed by the Grant Recipient who is/are independent of the Grant Recipient and (except for the Comptroller and Auditor General or the National Audit Office) holding a current practising certificate, or equivalent, issued by one of the following:

- The Institute of Chartered Accountant in England & Wales
- The Association of Chartered Certified Accountants
- The Chartered Institute of Public Finance and Accountancy
- The Chartered Institute of Management Accountants
- The Institute of Chartered Accountants of Scotland
- The Institute of Chartered Accountants in Ireland
- The Association of International Accountants
- The Association of Authorised Public Accountants

Letter of engagement

In the interests of a streamlined process, Homes England does not require to be party to an engagement letter between the Provider and the reporting accountant, provided the reporting accountant is procured directly by the provider in accordance with the grant agreement terms and conditions. Homes England will however sign a tripartite letter of engagement, if reporting accountants require this, setting out matters in addition to this guidance.

In the letter of engagement, reporting accountants may explain that their work consists of an examination of internal controls and tests carried out on a sample basis, and there can be no guarantee that fraud, misrepresentation or errors will be detected. They may also state that their work is not an audit and is not carried out in accordance with all Auditing Standards.

The letter of engagement should not say that accountants will carry out procedures solely to be able to report on whether the information has been accurately extracted from the underlying records of the Grant Recipient nor that their work will be carried out on the assumption that all of the information provided to them by the Grant Recipient is reliable and complete.

An example of a Model Tripartite engagement letter is available in the AAF 01/10 Guidance, Appendix E- on the ICAEW website.

Reporting accountants' reports

Reporting accountants' reports should be addressed to the Homes England Senior Officer and sent via RSAP@homesengland.gov.uk. A copy of any signed tripartite letter of engagement should be attached to each report. Accountants' reports that give an unqualified opinion should contain, as a minimum, an opinion on the reliability of the Statement of Grant Usage.

Example:

"We have read the funding agreement between [insert Grant Recipient's name] and Homes England dated [insert date].

In accordance with our engagement letter dated [insert date] ('the engagement letter'), a copy of which is attached, we have examined the attached Statement of Grant Usage, each page of which we have initialled for identification purposes only, in relation to the grant, reference [insert reference], for the period [insert date] to [insert date].

The Statement of Grant Usage has been prepared by, and is the sole responsibility of, the management of [insert Grant Recipient's name]. Our responsibility, under the terms of our engagement letter is to form an opinion on the basis of the work performed, and report our opinion to [insert Grant Recipient's name] and Homes England.

Our work was directed to those matters which in our view materially affect the Statement of Grant Usage, and was not directed to the discovery of errors or misstatements that we consider to be immaterial. Whilst we perform our work with reasonable skill and care, it should not be relied upon to disclose all misstatements, fraud or errors that might exist.

We have also examined the records of [insert Grant Recipient's name], carried out such tests as we consider necessary and received such explanations from the management of [insert Grant Recipient's name] as we consider necessary to enable us to form our opinion.

Opinions:

(1) On the basis of the work performed, in our opinion we have obtained sufficient and appropriate evidence that the Statement of Grant Usage, in all material respects, fairly presents [or reflects] the Eligible Expenditure in accordance with the definition of Eligible Expenditure set out in the funding agreement between [insert Grant Recipient's name] and Homes England, during the period [insert date] to [insert date].

(2) In the course of our work nothing came to our attention that is inconsistent with the statements made in the certificate signed on behalf of [insert Grant Recipient's name], which forms part of the Statement of Grant Usage.

This report is provided for the purpose of allowing [insert Grant Recipient's name] to meet its reporting obligations in respect of grants receivable from Homes England and on the basis that it is for use by [insert Grant Recipient's name] and Homes England only."

In the case of reports that give unqualified opinions, any significantly different form of words in the opinion paragraphs should be agreed by the reporting accountants with Homes England. Changes will only be acceptable as long as they do not amount to a significant restriction in the ability of Homes England to rely on the reporting accountant's opinions, beyond that described in this guidance. Any qualification to the opinions, any added emphasis, any limitation of scope that the reporting accountants encounter or any disclaimer of opinion should be supported by as complete an explanation as possible; for example, if there is any uncertainty, the reporting accountants should state what amount is uncertain or in dispute, and the facts relating to it.

Signing reports

With their signature, reporting accountants should write their name or give a reference that can be quoted if there are any queries. In addition, they should give their postal address, telephone number and, their email address.

Materiality

For the purposes of the work carried out by reporting accountants, amounts should be considered material if it is thought likely that they affect total eligibility for grant in the Revenue Funding Period by an amount exceeding 1% of the grant received in the year, or exceeding £1,000, whichever is the greatest. Notwithstanding this, all errors found by the reporting accountants, of whatever amount, must be corrected on the Statement of Grant Usage, by the Grant Recipient.

Disputed amounts

Reporting accountants need not seek to exclude all items from the Statement of Grant Usage where the eligibility is disputed but should report the facts in their report for consideration by Homes England.

However, wherever possible, reporting accountants should give unqualified opinions, rather than opinions that are "subject to" or "except for".

Limit of liability

We do not expect the reporting accountants to assume any liability to pay damages for losses arising as a result of breach of contract or professional negligence on their part in respect of their opinion on the Statement of Grant Usage, to any person other than Homes England.

In any case, reporting accountants' liability, in respect of damages resulting from professional negligence may be limited to the lower of:

- (a) the amount of Revenue Grant received by the Grant Recipient for the Revenue Funding Period plus any recovery costs incurred by Homes England, and
- (b) £1,000,000.

Duty of care

In accepting the assignment described in this guidance, reporting accountants accept that they owe a duty of care to Homes England.

Reporting accountants should note that:

- (c) the nature and extent of their tests is solely a matter for their professional judgement, and
- (d) their work will not be monitored by Homes England (but see below, under National Audit Office).

National Audit Office

In certain circumstances, the National Audit Office may ask to visit reporting accountants to discuss their methodology and findings. Reporting accountants are asked to co-operate with the National Audit Office as far as reasonably possible. Information gained by the National Audit Office in this way will not be used, without the reporting accountants' permission, for any purpose other than their audit of Homes England's annual accounts.

Access to government information

Homes England will not ask for anyone's permission before showing grant documents including reports from reporting accountants.

In addition to the above, the Freedom of Information Act obliges Homes England to disclose certain information, on request, to any member of the public.

Other guidance

Technical Release 03/03 *Public Sector Special Reporting Engagements - Grant Claims*, issued by the Institute of Chartered Accountants in England & Wales is applicable to this work. There is also a practice note issued by the Auditing Practices Board: *The Audit of Central Government Financial Statements (revised)*. This is not intended to apply to grants, but it contains definitions and explanations that reporting accountants might find useful.

If the reporting accountants need further advice or clarification, they can email: **RSAP@homesengland.gov.uk**

Schedule 5

Annual Return

To: RSAP@communities.gov.uk

Rough Sleeping Accommodation Programme 2021/24 Annual Return for Year 20[xx/xx]

Local authority	Scheme name	Breakdown of units funded, beds per unit, & Location	Capital funding received in 20[xx/xx]
[e.g. "Anytown LA"]	[e.g. "High Street Move-On Programme, Anytown"]	[e.g. 5 High Street, Anytown – 6 beds 12 High Street, Anytown – 2 beds 14 High Street, Anytown – 5 beds	

EITHER

I confirm that in accordance with funding received pursuant to a grant funding agreement between the Homes and Communities Agency (trading as Homes England) and [x] dated [y] ("the **Agreement**"), as at the date of this Annual Return, the unit(s) listed above remain in use in this local authority area as social housing available to people who:

- have recent lived experience of rough sleeping;
- are at immediate risk of rough sleeping; and
- are at immediate risk of homelessness,

in accordance with the Agreed Purposes (as defined in the Agreement).]

OR

[I confirm that in accordance with funding received pursuant to a grant funding agreement between the Homes and Communities Agency (trading as Homes England) and [x] dated [y] ("the **Agreement**"), as at the date of this Annual Return, the unit(s) listed above remain in use in this local authority area as social housing available to people who:

- have recent lived experience of rough sleeping;
- are at immediate risk of rough sleeping;
- are at immediate risk of homelessness; and
- [include agreed modifications],

in accordance with the Agreed Purposes (as defined in the Agreement) (as modified and re-stated in accordance with the change process on [date] pursuant to Clause 5 (*Changes to Capital Firm Schemes*) and/or Clause 10 (*Changes to Revenue Firm Schemes*) of the Agreement).]

Signed:

Position:

Grant Recipient:

Date:

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Schedule 6

Form of Health and Safety Report

Grant Recipient: []

Firm Scheme: []

To: Homes and Communities Agency (trading as Homes England)

Reporting period: [] to []

Average number of workers on site per day during reporting period	
Total number of all personal injury accidents	
Accidents resulting in greater than seven (7) days lost time (RIDDOR)	
Specified (major) injuries (RIDDOR)	
Fatalities (RIDDOR)	
Reportable work-related diseases (RIDDOR)	
Reportable injuries to members of the public as defined under (RIDDOR)	
Dangerous occurrences as defined under RIDDOR	
No of person days lost due to accidents or ill-health incurred by workers	
Accident investigations carried out in the period	
Site inspections, tool-box talks etc completed	
Visits by the HSE, Local Fire Authority, the Police and Environment Agency to the site	
Enforcement notices served by the regulatory authorities e.g. improvement, prohibition, warning notices.	

Schedule 7

Anti-bribery and Anti-corruption

- 1 The Grant Recipient must:
- 1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
- 1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 1.3 comply with Homes England's ethical, anti-bribery and anti-corruption policies, a copy of which is available here: <https://www.gov.uk/government/collections/homes-england-ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**);
- 1.4 have and maintain in place throughout the duration of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and paragraph 1.2 of this Schedule 7 (*Anti-bribery and Anti-corruption*), and will enforce them where appropriate;
- 1.5 if required by Homes England, produce a written certificate to it signed by an officer of the Grant Recipient, confirming compliance with this Schedule 7 (*Anti-bribery and Anti-corruption*) by the Grant Recipient and all persons associated with it under paragraph 1.6 of this Schedule 7 (*Anti-bribery and Anti-corruption*). The Grant Recipient shall provide such supporting evidence of compliance as Homes England may reasonably request;
- 1.6 ensure that any person associated with the Grant Recipient who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Grant Recipient in this Schedule 7 (*Anti-bribery and Anti-corruption*) (**Relevant Terms**). The Grant Recipient shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms;
- 1.7 immediately report to Homes England's Head of Financial Crime Compliance and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the Grant Recipient in connection with the performance of this Agreement; and

for the purpose of this Schedule 7 (*Anti-bribery and Anti-corruption*), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Schedule 7 (*Anti-bribery and Anti-corruption*) a person associated with the Grant Recipient includes any subcontractor of the Grant Recipient.

- 2 Where the Grant Recipient is aware that it is in breach of an obligation under this Schedule 7 (*Anti-bribery and Anti-corruption*) it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 3 If the Grant Recipient has any grounds for suspecting financial irregularity in the use of any Funding, it must:
- 3.1 notify Homes England immediately;
 - 3.2 explain to Homes England what steps are being taken to investigate the suspicion; and
 - 3.3 keep Homes England informed about the progress of the investigation.

For the purpose of this paragraph 3 "financial irregularity" includes fraud or other impropriety, mismanagement, and the use of Allocated Grant for purposes other than the purposes permitted under this Agreement.

Schedule 8

Information and Confidentiality

- 1 Each Party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- 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 or MHCLG arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other Party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 3 The obligations of confidence referred to in this Schedule 8 (*Information and Confidentiality*) shall not apply to any Confidential Information which:
 - 3.1 is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information;
 - 3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 3.3 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
- 1.2 is independently developed without access to the Confidential Information of the other Party.
- 4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - 4.1 to enable the disclosing Party to perform its obligations under this Agreement or any loan agreement or proposed loan agreement or funding documentation with a commercial lender;
 - 4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Grant Recipient acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England or MHCLG may nevertheless be obliged to disclose such Confidential Information;
 - 4.3 by any Regulatory Body (including any investment exchange and the Regulator) acting in the course of proceedings before it or acting in the course of its duties; or
 - 4.4 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.
- 5 The Grant Recipient shall ensure that all Confidential Information obtained from Homes England or MHCLG under or in connection with this Agreement:
 - 5.1 is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;

- 5.2 is treated as confidential and not disclosed (without Homes England's or MHCLG's (as applicable) prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement; and
- 5.3 where it is considered necessary in the opinion of Homes England or MHCLG (as applicable) the Grant Recipient shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 6 Nothing in this Schedule 8 (*Information and Confidentiality*) shall prevent Homes England or MHCLG or the Grant Recipient (as applicable):
- 6.1 disclosing any Confidential Information for the purpose of:
- 6.1.1 the examination and certification of its accounts; or
- 6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which it has used its resources;
- 6.2 disclosing any Confidential Information obtained from obtained from Homes England or MHCLG or the Grant Recipient (as applicable):
- 6.2.1 to Homes England or MHCLG (as applicable);
- 6.2.2 to any other department, office or agency of the Crown; or
- 6.2.3 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 6.2.4 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Agreement;
- 6.2.5 to any person engaged in providing any services to Homes England or MHCLG (as applicable) for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review,
- provided that in disclosing information under any of paragraphs 6.2.1 (*Information and Confidentiality*) to 6.2.5 (*Information and Confidentiality*) of this Schedule 8 (*Information and Confidentiality*) inclusive, the disclosing Party 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.
- 7 Nothing in this Schedule 8 (*Information and Confidentiality*) shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 8 The Grant Recipient acknowledges that each of Homes England, MHCLG and the Grant Recipient are FOIA Authorities and:

- 8.1 are subject to legal duties which may require the release of information under FOIA and/or EIR; and
- 8.2 may be under an obligation to provide Information subject to a Request for Information.
- 9 The FOIA Authority in receipt of or to receive the Request for Information (the **Relevant FOIA Authority**) shall be responsible for determining in its absolute discretion whether:
- 9.1 any Information is Exempted Information or remains Exempted Information; and/or
- 9.2 any Information is to be disclosed in response to a Request for Information,
- and in no event shall any Party or MHCLG (as applicable) other than the Relevant FOIA Authority respond directly to a Request for Information, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.
- 10 Notwithstanding any other provision of this Agreement but subject to paragraph 11 of this Schedule 8 (*Information and Confidentiality*) below, each Party acknowledges that the Relevant FOIA Authority may be obliged under FOIA or EIR to disclose Information:
- 10.1 without consulting the other Party or MHCLG (as applicable); or
- 10.2 following consultation with the other Party or MHCLG (as applicable) and having taken (or not taken, as the case may be) its views into account.
- 11 Without in any way limiting paragraph 9 of this Schedule 8 (*Information and Confidentiality*) or paragraph 10 of this Schedule 8 (*Information and Confidentiality*), in the event that the Relevant FOIA Authority receives a Request for Information, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other Party or MHCLG (as applicable).
- 12 Each Party will assist and co-operate with the Relevant FOIA Authority 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 shall procure that its agents contractors and sub-contractors will), at their own cost:
- 12.1 transfer any Request for Information received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
- 12.2 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;
- 12.3 provide the Relevant FOIA Authority with any Information already in its possession or power in the form that the Relevant FOIA Authority requires within five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information; and
- 12.4 permit the Relevant FOIA Authority to inspect any records as requested from time to time.

- 13 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.
- 14 The obligations in this Schedule 8 (*Information and Confidentiality*) will survive the expiry or termination of this 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 this Agreement or of any other duty of confidentiality relating to that information.
- 15 The Grant Recipient must regularly review its security arrangements in relation to its access to and operation of IMS and in particular the Grant Recipient must:
- 15.1 notify Homes England immediately if there is any change in the identity of the individual discharging the role of the security administrator on behalf of the Grant Recipient or if such person leaves the Grant Recipient's employment or relinquishes that role;
- 15.2 maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
- 15.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
- 15.4 ensure that systems are in place to prevent any person accessing IMS under a 'User ID' other than their own.
- 16 The Parties acknowledge and agree that the Relevant FOIA Authority may in its absolute discretion redact all or part of the Information within a Request for Information 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 Parties regarding any redactions to the Information to be published pursuant to this Schedule 8 (*Information and Confidentiality*). The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.

Schedule 9

Data Protection

- 1 In so far that Shared Personal Data is Processed under this Agreement it is understood that the Parties will each act in the capacity of an independent Data Controller.
- 2 The Grant Recipient (including its employees agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this Schedule 9 (*Data Protection*) and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.
- 3 The Grant Recipient warrants and represent that they each have in place appropriate technical and organisational measures to protect the Shared Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 4 The Grant Recipient shall notify Homes England without undue delay on becoming aware of any breach of the applicable Data Protection Legislation in relation to the Shared Personal Data.
- 5 Whilst each Party shall be responsible for responding to any complaint in relation to the Shared Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's rights, if necessary the Parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with the Shared Personal Data Processed under this Agreement.
- 6 The Grant Recipient shall use all reasonable endeavours to ensure that in complying with its obligations under Clause 15 (*Review, Monitoring and Reporting*), no Personal Data shall be included in any communications with Homes England save to the extent absolutely necessary for purposes of fulfilling its obligations under this Agreement.
- 7 The provision of this Schedule 9 (*Data Protection*) shall apply during the continuance of the Agreement and indefinitely after its termination.
- 8 The Grant Recipient shall indemnify Homes England against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by Homes England as a result of the Grant Recipient's destruction of and/or damage to any of the Shared Personal Data processed by the Grant Recipient, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Schedule 8 (*Information and Confidentiality*) by the Grant Recipient, its employees, agents or sub-contractors.
- 9 The Grant Recipient shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Grant Recipient's Processing of the Shared Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner.

- 10 The Grant Recipient undertakes to include obligations no less onerous than those set out in this Schedule 9 (*Data Protection*) in all contractual arrangements with agents engaged by the Grant Recipient in performing its obligations under this Agreement to Homes England.

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Schedule 10

Intellectual Property

- 1 Subject to paragraph 5 of this Schedule 10 (*Intellectual Property*) the Grant Recipient shall, to the extent that it is able to do so without incurring material cost, grant to Homes England and MHCLG a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by the Grant Recipient or which are or become owned by the Grant Recipient and which relate to the Firm Schemes, for any purpose relating to this Agreement.
- 2 To the extent that any of the data, materials and documents referred to in paragraph 2 of this Schedule 10 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, the Grant Recipient shall if requested by Homes England use its reasonable endeavours (without having to incur material cost) procure for the benefit of Homes England and MHCLG for the duration of this Agreement at the cost of the Grant Recipient the grant of a licence or sub-licence and supply any relevant software and/or database to enable Homes England and MHCLG making such request to access and otherwise use such data for the purposes referred to in paragraph 1 of this Schedule 10 (*Intellectual Property*).
- 3 Neither Party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 4 The Grant Recipient shall fully indemnify Homes England and MHCLG within five (5) Business Days of demand under this paragraph 4 of this Schedule 10 (*Intellectual Property*) 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 Schedule 10 (*Intellectual Property*), any breach by the Grant Recipient of this Schedule 10 (*Intellectual Property*) and against all costs and damages of any kind which Homes England and/or MHCLG may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 5 The Grant Recipient shall only be entitled to revoke the licence granted to Homes England and MHCLG under paragraph 1 of this Schedule 10 (*Intellectual Property*) in the following circumstances and upon the following terms:
 - 5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Capital Grant or Allocated Revenue Grant has been paid to the Grant Recipient; or
 - 5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Capital Grant or Allocated Revenue Grant has been paid to the Grant Recipient provided that nothing in this paragraph 5.2 of this Schedule 10 (*Intellectual Property*) shall entitle the Grant Recipient to revoke such licence insofar as it relates to:
 - 5.2.1 Capital Firm Schemes in respect of which Capital Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Capital Firm Scheme Grant has arisen;

- 5.2.2 Revenue Firm Schemes in respect of which Revenue Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Revenue Firm Scheme Grant has arisen; or
- 5.2.3 Continuing Capital Firm Schemes.

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Schedule 11

Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes and Communities Agency
One Friargate
Coventry
CV1 2GN

To: Homes and Communities Agency (trading as Homes England) (**Homes England**) and the Secretary of State for Housing, Communities and Local Government (**MHCLG**)

Dear Sirs,

Legal Opinion re Rough Sleeping Accommodation Programme grant agreement and related matters

I refer to the proposed grant agreement to be entered into between [] (the **Council**) and Homes England (the **Agreement**) which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

- (a) the Agreement in its final form prior to execution and delivery thereof by the Council;
- (b) the Council's Standing Orders for approving entry into and the execution and delivery of deeds by the Council and for the delegation of its authority and the powers of the Council's Executive; and
- (c) such other documents as 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 Council 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 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 Council of its obligations under the Agreement will violate any provisions of any existing application law, rule, regulation or agreement

binding on the Council, and the Agreement constitutes a valid and legally binding obligation on the Council 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 Council.

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 Council 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 MHCLG and is solely for their 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

¹Council 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 above².

Name	Title	Specimen Signature

¹ Council to ensure that the signatory to the Grant Agreement is different to the Council Solicitor signing the Legal Opinion

² Please note that the Legal Opinion will not be in a form satisfactory to Homes England unless the person executing the Agreement is identified in this table.

Schedule 12

SPEI Entrustment

Template: Entrustment

Tasks entrusted under this Agreement: as set out at Clause 2.1 (*Purpose*) and/or 2.2 (*Purpose*) of the Agreement.

Duration: the duration of each Firm Scheme shall be its Duration as defined in the Agreement.

Compensation for delivery of tasks: the Firm Scheme Grant, subject to the terms of this Agreement.

DRAFT

EXECUTION PAGE TO THE GRANT AGREEMENT

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

Homes and Communities Agency (trading as Homes England)

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

Authorised signatory:

Print Name:

[Grant Recipient]

EXECUTED as a DEED by affixing the)
common seal of [GRANT RECIPIENT])
in the presence of:)

Authorised Officer: