



Homes
England

Date: 8 December 2021

Our Ref: RFI3641

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████
By Email Only

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

Dear ██████████

RE: Request for Information – RFI3641

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

You requested the following information:

Homes England appoints agents to help provide Help to Buy schemes across England. In correspondence with Help to Buy South, they have indicated that all data they process is effectively owned by Homes England.

1. *A copy of the contract between Homes England and Help to Buy South, including any deeds of variation and extensions.*
2. *A copy of the contract between Homes England and the agents it appoints to provide Help to Buy schemes across England, including any deeds of variation and extensions.*

Response

We can confirm that we do hold the requested information.

For clarity, the agents appointed by Homes England to administer the Help to Buy (HTB) scheme across England are arranged into geographical areas as follows:

HTB Agent 1: North of England

HTB Agent 2: Midlands & London

HTB Agent 3: South of England

There is a contract and associated deeds of variation for each of these agents, which we have provided as the following annexes:

Annex A - HTB Agent 1: North of England

Annex B - HTB Agent 2: Midlands & London

Annex C - HTB Agent 3: South of England

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We have withheld some information contained within the Annexes under the following exemptions:

Section 40 – Personal information

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

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

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

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

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

Section 43 - Commercial interests

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

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

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

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

Arguments in favour of disclosure:

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



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Arguments in favour of withholding:

- While Homes England and the Agents are still in contract and the obligations of those contracts ongoing, it would be detrimental to release the withheld information. There is a high risk that disclosing the information would be likely to prejudice the commercial interests of the third parties. The operational and commercial procedures of Homes England and the third party could be exploited which could result in the contractual obligations being affected. This would not be in the public interest as public funds could be at risk if a service provider is unable to fulfil their requirements;
- To disclose information of internal processes would be likely to affect our ongoing and future relationship with the third party. There is a high risk that this would damage the performance of the contract if the relationship between Homes England and a service provider were prejudiced. This would not be in the public interest as Homes England may be unable to fulfil our requirements as set out in our strategic plan. Our strategic plan publicly stated a priority "*to enhance our Help to Buy Loan book administration focusing on value for money*";
- The information would reveal Homes England and the Agents' internal processes. To release this information would not be in the public interest as it would undermine the necessity for public authorities to have a 'safe space' in which to assess and deliberate decisions that will directly affect commercial operations and public funds. This would not be in the public interest as it would negatively affect Homes England's ability to manage public money;
- The contract between Homes England and the Agents sets out performance criteria in relation to ongoing milestones and targets, delivery and operational obligations, performance criteria, and information relating to payments/repayments. To release the detail of these ongoing contractual obligations between the parties would be likely to prejudice their ability to fulfil the requirements agreed between the parties in the contract. It is imperative that the Agents be able to work to achieve the obligations set out in the contract without undue influence from third parties that could disrupt the agreed key performance indicators, risks and auditing processes. This would affect value for public money and prejudice the delivery of the HTB scheme which would not be in line with the strategic objectives set out by government that Homes England is tasked with achieving as per our strategic plan;
- The withheld information contains the Invitation to Tenders (ITT) from the relevant agents for the contract. Disclosure of this information could put Homes England at risk of breach of Regulation 18 of the Public Contracts Regulations 2015. Regulation 18 provides that "Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner". Homes England is a contracting authority. The information relates to services that have been procured by Homes England. If this information were released it would be likely to prejudice future competitive tenders for Homes England contracts. Release of the information would be likely to result in third parties being placed at a commercial disadvantage in relation to other potential bidders if the wider public were aware of how an organisation had ranked those suppliers' bids. There would be significant reputational, commercial and financial loss to Homes England and our partners if third parties could use the information to distort the market for their own gain; and
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

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



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

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

Please note that where we have withheld entire sections of the contract, these have been removed from the Annexes in their entirety.

Right to Appeal

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

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

Or by email to infogov@homesengland.gov.uk

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

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

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

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

Yours sincerely,

The Information Governance Team
For Homes England

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dated 23 December 2019

Homes England

and

Plus Dane Housing Limited

Appointment of a Help to Buy Agent

Service Agreement relating to Lot 1 (North of England)

Trowers & Hamlin LLP
55 Princess Street
Manchester
M2 4EW
t +44 (0)161 838 2000

1

f +44 (0)161 838 2001
www.towers.com

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Agreement

dated 23 December 2019

Parties

- (1) **Homes England** (the trading name of the Homes and Communities Agency) a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (**Homes England**); and
- (2) **Plus Dane Housing Limited**[a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 31012R whose registered office is at Baltimore Buildings, 13 – 15 Rodney Street, Liverpool L1 9EF (the **Help to Buy Agent**)

Introduction

- (A) Homes England is empowered under Sections 2, 3 and 5 of the Housing and Regeneration Act 2008 to improve and facilitate the supply of housing in England.
- (B) In accordance with the European Union public sector procurement principles as implemented in the United Kingdom, Homes England has held a competitive tender process to find a service provider to provide a one stop-shop of services providing information about government-supported home ownership products, eligibility and affordability assessment of applicants of affordable home ownership products and eligibility assessment and administration for equity loan product sales in the Geographic Service Area.
- (C) On 3 June 2019 Homes England published a notice in the Official Journal of the European Union in relation to the tender of Homes England's requirements for these services. Homes England issued a SQ to respondents to its notice, then subsequently assessed and selected a short list of candidates.
- (D) Following such assessment and selection, Homes England issued an Invitation to Tender (**ITT**) to potential service providers (including the Help to Buy Agent) and subsequently evaluated responses to the ITT.
- (E) On the basis of the Help to Buy Agent's responses and subsequent discussions, the parties have agreed to the following terms for the provision and receipt of the Services.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

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

AHO Products means all homeownership products supported by Homes England in accordance with the AHCFG (or any supplementary guidance) including but not limited to: Shared Ownership, Social HomeBuy, HOLD, Older Persons Shared Ownership, Rent to Buy and any previous or new product of a similar nature made available by Homes England;

AHO Schemes means those affordable housing schemes (including any Nil Grant Units developed in conjunction with that scheme and any schemes agreed by Homes England to be Nil Grant Schemes) provided with the assistance of grant under section 19 of the Housing and Regeneration Act 2008 (or Section 18 or 27a of the Housing Act 1996 where applicable) which will be available for sale or rent on or after the date hereof under the following schemes:

- (a) initial sales of any AHO Product;
- (b) Resales of any relevant AHO Product; and

any additional home ownership for sale products funded via the 2016/21 Shared Ownership and Affordable Homes Programme and/or any additional schemes funded or promoted by Homes England (details of which shall be provided by Homes England);

Affordable Housing Capital Funding Guide or **AHCFG** means Homes England's Affordable Housing Capital Funding Guide as updated, revised or replaced from time to time;

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

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

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

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

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

Authorised Representative means as the case may be the person appointed by Homes England or the Help to Buy Agent respectively to manage all aspects of the Agreement and who is authorised to make day to day decisions in respect of the operational performance of the Agreement;

Authority to Exchange or **ATE** means a notice served by the Help to Buy Agent in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Authority to Proceed or **ATP** means a notice served by the Help to Buy Agent in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Benchmarking Standards means Homes England's Benchmarking Standards in relation to the Help to Buy Equity Loan Scheme as set out in Schedule 3 (as may be updated and amended from time to time by Homes England);

Business Continuity and Disaster Recovery Event means event that would significantly impact on the ability of the Help to Buy Agent to perform the Services, in whole or in part, in accordance with the terms of this Agreement;

Business Continuity and Disaster Recovery Plan means the Help to Buy Agent's business continuity plan for the Services to minimise the effect of any unplanned interruption or event that would significantly impact on the ability of the Help to Buy Agent to perform the Services, in whole or in part, in accordance with the terms of this Agreement and ensure continuity of business processes and operations supporting the Services following any failure or disruption of processes and operations affecting any element of the Services and the recovery of such processes and operations following a disaster;

Change in Control means any merger or transfer of engagement by the Help to Buy Agent to a third party (which shall include the Help to Buy Agent becoming a subsidiary of any such third party or any business or asset transfer to such party of all or the majority of the Help to Buy Agent's assets) which has not been previously agreed in writing by Homes England;

Commencement Date means 1 December 2019;

Complaint means any expression of dissatisfaction, whether oral or written and whether justified or not, from or on behalf of a Grant Recipient, Help to Buy Equity Loan Provider, Qualifying Applicant or any other party concerning the services provided by the Help to Buy Agent in relation to this Agreement;

Complaints Procedure means the procedure referred to in paragraph 5.2 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B;

Confirmation of Exchange means a letter issued to the Help to Buy Agent by the Qualifying Applicant's Conveyancer pursuant to Paragraph 4.14.12 of Schedule 1A;

Confirmation to Provider means a letter issued by the Help to Buy Agent pursuant to Paragraph 4.14.5 of Schedule 1A providing written confirmation that it is satisfied that the Conditions Precedent has been satisfied

Conditions Precedent means:

- (a) service of the relevant Authority to Proceed together with confirmation that such Authority to Proceed will be current and valid at the date of exchange;
- (b) receipt by the Help to Buy Agent of the Solicitor's Form 2 (with the attached certificate of title completed and signed by the legal advisor acting on behalf of the Eligible Purchaser) in respect of the relevant Eligible Dwelling in respect of the relevant Eligible Unit; and

- (c) receipt by the Help to Buy Agent from the legal advisor acting on behalf of the Eligible Purchaser of a certified copy of either the Eligible Purchaser's final professional valuation (obtained on behalf of an Approved Lender) or (where not available) the Eligible Purchaser's mortgage offer confirming the valuation and valuing the Eligible Dwelling at a sum which is equal to the Full Purchase Price or (at the discretion of Homes England) within a tolerance of that sum determined from time to time by Homes England and notified by the Help to Buy Agent to the Help to Buy Equity Loan Provider in writing;

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

Consumer Credit Legislation means the Consumer Credit Act 1974, Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the Mortgage Credit Directive Order 2015 together with all applicable consumer credit and regulated mortgage contract legislation and regulations to the extent applicable to the Help to Buy Agent's role under this Agreement;

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

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

Core Transaction Process means the transaction process set out in Schedule 4 as may be amended by Homes England from time to time, the parties acknowledging that such amendments may include (without limitation) new or enhanced requirements for credit reference checks and additional eligibility checks and Customer Due Diligence Requirements;

Customer Due Diligence Requirements means such requirements in respect of customer due diligence and any other requirements notified to the Help to Buy Agent by Homes England in writing from time to time. These requirements may include (without limitation) requirements to obtain from applicants and/or their advisers, and to verify the authenticity of, information including (without limitation) identity checks and source of funds/source of wealth and upload these to IMS, and any enhanced due diligence that Homes England may require in cases that it views as higher risk, for examples Politically Exposed Persons or source of funds/source of wealth from a high risk jurisdiction. Any such requirements notified to the Help to Buy Agent by Homes England will be deemed to be incorporated into the service requirements of Core Service 3 and Core Service 4 in the Specification in Schedule 1 of this Agreement;

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

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

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

Data Protection Declaration means a declaration in substantially the form set out in Schedule 8;

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

Data Protection Legislation means:

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

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

Default shall mean the occurrence of any of the events described in clause 6.3.1;

Dispute Resolution Procedure means the procedure set out in clause 14;

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

EIR Exception means any applicable exemption to the EIR;

Eligible Dwelling means (in relation to Help to Buy Equity Loan) a Dwelling which qualifies as an Eligible Dwelling pursuant to the Help to Buy Equity Loan Provider's funding administration agreement for Help to Buy Equity Loan;

Eligible Purchaser means a person:

- (a) who satisfies the eligibility criteria issued from time to time by Homes England in relation to Help to Buy Equity Loan;
- (b) who has been approved as eligible by the Help to Buy Agent;
- (c) who is taking out a prior first fixed charge with an Approved Lender;

- (d) who is not connected with the Help to Buy Equity Loan Provider (save where Homes England confirms in writing that any such person qualifies as an Eligible Purchaser); and
- (e) who does not (or will not at the point of purchase of the Eligible Dwelling) possess an interest in any other dwelling;

Equity Loan Products means any equity loan scheme funded or promoted by Homes England to assist potential buyers to acquire a home, including Help to Buy Equity Loans;

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

Exit Plan means the exit plan prepared and implemented in accordance with the requirements of Clause 13.3;

Fees means both the Standard Fee and the Transaction Fee payable in accordance with the provisions of Schedule 10;

Final Mobilisation Plan means the plan prepared by the Help to Buy Agent and approved in writing by Homes England which details the actions the Help to Buy Agent will take during the Mobilisation Period, agreed between the parties in accordance with clause 2.4.1;

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

FOIA Exemption means any applicable exemption to the FOIA;

Full Purchase Price means the full selling price of each property (which is to be set by the Help to Buy Equity Loan Provider but which must be equal to the Market Value of the relevant property);

Geographic Service Area means a geographical area prescribed by Homes England from time to time in which a Help to Buy Agent shall deliver the Services in the relevant lot as more particularly described in Schedule 11;

Good Industry Practice means the exercise of that degree of skill, prudence and diligence, which would reasonably and ordinarily be expected from a skilled and experienced contractor seeking in good faith to comply with its contractual obligations, complying with all Applicable Laws and Applicable Standards and engaged in a similar type of undertaking and under the same or similar circumstances and conditions as applies under this Agreement; and to a standard no less than that required by Homes England and/or the Regulator performing a similar role and to a standard no less than that maintained by the Help to Buy Agent in respect of its own leaseholders (if applicable);

Grant Recipient means an organisation in receipt of grant under Section 19 of the Housing and Regeneration Act 2008 or Section 18 or 27a of the Housing Act 1996;

Group Company means any company of which the Help to Buy Agent is a Subsidiary or which has the same Associate(s) where Subsidiary and Associate have the meanings given

to them by Sections 60 and 61 in the Housing Act 1996 and Group shall be construed accordingly;

Handover Period shall mean such period reasonably specified by Homes England in order to facilitate any handover or winding down of the services and which shall, save where otherwise agreed between the parties, be no longer than six (6) months prior to the expiry or termination of this Agreement;

Help to Buy Agent Equipment means the hardware, computer and telecoms devices and equipment supplied by the Help to Buy Agent or its sub-contractors (but not hired, leased or loaned from Homes England) for the provision of the Services;

Help to Buy Agent Personnel means all directors, officers, employees, agents, consultants and contractors of the Help to Buy Agent and/or of any sub-contractor engaged in the performance of its obligations under this Contract;

Help to Buy Agent's Proposals means the proposals and/or commitments made by the Help to Buy Agent in its response to Homes England's SQ and/or ITT;

Help to Buy Agent System means the information and communications technology system used by the Help to Buy Agent in performing the Services including the Help to Buy Agent Equipment and related cabling (but excluding Homes England System);

Help to Buy Equity Loan and Help to Buy Equity Loan Scheme means the government home ownership initiative of the same name as described in the Help to Buy Equity Loan Participation Guidance published by Homes England on 25 March 2013;

Help to Buy Equity Loan Provider means a provider who has entered into an administration agreement with Homes England to enable the provision of Help to Buy Equity Loans to Eligible Purchasers;

HOLD means home ownership for people with long term disabilities, funded under Shared Ownership to enable Qualifying Applicants to purchase a property suitable to their needs on shared ownership terms on the open market;

Homes England Contribution means in relation to Help to Buy Equity Loan Homes England's contribution in value for between 10% (ten per cent) and 20% (twenty per cent) of the Market Value of the property;

Homes England Data means:

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

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

ICT Environment means Homes England System and the Help to Buy Agent System;

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

Incident Report means the report to be provided using the template in Appendix 1 of this Agreement by the Help to Buy Agent following every Business Continuity and Disaster Recovery Event that occurs;

Information means:

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

Intellectual Property Rights shall include without limitation all and any rights in and to, and any interests in, any patents, trade marks, service marks, registered designs, utility models, design rights, copyright (including copyright in computer software), database rights, inventions, trade secrets and other confidential information, know-how, business or trade names (including internet domain names and e-mail address names) and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights;

ITT means the Invitation to Tender issued to potential service providers by Homes England on 20 August 2019;

ITT Response means the response to the ITT submitted by the Help to Buy Agent and appended as Appendix 2 to this Agreement and which forms part of this Agreement, save that in the event of conflict between the ITT Response and the terms of the rest of the Agreement, the terms of the rest of the Agreement shall prevail;

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

Key Performance Indicators or KPI means the performance indicators listed Appendix 1 of Schedule 2;

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

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

Market Value means the best price reasonably obtainable in the open market for the relevant property (disregarding the availability of Help to Buy Equity Loan as applicable);

Material Default means the breach by the Help to Buy Agent of any of its obligations under, or incorporated by reference into, this Agreement which breach is, in the reasonable opinion of Homes England, material and includes but is not limited to a Critical Service Failure as defined in Schedule 2;

MHCLG means the Ministry of Housing, Communities and Local Government and shall include any successor or replacement governmental department or any governmental department performing a similar role to the MHCLG;

Mobilisation Period means the period from and including the Commencement Date until and including 29 February 2020;

Month means a calendar month;

Mortgage Administrator means any agent appointed by Homes England to administer their Equity Loan Products and whom Homes England have confirmed in writing will fulfil the role of Mortgage Administrator in relation to this Agreement **provided always that** Homes England may itself fulfil the role of Mortgage Administrator where none has been appointed;

Mortgage Administrator Key Document Pack means a collated pack of documents to be provided by the Help to Buy Agent to the Mortgage Administrator pursuant to Paragraph 4.15.6 of the Specification which shall contain in relation to the relevant Qualifying Applicant:

- (a) the Property Information Form;
- (b) the Authority to Proceed;
- (c) Copy Confirmation to Developer;
- (d) Completed and dated Help to Buy Equity Loan document; and
- (e) Official copy of the registered title to the relevant Eligible Unit.

Mortgage Offer means a Qualifying Applicant's mortgage offer in relation to the Eligible Dwelling;

Mystery Shopping means the use of individuals (whether Homes England employees or independent persons) whose task is to experience and measure compliance by the Help to Buy Agent with this Agreement or the customer service provided by the Help to Buy Agent, by acting as potential Help to Buy customers/actual Help to Buy customers and reporting back on their experiences to Homes England;

New Provider shall mean a New Provider as defined in clause 12.4;

Nil Grant Scheme means a scheme provided by a Grant Recipient consisting only of Nil Grant Units;

Nil Grant Unit means a property developed without the assistance of grant from Homes England which Homes England has confirmed constitutes a nil grant unit;

Older Persons Shared Ownership means the Shared Ownership product made available to older persons in accordance with the requirements of the AHCFG.

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

Outgoing Provider(s) means Yorkshire Housing Limited;

Performance Monitoring means the procedure for monitoring compliance with the specification described in Part 2 of Schedule 2;

Performance Report means the report prepared by the Help to Buy Agent every month in accordance with Part 2 of Schedule 2 as part of the Performance Monitoring;

process/processed/processing has the meaning ascribed to the term in Section 3, Part 1 of the DPA;

Property Information Form or **PIF** means a notice served by the Qualifying Applicant in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

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;

Provisional Mobilisation Plan means the plan prepared by the Help to Buy Agent and included in the ITT Response which details the actions the Help to Buy Agent proposed take during the Mobilisation Period;

Qualifying Applicant means an applicant who has been assessed by the Help to Buy Agent as eligible to purchase either a AHO product or an Equity Loan Product;

Qualifying Lender means an institution authorised by the Financial Conduct Authority to enter into a regulated mortgage contract as a lender;

Quarter means a rolling three (3) monthly period with the first Quarter commencing on the Commencement Date and the final Quarter ending on the expiry of this Agreement in accordance with clause 3;

Regulator means the Regulator of Social Housing or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

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

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

Resale means a second or subsequent sale of a property which is subject to a Shared Ownership Lease (including HOLD, Social HomeBuy, Older Persons Shared Ownership and any similar Help to Buy or HomeBuy product);

Required Consents means such consents, certificate, licence, approval, permission or otherwise the authorisation necessary for compliance with the Specification;

Revised Authority to Proceed means an Authority to Proceed issued pursuant to Paragraph 4.14.3 or 4.14.4 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph(s) of Specification B;

Security Plan means the Help to Buy Agent's security plan prepared pursuant to paragraph 2 of Schedule 6 (Security Requirements and Plan);

Security Policy means Homes England's security policy referred to in Schedule 6 (Security Requirements and Plan) and set out in Schedule 7 (Security Policy);

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

Service Improvement Plan means the service improvement plan in respect of the Services (as amended from time to time) which is produced by Homes England and shared with the Help to Buy Agent pursuant to Clause 5.4 which contains actions to be adopted as part of the service improvement for the delivery of the Services;

Shared Ownership means a property disposed of on a Shared Ownership Lease (which term shall include any Shared Ownership Leases referred to as NewBuild Help to Buy leases);

Shared Ownership Lease means a lease that meets the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977 and contains the fundamental clauses specified in the Affordable Housing Capital Funding Guide;

Social HomeBuy means a grant funded scheme promoted by Homes England and Local Authorities enabling Qualifying Applicants to purchase a rented property with the benefit of a discount on a Social HomeBuy Lease or outright purchase basis;

Social HomeBuy Lease means a lease that meets the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977 and contains the fundamental clauses specified in the Affordable Housing Capital Funding Guide;

Solicitor's Form 1 means the pro forma document headed Solicitor's Form 1 set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Solicitor's Form 2 means the pro forma document headed Solicitor's Form 2 set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Solicitor's Information Pack means a pack to be provided by the Help to Buy Agent to the Qualifying Applicant's conveyancer in order to administer the Help to Buy Equity Loan Scheme in such form as Homes England shall make available from time to time in relation to the Help to Buy Equity Loan Scheme;

Special Changes means those changes amendments and modifications made to this Agreement under the provisions of Schedule 12;

Specification means (until the Specification Transition Date) Specification A or (from and including Specification Transition Date) Specification B;

Specification A means the specification set out in Schedule 1A;

Specification B means the specification set out in Schedule 1B;

Specification Transition Date means the date on which Specification A ceases to apply and Specification B takes effect;

SQ means the Selection Questionnaire issued to prospective bidders by Homes England on 3 June 2019;

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

Staff Vetting Procedures means the series of checks made by the Help to Buy Agent on all Help to Buy Agent Personnel;

Stakeholders means the Regional Assembly and the Mayor of London (or any successor bodies or organisations) in the Geographic Service Area (where applicable);

Standard Documents means the standard pack of documents, forms and letters issued by Homes England to the Help to Buy Agent including instructions as regards the appropriate manner of and time for use as updated or amended by Homes England from time to time;

Standard Fee means (subject to paragraph 4 of Schedule 10) zero pounds (£0) payable in accordance with Paragraph 2 of Schedule 10 in respect of the Services;

Statutory Requirements means the requirements of any Applicable Law or (but only to the extent that observance of any of the following by the Help to Buy Agent is mandatory as a result of a general rule of law or necessary in order that the Help to Buy Agent complies with its obligations under this Agreement) of any requirement, demand, guideline, policy, code of practice, rule, decision or determination of any competent authority (meaning any entity whose authority is or may be required for the compliance with all or part of the Specification or which otherwise has jurisdiction with regards to all or part of the Specification), whether now or hereafter in effect;

Sub-processor means any third Party appointed to process Personal Data on behalf of the Help to Buy Agent related to this Contract;

Term means either the Initial Term (as defined in clause 3) or any extension by Homes England pursuant to clause 3.2);

Third Party Questionnaire means the Homes England 3rd Party Information Security (Information Security) Questionnaire issued to the Help to Buy Agent under this Agreement as may be varied by Homes England from time to time;

Transaction Fee means s. 43

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time;

Valid Valuation means a survey or valuation report confirming the Market Value of the relevant property obtained in accordance with the requirements of the relevant qualifying applicant's mortgage lender provided such lender is a Qualifying Lender

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

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

Warning Notice means a notice served pursuant to clause 6.3;

Welcome Letter means a letter sent by the Help to Buy Agent as required by KPI 6 (Equity Loan Product and Process) in substantially the form set out in the Standard Documents or such other form (including electronic formats) as Homes England may from time to time reasonably require; and

Working Day means any day Monday to Friday (inclusive) excluding public holidays.

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

1.3 All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which had been amended, extended, consolidated, or replaced by the same and shall include any

orders, regulations or other delegated or subordinate legislation made under the relevant statute.

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

2 Purpose

- 2.1 The purpose of this Agreement is to govern the day-to-day working relationship between the Help to Buy Agent and Homes England. It also details agreed performance standards to be met by the Help to Buy Agent.
- 2.2 The Agreement is intended to cover the sale of all Equity Loan Products and the administration of all AHO Products (including Resales) in accordance with the Specification within the Geographic Service Area where such sale shall occur after the date hereof.
- 2.3 The Help to Buy Agent shall provide the Services from 2 January 2020 unless otherwise agreed with Homes England in writing. Homes England shall act reasonably in considering any request made by the Help to Buy Agent to delay the Services start date in order to allow the Help to Buy Agent sufficient time to mobilise in accordance with the Final Mobilisation Plan. The Parties agree that the Services start date shall be no later than the last day of the Mobilisation Period.
- 2.4 The parties shall co-operate in good faith to ensure that:
- 2.4.1 the Final Mobilisation Plan acceptable to Homes England is agreed by the parties as soon as reasonably practicable and in any event by 23 December 2019; and
- 2.4.2 following the agreement of the Final Mobilisation Plan pursuant to clause 2.4.1, the Final Mobilisation Plan is implemented with all necessary speed and in a

manner that will ensure the Help to Buy Agent is ready to commence providing the Services with effect from 2 January 2020

2.5 The reasonable costs of preparing and implementing the Final Mobilisation Plan shall be borne by the Help to Buy Agent.

3 **Term**

3.1 This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Agreement shall continue in force until 31 March 2021 (the **Initial Term**).

3.2 Homes England (at its sole discretion) may extend the Initial Term by a further period or periods not exceeding in total a further three (3) years by giving the Help to Buy Agent reasonable (in Homes England's opinion) written notice prior to the expiry of the Initial Term or any extension to the term. The parties acknowledge that Homes England's aspiration is to give a minimum of three (3) months' notice but this may not be possible and therefore any shorter notice shall be valid and have full force and effect. Any extension pursuant to this clause 3.2 shall be for a minimum period of six (6) months and the overall term of this Agreement shall not in any event be extended beyond 30 September 2024. The Help to Buy Agent agrees that nothing in this Agreement shall oblige Homes England to extend the Agreement following the expiry of either the Initial Term or any individual extension period.

3.3 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:

3.3.1 the end of the Initial Term; or

3.3.2 if Homes England elects to extend the Initial Term, the end of any extension period provided further notice of extension has not been served pursuant to clause 3.2.

4 **Authorised representatives and contacts**

4.1 Not later than the date hereof:

4.1.1 Homes England shall produce to the Help to Buy Agent details of its Authorised Representative and other nominated staff who will deal with the Help to Buy Agent for the purposes of day-to-day operation of this Agreement; and

4.1.2 the Help to Buy Agent shall produce to Homes England details of its Authorised Representative and other nominated staff who will deal with Homes England for the purposes of day-to-day operation of this Agreement.

4.2 Each party shall notify the other in advance of any appointment of a replacement for the Authorised Representative and the key personnel whose details are provided pursuant to clause 4.1.

5 **The Help to Buy Agent's obligations**

5.1 The Help to Buy Agent shall with effect from the Commencement Date at all times comply with the Specification as required under this Agreement, in a manner consistent with the following:

- 5.1.1 to comply with the Specification and to perform the Help to Buy Agent's covenants and obligations contained in this Agreement in accordance with Good Industry Practice;
 - 5.1.2 (without prejudice to the generality of clause 5.1.1) to implement the Final Mobilisation Plan during the Mobilisation Period
 - 5.1.3 to comply with all Statutory Requirements, Applicable Standards (including for the avoidance of doubt the applicable requirements of the Affordable Housing Capital Funding Guide), the Benchmarking Standards any regulations relating to any AHO Schemes and/or Equity Loan Products issued from time to time by Homes England and all conditions of Required Consents which apply to the Specification (it being the responsibility of the Help to Buy Agent to obtain each Required Consent and to provide documentary evidence of such Required Consent to Homes England upon request) and procure so far as reasonably practicable that such Required Consents are capable of assignment or transfer to Homes England or its nominee;
 - 5.1.4 to comply with the promises and commitments made by the Help to Buy Agent to Homes England in the Help to Buy Agent's Proposals;
 - 5.1.5 (where the Estate Agents Act 1979 applies to the Help to Buy Agent's compliance with the Specification) to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to the extent such regulations apply; and
 - 5.1.6 to comply with the provisions of the Consumer Credit Legislation and the Help to Buy Agent shall provide a copy of any required Financial Conduct Authority authorisation to Homes England within two (2) Working Days of receipt of a request.
- 5.2 Homes England shall give the Help to Buy Agent not less than three (3) months' written notice of the Specification Transition Date and such notice shall include the detailed content of Specification B.
- 5.3 The Help to Buy Agent shall indemnify and hold harmless Homes England against any liability which Homes England may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by Homes England to the extent that the same arises by reason of any breach of this Agreement or any tortious act or omission on the Help to Buy Agent's part (and/or any third party to whom the Help to Buy Agent has subcontracted the performance of some or all of the Help to Buy Agent's obligations under this Agreement) in the performance of the Help to Buy Agent's obligations under and in connection with this Agreement.
- 5.4 As part of their overall monitoring of the delivery of the Services, Homes England may produce a Service Improvement Plan. The plan will include detail of any reasonable requirements for improvements to be made to the manner or processes used for delivery of the Services and either party may suggest areas to be covered by any Service Improvement Plan.
- 5.5 Subject to clause 5.6, where a Service Improvement Plan is produced pursuant to Clause 5.4, the process in Schedule 15 shall be followed.

5.6 Where a Service Improvement Plan produced pursuant to Clause 5.4 requires that improvements be made or actions be taken under clause 6.2.2, the Help to Buy Agent (with the co-operation of Homes England where necessary) shall implement the Service Improvement Plan in accordance with its terms and for the avoidance of doubt the provisions of Schedule 15 shall have no application in respect of items in the Service Improvement Plan that result from the operation of clause 6.2.

6 **Monitoring and reporting**

6.1 The parties shall comply with the requirements of Schedule 2.

6.2 In addition to the provisions of Schedule 2,

6.2.1 the Help to Buy Agent shall:

- (a) permit Homes England (upon demand) to conduct assurance testing and perform audits of the Help to Buy Agent and as part of this give reasonable access to all relevant assets, including their systems and premises; and
- (b) ensure that it designs and delivers a continuous assurance plan which is compliant with the assurance requirements of Performance Monitoring and which assesses its performance against the requirements of this Agreement including but not limited to all information security requirements, compliance with the KPIs and PIs, overall conduct and quality of provision of customer services and that the outcomes of such strategy are made available to Homes England.

6.2.2 where Homes England determines improvements or actions required either as a result of Performance Monitoring, the assurance plan referred to in Clause 6.2.1(b) or from Homes England's testing of the Help to Buy Agent, the Help to Buy Agent will retain the responsibility to implement these.

6.3 **Warning Notices**

6.3.1 The occurrence of any of the following is a Default:

- (a) any Complaint or incident which either comes to the attention of Homes England or is recorded by the Help to Buy Agent pursuant to the Complaints Procedure which (in Homes England's reasonable opinion) is likely to have or have had a material and adverse impact on the Help to Buy Agent's performance of its obligations under this Agreement and which is not subsequently shown to be unfounded which shall include (inter alia): or
 - i any Complaint from a Grant Recipient or a Help to Buy Equity Loan Provider that a failure or failures by the Help to Buy Agent has materially and adversely impacted the sales and/or marketing of its properties, which is not subsequently shown to be unfounded;
- (b) any Complaint from a Grant Recipient/Help to Buy Equity Loan Provider (as applicable) that the Help to Buy Agent is persistently failing to either confirm an applicant's eligibility status or issue an Authority to Proceed

within four (4) Working Days of receipt of either a properly completed application form or Property Information Form, which is not subsequently shown to be unfounded (and for the purposes of this paragraph 6.3.1(b)) the Help to Buy Agent shall be deemed to be persistently failing if they fail to meet the relevant Key Performance Indicator Target in any three (3) consecutive months;

- (c) Exchange or completion taking place in respect of any purchase by a Qualifying Applicant without the full procedure set out in paragraph 4 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B being followed;
- (d) (where the Help to Buy Agent is a Help to Buy Agent for more than one Geographic Service Area) the Help to Buy Agent commits a Default in relation to any other Help to Buy Agent Contract between the Help to Buy Agent and Homes England; or
- (e) Material PI Failure as defined in Schedule 2.

6.3.2 In the event a Default occurs, the Help to Buy Agent will be required to promptly report to Homes England on the nature and frequency of the Defaults and to identify the potential causes and solutions to reduce or remove the future occurrence of Defaults. For the avoidance of doubt Homes England can make suggestions and recommendations but has no power to require the Help to Buy Agent to carry out any action or implement any changes to working practices to minimise future Defaults.

6.3.3 If Homes England (acting reasonably) is not satisfied with the Help to Buy Agent's report submitted pursuant to Part 2 of Schedule 2 or, if at any time, a further Default occurs then Homes England shall be entitled to serve a Warning Notice on the Help to Buy Agent. For the avoidance of doubt, a Warning Notice shall only be served once in respect of any individual instance of a Default.

6.3.4 Any such notice shall state on its face that it is a Warning Notice, the incident(s) or Complaint(s) to which it relates and the circumstances giving rise to the issue of the Warning Notice and shall be signed by or on behalf of Homes England. In the event that any Warning Notice is subsequently revoked, such notice shall be treated as not having been issued for the purposes of clauses 10 and/or 11.3.1.

6.4 **Inspection and audit facilities**

6.4.1 The Help to Buy Agent shall as and when requested by Homes England, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement a copy of each of:

- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Help to Buy Agent and any Help to Buy Agent Personnel for the purposes of this Agreement; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the officers, employees, agents or consultants of

the Help to Buy Agent and of any Help to Buy Agent Personnel relating to the Services and which have been supplied to the Help to Buy Agent, its and any Help to Buy Agent Personnel for the purposes of this Agreement.

6.4.2 The Help to Buy Agent shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by it in respect of the Services, and must procure that any Help to Buy Agent Personnel does likewise in respect of expenditure incurred by it in respect of the Services;
- (b) when required to do so by Homes England, provide a summary of any of the income and expenditure referred to in clause 6.4.2(a) as Homes England may require to enable it to monitor the performance by the Help to Buy Agent of its obligations under this Agreement; and
- (c) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 6.4.

6.4.3 The Help to Buy Agent shall ensure that it and any Sub-contractor keeps on an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Services which identify items of revenue received and expenditure incurred in relation to the same.

6.4.4 On the expiry of this Agreement or (if earlier) upon its termination, and for a period of three (3) years following expiry or termination, the Help to Buy Agent shall if requested to do so, deliver up to Homes England all the data, materials, documents and accounts referred to in this clause 6.4 which it has in its possession, custody or control and shall procure the delivery by any Sub-contractor to Homes England of the data, materials, documents and accounts referred to in this Condition 6.4 held by them or as otherwise directed by Homes England.

6.4.5 Compliance with this clause 6.4 shall require the Help to Buy Agent to keep books of account in accordance with best accountancy practice with respect to the Services showing in detail:

- (a) full particulars of the costs of performing the Services;
- (b) a summary of the costs referred to in clause 6.4.2, including details of any funds held by Help to Buy Agent specifically to cover such costs;
- (c) administrative overheads where directly attributed or where apportioned on a pro rata basis;
- (d) a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- (e) such other records as Homes England may reasonably require having regard to the cost to Help to Buy Agent of maintaining and providing such records

and the Help to Buy Agent shall have the books of account evidencing the items listed in this clause 6.4.5 available for inspection by Homes England (and any person appointed pursuant to the Dispute Resolution Procedure to determine a dispute or otherwise authorised by Homes England) upon reasonable notice, and shall submit a report of these to Homes England as and when requested.

6.4.6 The Help to Buy Agent must for a period of ten (10) years from the expiry or termination of this Agreement (howsoever caused) or such period as is agreed in writing between the parties from time to time retain all of the data, documents, materials and accounts referred to in this clause 6.4 and the Help to Buy Agent may retain such data, documents, materials and accounts in electronic form only.

6.5 **Audit Right**

6.5.1 Homes England, its duly authorised agents and identified representatives and staff and agents of the National Audit Office, the Ministry for Housing, Communities and Local Government, the European Court of Auditors and the European Commission and any other duly authorised agents or representatives of Homes England (the **Auditors**) may conduct audits (**Audits**) of the Help to Buy Agent as and when reasonably required for the following purposes in connection with this Agreement:

- (a) to verify the accuracy of the Fees;
- (b) to review the integrity, confidentiality and security of Homes England data;
- (c) to review the Help to Buy Agent's compliance with the Data Protection Legislation and any Applicable Laws;
- (d) to review the Help to Buy Agent's compliance with its obligations under this Agreement;
- (e) to review any books of account and all transaction records and documents kept by the Help to Buy Agent in connection with the provision of the Services;
- (f) to verify the accuracy and completeness of any information delivered or required by this Agreement;
- (g) to verify the Help to Buy Agent's compliance with this Agreement and applicable Law;
 - i to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances Homes England shall have no obligation to inform the Help to Buy Agent of the purpose or objective of its investigations;
 - ii to identify or investigate any circumstances which may impact upon the financial stability of the Help to Buy Agent's ability to perform the Services;
 - iii to review any books of account and the internal contract management accounts kept by the Help to Buy Agent in connection with this Agreement;

- iv to carry out Homes England's internal and statutory audits and to prepare, examine and/or certify Homes England's annual and interim reports and accounts;
 - v to review any Performance Reports and/or other records relating to the Help to Buy Agent's performance of the Services and to verify that these reflect the Help to Buy Agent's own internal reports and records;
 - vi to inspect the Help to Buy Agent System (or any part of it) and the wider service delivery environment (or any part of it) dedicated to the Services;
 - vii to review any records created during the design and development of the Help to Buy Agent System;
 - viii to review the Help to Buy Agent's quality management systems;
 - ix to review the Help to Buy Agent's compliance with the Key Performance Indicators; and
 - x to review the integrity, confidentiality and security of Homes England Data.
- 6.5.2 Homes England shall during each Audit comply with those security, sites, systems and facilities operating procedures of the Help to Buy Agent that Homes England deems reasonable and use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Help to Buy Agent or delay the provision of the Services.
- 6.5.3 The Help to Buy Agent shall provide on demand such access to Homes England and the Auditors with all reasonable co-operation and assistance and facilities as the Auditors may reasonably require to visit any place where the records maintained under this clause 6 are held and to examine such records, and shall permit such records to be examined and copied by the Auditors (and shall procure such co-operation and assistance from its subcontractors) in relation to each Audit, including:
- (a) all information requested by Homes England within the permitted scope of the Audit;
 - (b) reasonable access to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Help to Buy Agent System; and
 - (d) access to Help to Buy Agent Personnel.
- 6.5.4 The Help to Buy Agent shall permit the Auditors and their agents, representatives and employees to interview its employees to obtain appropriate information and oral explanations of documents and information provided that the Auditors shall where it is reasonable to do so take account of the Help to Buy Agent's reasonable requirements concerning the conduct of any such interviews.
- 6.5.5 The Help to Buy Agent shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Help to Buy Agent's

performance of the Services against the Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators.

- 6.5.6 Homes England shall share its plans for the timing of Audits and use its reasonable endeavours to seek co-ordination between the Auditors so as to limit the administrative burden placed on the Help to Buy Agent.
- 6.5.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 6.5, unless the Audit identifies a Material Default by the Help to Buy Agent in which case the Help to Buy Agent shall reimburse Homes England for all Homes England's reasonable costs incurred in connection with the Audit.
- 6.5.8 Save in the circumstances detailed in clause 6.5.9, Homes England shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an Audit.
- 6.5.9 Homes England shall be permitted (using appropriately authorised personnel) immediate access to the records set out in clause 6.4.1, the Help to Buy Agent's personnel and any premises (or part of any premises) where the Help to Buy Agent provides the Services to carry out investigations and Audits in the following circumstances:
- (a) suspected fraud;
 - (b) where Homes England has reasonable grounds to suspect that the Help to Buy Agent has committed a breach of this Agreement or a fraudulent act or where an Audit is required by a Regulatory Body; and
 - (c) circumstances have arisen that may permit Homes England to terminate all or part of this Agreement.
- 6.5.10 If an Audit identifies that:
- (a) the Help to Buy Agent has committed a Default, the procedure set out in clauses 6.3.2 to 6.3.4 shall apply;
 - (b) there is an error in any information reported by the Help to Buy Agent to Homes England under this Agreement, the Help to Buy Agent shall promptly rectify the error;
 - (c) Homes England has overpaid any Fees, the Help to Buy Agent shall pay to Homes England the amount overpaid within thirty (30) Working Days of Homes England confirming the outcome of the Audit to the Help to Buy Agent. Homes England may deduct the relevant amount from the Fees if the Help to Buy Agent fails to make this payment;
 - (d) Homes England has underpaid any Fees, Homes England shall pay to the Help to Buy Agent the amount of the underpayment less the cost of Audit incurred by Homes England if this was due to a Default by the Help to Buy Agent in relation to invoicing within thirty (30) Working Days of Homes England confirming the outcome of the Audit to the Help to Buy Agent.

6.5.11 The provisions of this clause 6.5 shall survive the expiry or termination of this Agreement for a period of twelve (12) months.

7 Co-operation of Grant Recipient

7.1 For all AHO Schemes, the Help to Buy Agent shall enter into a Data Protection Declaration with each Grant Recipient in the Geographic Service Area.

7.2 The Help to Buy Agent shall enter into a Data Protection Declaration with each Help to Buy Equity Loan Provider in the Geographic Service Area prior to marketing and administering applications for such provider's Help to Buy Equity Loan Schemes.

7.3 The Help to Buy Agent shall confirm as part of the Performance Report (submitted in accordance with Part 2 of Schedule 2) the details of all of the Grant Recipients and/or Help to Buy Equity Loan Providers who have signed a Data Protection Declaration pursuant to clause 7.1 and/or 7.2 during the preceding month and shall supply a copy of any of the Data Protection Declarations or variations and extensions it enters into with Grant Recipients and/or Help to Buy Equity Loan Providers to Homes England within four (4) Working Days of receipt of a reasonable request.

8 Information and confidentiality

8.1 Freedom of Information

8.1.1 The Help to Buy Agent acknowledges that Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.

8.1.2 Homes England shall be responsible for determining in its absolute discretion whether:

(a) any Information is Exempted Information or remains Exempted Information; or

(b) any Information is to be disclosed in response to a Request for Information,

and in no event shall the Help to Buy Agent respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England.

8.1.3 Subject to clause 8.1.4 below, the Help to Buy Agent acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:

(a) without consulting the Help to Buy Agent; or

(b) following consultation with the Help to Buy Agent and having taken (or not taken, as the case may be) its views into account.

8.1.4 Without in any way limiting clauses 8.1.2 and 8.1.3, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Help to Buy Agent.

- 8.1.5 The Help to Buy Agent will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure requirements under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:
- (a) transfer any Request for Information received by the Help to Buy Agent to Homes England as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England;
 - (c) provide Homes England with any data or information in its possession or power in the form that Homes England requires within five (5) Working Days (or such other period as Homes England may specify) of Homes England requesting that Information;
 - (d) permit Homes England to inspect such as requested from time to time.
- 8.1.6 Nothing in this Agreement will prevent Homes England from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under the FOIA and/or the EIR in relation to any Exempted Information.
- 8.1.7 To the extent that the Help to Buy Agent becomes an Authority subject to the FOIA and the EIR during the course of the Agreement, this clause 8.1 will apply mutatis mutandis to both parties.

8.2 Confidentiality

- 8.2.1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- 8.2.2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England or the Services arising or coming to its attention in the course of providing the Services to Homes England 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.
- 8.2.3 The obligations of confidence referred to in clause 8.2.2 shall not apply to any Confidential Information which:
- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
 - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or

- (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to the Confidential Information of the other party.

8.2.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:

- (a) to enable the disclosing party to perform its obligations under this Agreement; or
- (b) by any Applicable Laws or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA, the EIR or the Code of Practice on Access to Government Information and the Help to Buy Agent acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such confidential information; or
- (c) by any Regulatory Body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- (d) in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

8.2.5 The Help to Buy Agent shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:

- (a) is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
- (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
- (c) where it is considered necessary in the opinion of Homes England the Help to Buy Agent shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

8.2.6 Nothing in this clause 8.2 shall prevent Homes England:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or

- ii any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources;
- (b) disclosing any Confidential Information obtained from the Help to Buy Agent:
 - i to any other department, office or agency of the Crown; or
 - ii to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
 - iv to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement;
- (c) provided that in disclosing information under clauses 8.2.6(b)i or 8.2.6(b)ii Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

8.2.7 Nothing in this clause 8.2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

8.2.8 The obligations in this clause 8.2 will survive the expiry or termination of this Agreement for a period of three (3) 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.

8.3 Transparency

8.3.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Help to Buy Agent hereby consents for Homes England to publish the Agreement to the general public in its entirety (but with any information, which is exempt from disclosure in accordance with the provisions of the FOIA, redacted), including from time to time agreed changes to the contract.

8.3.2 Homes England shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:

- (a) following consultation with the Help to Buy Agent and having taken (or not taken, as the case may be) its views into account; or

(b) without consulting the Help to Buy Agent.

8.3.3 The Help to Buy Agent shall assist and co-operate with Homes England to enable Homes England to publish this Agreement.

9 Fees

9.1 The parties shall comply with the provisions of Schedule 10.

10 Suspension of Services

Performance Issues

10.1 Following the occurrence of a Default as described in clause 6.3 Homes England may notify some or all of the Grant Recipients and/or Help to Buy Equity Loan Providers operating in the Geographic Service Area (the **Relevant Counterparties**) that they shall be permitted to refer applicants and Qualifying Applicants to a specified alternate Help to Buy Agent (the **Alternate Help to Buy Agent**) until further notice (the **Alternate Help to Buy Agent Period**). Homes England shall send a copy of such notice to the Help to Buy Agent.

10.2 Within one (1) month (or such longer period as Homes England shall specify) of service of the notice under clause 10.1 Homes England shall review the decision and provided either:

(a) Homes England (acting reasonably) is satisfied that the Help to Buy Agent has not incurred a further Default under clause 6.3; or

(b) the Help to Buy Agent has demonstrated to Homes England's reasonable satisfaction that it has identified and (where appropriate) implemented the causes and solutions to reduce or remove the future occurrence of such Defaults;

then Homes England shall forthwith notify the Relevant Counterparties that the Alternate Help to Buy Agent Period shall be terminated and that from the date of receipt of such notification only such Relevant Counterparties shall only refer applicants to the Help to Buy Agent.

10.3 In the event that following the first review under clause 10.2, Homes England is not satisfied that either clause 10.2(a) or 10.2(b) apply, further performance reviews shall be carried out at monthly intervals in accordance with the procedure set out in clause 10.2 until Homes England (acting reasonably) concludes that either clause 10.2(a) or 10.2(b) have been complied with.

10.4 For the avoidance of doubt any exercise by Homes England of its rights under this clause 10 does not in any way impact on Homes England's ability to follow the procedure set out in clause 6.3 in respect of any Default.

10.5 If, during the Alternate Help to Buy Agent Period, any applicant referred to the Alternate Help to Buy Agency by a Relevant Grant Recipient proceeds to purchase a property under the Help to Buy Equity Loan Scheme, the Alternate Help to Buy Agent shall be entitled to process such application in accordance with the Specification and claim the Transaction Fee in relation to such purchase. For the avoidance of doubt, where the Alternate Help to Buy Agent is entitled to claim a fee under this clause 10.5, the Help to Buy Agent shall not be entitled to the Transaction Fee for such transaction.

11 Termination of this Agreement

11.1 Homes England may at any time by notice terminate this Agreement as from the date of service of such notice if a Material Default has occurred and Homes England has determined to terminate this Agreement in accordance with clause 11.2.

11.2 If Material Default has occurred and:

11.2.1 such Material Default is capable of remedy and the Help to Buy Agent shall have failed to remedy the Material Default within a reasonable period specified by Homes England in a notice to the Help to Buy Agent specifying the Material Default and requiring its remedy; or

11.2.2 such Material Default is not capable of remedy,

then Homes England may terminate this Agreement forthwith by notice to the Help to Buy Agent.

11.3 Homes England may terminate this Agreement on (in the case of clause 11.3.1) three (3) months' notice or (in the cases of clauses 11.3.2 to 11.3.6) forthwith by notice to the Help to Buy Agent if:

11.3.1 the Help to Buy Agent is in receipt of two valid Warning Notices under clause 6 in any rolling twelve (12) month period provided, in each case, that neither of the Warning Notices:

(a) has been subsequently revoked or determined to be invalid; or

(b) is the subject of a dispute pursuant to the terms of clause 14; or

11.3.2 the Help to Buy Agent has offered or given or agreed to give to any employee or representative of Homes England or the Crown any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining of this or any other contract with Homes England or for showing or refraining from showing favour or disfavour to any person in relation to this contract or who or appears to have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or

11.3.3 the Help to Buy Agent transfers or assigns this Agreement in contravention of clause 18.1; or

11.3.4 any of the following occurs in relation to the Help to Buy Agent:

(a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or

(a) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities); a moratorium is declared in respect of any indebtedness and/or any moratorium pursuant to Section 145 of the HRA 2008; or

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

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Working Days of commencement; or

11.3.5 a Change in Control takes place; or

11.3.6 the Alternate Help to Buy Agent Period continues for a period of six (6) months or more.

11.4 Homes England may terminate this Agreement at any time after the Initial Term on not less than six (6) months' written notice to the Help to Buy Agent.

12 **Consequences of Specification Transition and/or expiry/termination**

12.1 Homes England and the Help to Buy Agent agree that there are no individuals employed by the Help to Buy Agent whose contracts of employment will, by virtue of the move from Specification A to Specification B on the Specification Transition Date transfer to Homes England in accordance with TUPE.

12.2 If it is subsequently agreed or determined that there are persons employed by the Help to Buy Agent or any existing third party service provider to the Help to Buy Agent whose contracts of employment do have effect after the Specification Transition Date as if originally made between those persons and Homes England (the **Transferring IT Staff**) then:

12.2.1 the Help to Buy Agent shall within twenty (20) Working Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Help to Buy Agent to some or all of the Transferring IT Staff;

12.2.2 Homes England shall procure that no person to whom a position has been offered in accordance with paragraph 12.2.1 shall be dismissed by reason of redundancy until the period for acceptance of the offer has expired and the person in question has not accepted the offer;

12.2.3 subject to paragraph 12.2.1 and paragraph 12.2.2, Homes England shall be entitled to dismiss any or all of the Transferring IT Staff by reason of redundancy; and

12.2.4 provided that Homes England complies with its obligations under paragraph 12.2.2 any IT Employee Costs reasonably incurred by Homes England shall be indemnified by the Help to Buy Agent. The Help to Buy Agent shall also indemnify Homes England against any loss reasonably incurred by Homes England where such loss arises as a result of any act, fault or omission of the Help to Buy Agent occurring prior to the Specification Transition Date and relating to claims made against Homes England by any IT Transferring Staff including any cost or liability arising from a claim that Homes England could not lawfully terminate employment by reason of redundancy.

12.3 **IT Employee Costs** means:

12.3.1 the costs incurred by Homes England associated with employing any Transferring IT Staff from the Specification Transition Date to earlier of:

i the date of dismissal by Homes England by reason of redundancy under clause 12.2.3; or

ii forty five (45) Working Days from the Specification Transition Date; and

12.3.2 any redundancy payment, notice pay or payment in lieu of notice, and any accrued but untaken holiday entitlements and any award due to any Transferring IT Staff and which are required by Legislation or by contract to be made to such Transferring IT Staff and which arise as a result of their dismissal by reason of redundancy under paragraph 12.2.3 where notice is given within two (2) months of the Specification Transition Date as defined in Part 1 of Schedule 1.

12.4 During the six (6) months preceding the expiry of this Agreement or after Homes England has given notice of termination of this Agreement and/or during any Handover Period the Help to Buy Agent shall at its own expense and use its best endeavours to provide such information as may reasonably be required by any alternative provider or Homes England to assist the transfer of the obligations under this Agreement to an alternative provider or providers (a **New Provider**) or the winding down of the AHO Scheme(s) to which this Agreement relates; and

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

(a) all material facts and matters relating to or concerning the employment of any of the Staff or former Staff including but not limited to their respective ages length of service notice periods all terms and conditions of employment benefits policies or other agreements or arrangements or understandings in respect of each of them and any

variation thereto agreed with or imposed upon any of the Staff or former Staff within a period of six (6) months preceding the date of termination or expiry;

- (b) all material facts and matters relating to all or any collective agreements, arrangements or other understanding which the Help to Buy Agent or its agents has with any trade union, staff association or other body representing any of the Staff;
- (c) full details of any representations or statements (whether oral, written or otherwise) made by the Help to Buy Agent or the Agents to any of the Staff or former Staff (or their unions or other representatives) in any way connected with or concerning employment with a New Provider including where applicable Homes England;
- (d) all material facts and matters and written records relating to or concerning all or any obligations arising from the Working Time Directive (93/104) including providing to Homes England all and any records relating to the hours worked by every member of Staff.

12.6 Homes England shall provide the Help to Buy Agent with any information that it receives from any New Provider that the Help to Buy Agent requires to comply with its obligations under the Transfer Regulations.

12.7 With effect from the termination or expiry of this Agreement the Help to Buy Agent shall indemnify and keep indemnified Homes England against any claim liability expense or demand made by and on behalf of any member of Staff or former member of Staff or group of Staff or group of any former members of Staff which may be incurred by Homes England or any New Provider as a result of anything done or omitted to be done in breach of its obligations in relation to the employment of such Staff or former member of Staff by the Help to Buy Agent save and to the extent that such claim liability expense or demand would not have arisen except in consequence of a failure by Homes England or any New Provider to comply with regulation 13 of the Transfer Regulations.

12.8 The Help to Buy Agent shall indemnify and hold harmless Homes England against all claims, liabilities, costs and demands (including all expenses associated therewith howsoever arising) arising out of the inaccuracy of any information provided pursuant to clauses 12.4 and 12.5 above or arising out of such information being incomplete.

12.9 During the last six (6) months of either the Initial Term or any extension of this Agreement in accordance with clause 3.2, the Help to Buy Agent hereby undertakes not to make any amendments to the number of Staff employed in relation to complying with the Specification or the terms and conditions of employed Staff save for:

12.9.1 any reasonable salary increase;

12.9.2 any changes already agreed or indicated prior to Homes England's request referred to at clause 12.212.5 above (**provided that** such changes have been notified to Homes England at the time of Homes England's request pursuant to clause 12.5 above).

For the avoidance of doubt, such changes shall include the relocation or assignment of new duties to any of the Staff, the engagement or dismissal or transfer of Staff carrying out such work under the terms of this Agreement or any amendment to terms and conditions of employment save in the case of dismissal where the Help to Buy Agent shall be reasonably

and fairly entitled to dismiss any employee for reasons of gross misconduct or gross negligence.

12.10 In the event that the Transfer Regulations apply with effect from the termination or expiry of this Agreement Homes England shall meet the Help to Buy Agent's costs of meeting any claim, liability, expense or demand made by and on behalf of any member of the transferring Staff provided that the Help to Buy Agent:

12.10.1 takes reasonable steps to mitigate any such costs;

12.10.2 keeps Homes England informed in relation to any such claim insofar as is reasonably practicable; and

12.10.3 does not settle any claim giving rise to such costs without the prior written consent of Homes England.

12.11 In the event that the Transfer Regulations apply with effect from the termination or expiry of this Agreement Homes England will take reasonable steps to liaise with the New Provider so that the New Provider provides the Help to Buy Agent with sufficient information to enable it to discharge its consultation obligations under Regulation 13 of the Transfer Regulations.

12.12 In the event of any claim or allegation arising out of or in connection with this clause 12, Homes England and the Help to Buy Agent shall upon written request by the other party, give such assistance or information relevant to such a claim or allegation as may reasonably be requested. Such assistance and/or information shall be given promptly.

13 **Exit management**

13.1 Forthwith upon the termination or expiry of this Agreement and during any Handover Period, the Help to Buy Agent shall make all information and assistance available to Homes England, as well as to any incoming provider, so as to:

13.1.1 maintain the continuity of service under this Agreement while alternative arrangements are put in place;

13.1.2 achieve to the extent reasonably possible a smooth transfer to the New Provider, the facilitate a smooth transfer of the Services and to

13.1.3 minimise any loss or disruption to the Services

provided that nothing in this clause shall oblige the Help to Buy Agent to make available information which the parties agree may be classified as commercially sensitive to any New Provider or to breach any Applicable Laws.

13.2 Upon termination or expiry of this Agreement:

13.2.1 the Help to Buy Agent shall have no further right to perform the Help to Buy Agent's role in complying with the Specification;

13.2.2 Homes England may elect for itself or the New Provider to acquire, in which case the Help to Buy Agent shall insofar as reasonably possible sell, or procure the sale of, any equipment or materials exclusively used in complying with the Specification (and not used by the Help to Buy Agent for any of its other activities) at their market

value at a price agreed by the parties or determined under the Dispute Resolution Procedure;

13.2.3 The Help to Buy Agent shall assign to Homes England or if requested by Homes England the New Provider those Required Consents obtained by the Help to Buy Agent and capable of assignment;

13.2.4 The Help to Buy Agent shall deliver to Homes England all software, records, documentation and other data which are owned by Homes England) and (provided such action shall not breach any Applicable Laws) shall make copies available to Homes England or if requested by Homes England the New Provider to the extent that any such software, records, documentation and other data are either subject to rights in favour of Homes England or relate to the compliance with the Specification by the Help to Buy Agent; and

13.2.5 The Help to Buy Agent shall follow such reasonable instructions issued by Homes England in relation to any website or consumer facing portal in order to achieve a smooth transition of or handling down of the Services.

13.3 Without prejudice to the generality of clauses 13.1 and 13.2, the parties agree that:

13.3.1 as soon as reasonably practicable after the commencement of the Handover Period and in any event within twenty (20) Working Days of such date, the Help to Buy Agent shall provide to Homes England in writing a draft Exit Plan setting out what information and assistance it proposes to provide to Homes England and to any incoming provider so as to either maintain continuity of service and achieve a smooth transfer to any New Provider or achieve smooth winding up of the Service;

13.3.2 the draft Exit Plan referred to in clause 13.3.1 shall include (but shall not be limited to) such matters as are set out in Schedule 13 and such other matters as may be notified to the Help to Buy Agent by Homes England;

13.3.3 at any time following the provision by the Help to Buy Agent of the draft Exit Plan, Homes England may by service of not less than seven (7) days' written notice require the Help to Buy Agent to attend one or more meetings with Homes England to discuss the draft Exit Plan and finalise the final details of the Exit Plan to ensure either the smooth transfer or winding down of the Services;

13.3.4 the parties shall co-operate in good faith to ensure that:

(a) an Exit Plan acceptable to Homes England is agreed by the parties as soon as reasonably practicable and in any event within twenty (20) Working Days of the issue of the draft Exit Plan pursuant to clause 13.3.1; and

(b) following the agreement of an Exit Plan pursuant to clause 13.3.4(a), the Exit Plan is implemented in accordance with its terms.

13.3.5 the reasonable costs of preparing and implementing the Exit Plan shall be borne by the Help to Buy Agent.

13.4 Within 20 Working Days after service by Homes England of a notice to terminate this Agreement the Help to Buy Agent will submit to Homes England for approval (not to be unreasonably withheld) a final detailed summary of the actions it intends to take to achieve an orderly transition of the Services to Homes England or to a New Provider (“an Early Termination Exit Plan) and this Early Termination Exit Plan will incorporate the matters contained in Schedule 13 hereto together with any others matters reasonably required by Homes England.

14 **Dispute Resolution**

14.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this clause 14.

14.1.1 In the event that the Help to Buy Agent or Homes England consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 14.

14.1.2 Representatives of the parties shall meet within five (5) Working Days (or such other longer period not exceeding twenty (20) Working Days as the parties may agree) of receipt of a Notice of Dispute. Homes England's representative at this stage of the process shall be its Director of Help to Buy.

14.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 14.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief financial officers (or nominated deputies) of the Help to Buy Agent and Homes England (the **CFOs**).

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

14.1.5 If the Dispute remains unresolved after ten (10) Working Days following referral to the CFOs, such Dispute must be dealt with in accordance with clause 14.2.

14.2 In the circumstances contemplated in clause 14.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

14.2.1 to initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.

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

14.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

14.3 The fact that the parties are engaged in any part of the dispute resolution process described in this clause 14 shall not prevent Homes England from terminating this Agreement in accordance with its terms where such right to terminate has arisen.

15 **Intellectual property rights**

15.1 All legal and equitable right, title and interest in and to Intellectual Property Rights created or developed or otherwise arising in the course of or pursuant to the Services or otherwise in performance of the Agreement shall (except insofar as Homes England may otherwise agree in advance in writing) vest in Homes England, including (without limitation) any and all Intellectual Property Rights created or developed or otherwise arising in relation to the whole or any part of any physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and information in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents on its behalf. The Help to Buy Agent shall procure (at its own expense) such assignments of the said Intellectual Property Rights as may be necessary in order to enable the Help to Buy Agent to comply with its obligations under and to give effect to this clause 15.1.

15.2 The Help to Buy Agent hereby assigns (insofar as permissible by law) and agrees to assign by way of future assignment to Homes England all its right, title and interest in and to the Intellectual Property Rights created or developed or otherwise arising in the course of or pursuant to the Services or otherwise in performance of the Agreement (including, for the avoidance of doubt and without limitation, any and all Intellectual Property Rights created or developed or otherwise arising in relation to the whole or any part of any physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and information in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents on its behalf), and the Help to Buy Agent shall, until such time as any assignment of such Intellectual Property Rights is complete and effective, hold the legal title to them on trust for Homes England. The Help to Buy Agent further agrees that it shall take such steps as Homes England may reasonably request in writing to assist Homes England to register, maintain, defend, protect or enforce any of the aforesaid Intellectual Property Rights.

15.3 Without prejudice to the foregoing provisions of this clause 15, if and insofar as any Intellectual Property Rights which are subject to this clause 15 are owned by the Help to Buy Agent or its sub-contractors or agents (or any other third party), the Help to Buy Agent hereby grants and agrees to grant and to do all such acts and things at its own expense as may be necessary to procure the grant of a perpetual, royalty free, irrevocable licence to Homes England (with the right to grant sub-licences) to use such Intellectual Property Rights, including without limitation for the purpose of enabling a third party to deliver the Services or services which are broadly equivalent or similar to the Services.

- 15.4 Homes England hereby grants and agrees to grant to the Help to Buy Agent a royalty free licence to use any and all Intellectual Property Rights which are subject to this clause 15 for the sole purpose of supplying the Services and otherwise performing the Agreement.
- 15.5 At the expiry or earlier termination of this Agreement, the Help to Buy Agent shall forthwith at its expense:
- 15.5.1 deliver and transfer to Homes England, or whomsoever Homes England shall in writing direct, or at Homes England's option destroy or procure the destruction of and in the case of electronic documents cause or procure to be deleted permanently, any and all physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and records in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents in the course of or pursuant to the Services or otherwise in performance of the Agreement and which are in each case in the Help to Buy Agent's possession, custody or power;
- 15.5.2 deliver and transfer to Homes England all current and effective user names and passwords of URLs and websites and social media accounts and electronic media howsoever, which in each case are controlled by the Help to Buy Agent or its sub-contractors or agents and are solely or principally used in the course of or pursuant to the Services or otherwise in performance of the Agreement;
- 15.5.3 deliver and transfer and otherwise communicate to Homes England, or whomsoever Homes England shall in writing direct, in such format and on such physical or electronic media as Homes England may reasonably request, any and all information and/or data of any sort which is compiled or collected or created by the Help to Buy Agent or its sub-contractors or agents (including for the avoidance of doubt the information and documentation referred to in paragraph 5.8.6 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B) in the course of or pursuant to the Services or otherwise in performance of the Agreement perform (or procure the performance of) all such further acts and things, and sign, execute and deliver (or procure the signature, execution and delivery of) all such further documents, instruments and agreements as may be required by law or as Homes England may request to vest in Homes England the full benefit of this clause 15 including, without limitation, to vest in Homes England all right, title and interest in and to such Intellectual Property Rights as may be created or developed or otherwise arise in the course of or pursuant to the Services or otherwise in performance of the Agreement (except insofar as Homes England may otherwise agree in advance in writing);
- 15.5.4 at the reasonable request and expense of Homes England, to assist Homes England to register, maintain, defend, protect or enforce any and all Intellectual Property Rights which are subject to this clause 15, and to assist with any other proceedings which may be brought by or against Homes England against or by any third party relating to such Intellectual Property Rights.
- 15.6 The Help to Buy Agent shall indemnify Homes England in respect of any Loss or Damage Homes England may incur in the event that any Intellectual Property Rights assigned by this clause 15 are found to be invalid or impaired in any way or arising from any claim by any third

party (whether by way of claim or counterclaim or otherwise, and whether or not meritorious) that the exercise of the rights assigned or licensed by this clause 15 infringes the rights of such third party.

15.7 Subject to any other provision within this clause 15, ownership of and title to all Intellectual Property Rights owned by the Help to Buy Agent that pre-date this Agreement and are not created or developed or do not otherwise arise in the course of or pursuant to the Services or otherwise in performance of the Agreement shall as between the Help to Buy Agent and Homes England remain with the Help to Buy Agent and Homes England shall not acquire any proprietary right, title or interest to the same.

16 **Business Continuity**

16.1 Within 40 Working Days from the date of this Agreement, the Help to Buy Agent shall prepare and deliver to Homes England for Homes England's written approval, a Business Continuity and Disaster Recovery Plan.

16.2 Throughout the Term, the Help to Buy Agent shall ensure that it holds a Business Continuity and Disaster Recovery Plan that it is able to implement at any time in accordance with its terms to ensure minimal levels of disruption to the delivery of the Services.

16.3 The Business Continuity and Disaster Recovery Plan should confirm the requirements including, but not limited to, disaster recovery plans, data integrity and security during Business Continuity and Disaster Recovery Events across all systems, timescales and points of contact for the Help to Buy Agent and Homes England for notification, incident management and escalation.

16.4 The Business Continuity and Disaster Recovery Plan should contain a business impact analysis detailing the impact of a Business Continuity and Disaster Recovery Event on the business processes and operations supporting the delivery of the Services.

16.5 The Help to Buy Agent shall for the duration of this Agreement ensure that any computer system, database or any other system in which any Data is held (together, Relevant Systems) will be covered by the Business Continuity and Disaster Recovery Plan (including but without limitation off site storage and data backup arrangements) in accordance with current best practice business standards, and in any case of a standard sufficient to allow Homes England access to any Relevant System as soon as reasonably practicable following the occurrence of any event interrupting the business of the Help to Buy Agent.

16.6 The Help to Buy Agent should comply with relevant international standards regarding business continuity (currently ISO22301). It shall make the Business Continuity and Disaster Recovery Plan available along with an associated testing schedule of business continuity related activities to Homes England upon request, and will retain the responsibility to implement improvements required by Homes England.

16.7 The Help to Buy Agent shall test the Business Continuity and Disaster Recovery Plan on a regular basis, and in any event at least once every twelve (12) months. The Help to Buy Agent shall give Homes England at least twenty (20) Working Days' notice of each test and allow Homes England to participate in those tests.

16.8 The Help to Buy Agent shall, within twenty (20) Working Days of the conclusion of each test, provide to Homes England a report in writing setting out:

- a) The outcome of the test;
- b) any failures in the Business Continuity and Disaster Recovery Plan revealed by the test; and
- c) the Help to Buy Agent's proposal for remedying any such failures

16.9 Following each test, the Help to Buy Agent shall take all measures reasonably requested by Homes England (including requests for the retesting of the Business Continuity and Disaster Recovery Plan within 90 days of the request for the retest) to remedy any failures in the Business Continuity and Disaster Recovery Plan. Such remedial activity shall be completed by the Help to Buy Agent by the date reasonably required by Homes England.

16.10 The Help to Buy Agent shall provide Homes England with an Incident Report within twenty (20) Working Days of each and every Business Continuity and Disaster Recovery Event.

17 **Agency**

17.1 Neither the Help to Buy Agent nor its personnel shall in any circumstances hold itself or themselves out as being the servant or agent of Homes England otherwise than in circumstances expressly permitted by this Agreement.

17.2 Neither the Help to Buy Agent nor its personnel shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of Homes England or in any other way to bind Homes England to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly permitted by this Agreement.

18 **Assignment and sub-contracting**

18.1 The Help to Buy Agent shall not be entitled to assign this Agreement, without the prior written consent of Homes England (such consent not to be unreasonably withheld or delayed in the case of a Group Company) and shall promptly give written notice of any assignment to Homes England.

18.2 The Help to Buy Agent shall only be permitted to employ subcontractors for the execution of any of the Help to Buy Agent's obligations hereunder with Homes England's prior consent (which shall not be unreasonably withheld or delayed in the case of a Group Company) and may only employ such subcontractors as are capable of providing services effectively on terms which enable the Help to Buy Agent to comply with the provisions of this Agreement. The Help to Buy Agent shall not be relieved of any of its obligations under this Agreement by any permitted subcontracting and shall at all times remain primarily liable for the acts and omissions of such subcontractors. If so requested, the Help to Buy Agent will promptly supply Homes England with a copy of any subcontracts.

19 **Human rights**

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

20 **Conflicts**

The Help to Buy Agent shall not, without the prior written consent of Homes England, accept any commission, gift, benefit or other inducement (in money or in kind) from any supplier or

potential supplier of goods and/or service to the Help to Buy Agent or any of its sub-contractors directly or indirectly in connection with the subject matter of this Agreement. Where, notwithstanding the foregoing, a conflict of interest does arise, the Help to Buy Agent shall forthwith bring such conflict to the attention of Homes England and the parties shall discuss how best to proceed in the circumstances, taking account of the best interests of Homes England, the residents and the Leaseholders.

21 Notices

21.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, sent by facsimile, electronic mail or sent by the Recorded Delivery Service addressed in the case of either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses or to any fax numbers as either party may from time to time notify to the other in writing **provided that** such other address is within England and Wales.

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

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

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

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

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

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

22 Waiver

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

23 Concurrent remedies

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

24 **Entire agreement**

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

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

25 **Severance**

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

26 **No partnership etc.**

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make the Help to Buy Agent the agent of Homes England or authorise the Help to Buy Agent:

26.1 to incur any expenses on behalf of Homes England;

26.2 to enter into any engagement or make any representation or warranty on behalf of Homes England; or

26.3 to commit or bind Homes England in any way whatsoever,

without in each case obtaining Homes England's prior written consent.

27 **Announcement**

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

28 **Survival of this contract**

28.1 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.

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

29 Good faith and third parties

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

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

30 Law

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

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

31 Data protection

31.1 This clause 31 applies where the Help to Buy Agent is Processing Personal Data on behalf of Homes England and shall be of no effect where the Help to Buy Agent is acting as a Data Controller (including as Joint Controllers) under Data Protection Legislation, and for the avoidance of doubt nothing in this clause 31 shall operate so as to prevent or prohibit the Help to Buy Agent in complying with its own obligations as a Data Controller under the Data Protection Legislation to the extent such obligations arise in respect of the Personal Data, the parties hereby acknowledging that in their respective roles as Data Controllers, each party is independently required to comply with any lawful request to exercise a data subject right under the Data Protection Legislation.

31.2 Homes England and the Help to Buy Agent acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Data Controller and the Help to Buy Agent is the Data Processor. The only processing that the Help to Buy Agent is authorised undertake on behalf of Homes England is detailed in Schedule 9 and may not be determined by the Help to Buy Agent.

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

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

31.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

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

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

- 31.4 The Help to Buy Agent warrants and represents that it has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to process Personal Data for the purposes of performing its obligations under this Contract.
- 31.5 The Help to Buy Agent undertakes that to the extent that the Help to Buy Agent and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of Homes England (**Homes England's Personal Data**) for the purpose of providing the Services, it will at all times comply with the provisions of the Data Protection Legislation.
- 31.6 The Help to Buy Agent shall not perform its obligations under this Contract in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation. The Help to Buy Agent shall notify Homes England immediately if it considers that any of Homes England's instructions infringe the Data Protection Legislation.
- 31.7 For the purposes of this Contract, where the Help to Buy Agent is Processing Homes England's Personal Data on behalf of Homes England, it shall:
- 31.7.1 at all material times have in place and maintain Protective Measures which are appropriate to protect against a Data Loss Event which Homes England may reasonably reject (but failure to reject shall not amount to approval by Homes England of the adequacy of the Protective Measures) having taken into account the:
- i nature of the data to be protected;
 - ii harm that might result from a Data Loss Event;
 - iii state of technological development; and
 - iv cost of implementing any measures
- 31.7.2 For the avoidance of doubt, this includes the obligation to comply with any records management, operational and/or information security policies operated by Homes England, when providing the Services on Homes England's premises and/or accessing their manual and/or automated information systems;
- 31.7.3 only process Personal Data in accordance with Schedule 9 unless the Help to Buy Agent is required to do otherwise by any Applicable Law or any Regulatory Body. Where the Help to Buy Agent is relying on such requirements as the basis for processing Personal Data, the Help to Buy Agent shall promptly notify Homes England of this before performing the Processing unless such requirements prohibit the Help to Buy Agent from so notifying Homes England;
- 31.7.4 not engage a Sub-processor without:
- (a) prior written authorisation from Homes England and ensuring compliance with any conditions attached to that consent;
 - (b) including obligations which give effect to the terms of this clause 31, in a written agreement with any Sub-processor engaged by the Help to Buy Agent to provide the Services to Homes England;

- (c) Provide Homes England with such information regarding the Sub-processor as Homes England may reasonably require.

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

- 31.7.5 allow Homes England (and or its designated auditors) to audit the Help to Buy Agent's compliance with the requirements of this clause 31 on reasonable notice and/or, at Homes England's request, provide Homes England with evidence of the Help to Buy Agent's compliance with the obligations within this clause 31.
- 31.8 The Help to Buy Agent undertakes not to disclose or transfer any of Homes England's Personal Data to any third party without the prior written consent of Homes England save that the Help to Buy Agent shall be entitled to disclose Homes England's Personal Data to Help to Buy Agent Personnel, any Equity Loan Providers, any government or regulatory body which is entitled by law to access such information and any third party that has entered into a Data Protection Declaration to whom such disclosure is reasonably necessary in order for the Help to Buy Agent to carry out the Services, or to the extent required under a court order subject always to compliance with clause 31.9.
- 31.9 In respect of the Help to Buy Agent Personnel, the Help to Buy Agent shall:
 - 31.9.1 take reasonable steps to ensure the reliability and integrity of any Help to Buy Agent Personnel who have access to the Personal Data;
 - 31.9.2 ensure that all Help to Buy Agent Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, have provided a confidentiality undertaking to the Help to Buy Agent or Sub-processor in relation to the same and comply with the obligations set out in this clause 31;
 - 31.9.3 ensure that none of Help to Buy Agent Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Homes England or as otherwise permitted by this Contract;
 - 31.9.4 ensure that the Help to Buy Agent Personnel have undertaken adequate training in the law relating to the use, care, protection and handling of Personal Data and are aware of their obligations and those of the Help to Buy Agent under the Data Protection Legislation and this Contract;
 - 31.9.5 ensure that the Help to Buy Agent Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 9)
- 31.10 The Help to Buy Agent shall:
 - 31.10.1 provide a written description of the technical and organisational methods employed by the Help to Buy Agent for processing Personal Data (within the timescales required by Homes England); and
 - 31.10.2 not Process Personal Data outside the United Kingdom without the prior written consent of Homes England and, where Homes England consents to a transfer, to ensure:

- (a) the Help to Buy Agent has provided appropriate safeguards in relation to the transfer as determined by Homes England;
- (b) the Data Subject has enforceable rights and effective legal remedies in relation to such Personal Data;
- (c) the Help to Buy Agent complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Homes England in meeting its obligations); and
- (d) it complies with any reasonable instructions notified to it by Homes England in relation to the Processing of the Personal Data.

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

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

31.11.2 notify Homes England as soon as reasonably practicable without undue delay, and in any event within 24 hours if it:

- (a) receives:
 - i a Data Subject Request (or purported Data Subject Request);
 - ii a request to rectify, block or erase any Personal Data;
 - iii any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - iv any other Complaint, communication or request relating to Homes England's obligations under the Data Protection Legislation;
 - v a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Law,

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

31.12 Taking into account the nature of the processing, the Help to Buy Agent shall provide Homes England with full assistance in relation to either the Help to Buy Agent's or Homes England's obligations under Data Protection Legislation and any Complaint, communication or request made pursuant to clause 31.10 (and in so far as possible within the timescales reasonably required by Homes England) including by promptly providing Homes England:

- 31.12.1 with full details and copies of the Complaint, communication or request;
 - 31.12.2 with such assistance as is reasonably requested to enable Homes England to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 31.12.3 at its request, with any Personal Data it holds in relation to a Data Subject;
 - 31.12.4 with such assistance as requested by Homes England:
 - (a) following any Data Loss Event;
 - (b) with respect to any request from the Information Commissioner's Office, or any consultation by Homes England with the Information Commissioner's Office.
- 31.13 If the Help to Buy Agent becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to Homes England's Personal Data, or any other Data Loss Event, the Help to Buy Agent shall:
- 31.13.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 31.13.2 notify Homes England of the suspected incident and the findings of the Help to Buy Agent's initial investigation without undue delay after becoming aware of that event, and in any event within 24 hours of becoming so aware. The Help to Buy Agent shall take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England save as permitted by 31.13.4 or as required by law PROVIDED THAT the Help to Buy Agent shall not make a notification to the Information Commissioner or any affected Data Subjects
 - 31.13.3 fully co-operate with Homes England in the course of any investigation undertaken by Homes England and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and /or notification to any affected Data Subjects; and
 - 31.13.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 31.14 The Help to Buy Agent shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Help to Buy Agent employs fewer than 250 staff, unless Homes England determines that the processing:
- 31.14.1 is not occasional;
 - 31.14.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 31.14.3 is likely to result in a risk to the rights and freedoms of Data Subjects.

- 31.15 The Help to Buy Agent 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 Help to Buy Agent's destruction of and/or damage to or unlawful Processing of any of Homes England's Personal Data processed by the Help to Buy Agent, Help to Buy Agent Personnel or a Sub-processor, or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this clause 31 by the Help to Buy Agent, Help to Buy Agent Personnel or a Sub-processor.
- 31.16 The Help to Buy Agent shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Help to Buy Agent's Processing of Homes England's Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly and in any event within the timescales set out in this Contract.
- 31.17 The Help to Buy Agent undertakes to act upon the written instructions from Homes England in relation to the secure deletion or return of Homes England's Personal Data at the termination or expiry of this Contract or such time that the Help to Buy Agent no longer requires access to Homes England's Personal Data for the purposes of performing its obligations under this Contract, in so far as the Help to Buy Agent is able to take into account its own data retention requirements and, unless the Help to Buy Agent is required by Law to retain the Personal Data.
- 31.18 Homes England may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 31.19 The Help to Buy Agent and Homes England agree to take account of any guidance issued by the Information Commissioner's Office. Homes England may on not less than thirty (30) Working Days' notice to the Help to Buy Agent amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

32 Co-operation

- 32.1 Homes England and the Help to Buy Agent shall act as stated in this Agreement and in a spirit of mutual trust and co-operation.
- 32.2 Without prejudice to any other term of this Agreement, the Help to Buy Agent shall co-operate with the Outgoing Provider so as:
- 32.2.1 to maintain the continuity of and quality of the Services in accordance with this Agreement; and
- 32.2.2 to achieve to the extent reasonably possible a smooth transfer of the Services to the Help to Buy Agent,
- provided that** nothing in this clause shall oblige the Help to Buy Agent to breach any Applicable Laws.
- 32.3 The Help to Buy Agent shall in the performance of the Services, and in order to achieve a smooth handover of information in respect of any relevant Qualifying Applicant, at all times act reasonably and co-operate with the Mortgage Administrator.

33 **Insurance**

- 33.1 The Help to Buy Agent shall take out and maintain policies of insurance as are set out in Schedule 5 and shall otherwise comply with the provisions of this clause 33.
- 33.2 The Help to Buy Agent agrees to maintain such insurance at all times until twelve (12) years after expiry of the Term (or, if later, twelve (12) years after the date upon which the Help to Buy Agent completes the provision of Services pursuant to an instruction from Homes England), **provided that** such insurance continues to be available at commercially reasonable rates and upon commercially reasonable terms which it would not be imprudent for the Help to Buy Agent to accept having regard (inter alia) to the premium charged, the terms proposed and the duties undertaken by the Help to Buy Agent in relation to any task or works in respect of which the Help to Buy Agent is instructed pursuant hereto.
- 33.3 The Help to Buy Agent shall, if and when required by Homes England, produce to it a copy of the relevant insurance policies taken out pursuant to clause 33.1 together with documentary proof that such insurance is being maintained.
- 33.4 If the Help to Buy Agent becomes in default of its obligations to insure or continue to insure as set out in this clause 33, the Help to Buy Agent shall pay or allow to Homes England on demand any sum of money reasonably expended by Homes England to effect insurance against any risk or amount in respect of which the default shall have occurred and Homes England may deduct such sum (or part thereof) from any sums due or to become due to the Help to Buy Agent under this Agreement.
- 33.5 The Help to Buy Agent warrants to Homes England that prior to the execution of this Agreement it has (if required by the terms of its insurance) made full disclosure to its insurers of the existence and contents of this Agreement, and as may otherwise be required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and they have not advised the Help to Buy Agent that the cover required under this Agreement is, or may be, declined.
- 33.6 Any insurance required to be taken out by the Help to Buy Agent under this Agreement shall not include any condition which may adversely affect the rights of Homes England to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930. The Help to Buy Agent shall not compromise, settle or waive any claim which it may have under any insurance policy taken out in accordance with this Agreement, in respect of any liability which the Help to Buy Agent may incur under this Agreement, which may in any way prejudice the ability of Homes England to recover the full amount of any claim Homes England may be lawfully entitled to.
- 33.7 For the avoidance of doubt, it is agreed that nothing in this clause 33 shall relieve the Help to Buy Agent from any of his obligations and liabilities under the Agreement.

34 **Staffing Security**

- 34.1 The Help to Buy Agent shall develop and implement its own Staff Vetting Procedures, details of which shall be made available to Homes England within two (2) Working Days of receipt of a request. The Help to Buy Agent shall comply with all Applicable Laws and Applicable Standard in formulating its Staff Vetting Procedures and shall have regard to any reasonable comments made by Homes England.

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

34.3 The Help to Buy Agent shall provide training on a continuing basis for all Help to Buy Agent Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

35 **Warranties**

The Help to Buy Agent warrants, represents and undertakes for the duration of the Term that:

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

35.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Help to Buy Agent's obligations under this Agreement;

35.3 in performing its obligations under this Agreement, all software used by or on behalf of the Help to Buy Agent will:

35.3.1 be currently supported versions of that software; and

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

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

35.5 the Help to Buy Agent System and assets used in the performance of the Services:

35.5.1 will be free of all encumbrances and defects; and

35.5.2 will be Date Compliant;

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

36 **Security Requirements**

36.1 The Help to Buy Agent shall comply, and shall procure the compliance of the Help to Buy Agent Personnel, with the Security Policy and the Security Plan and the Help to Buy Agent shall ensure that the Security Plan produced by the Help to Buy Agent fully complies with the Security Policy.

36.2 Homes England shall notify the Help to Buy Agent of any changes or proposed changes to the Security Policy.

37 Malicious Software

- 37.1 The Help to Buy Agent shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 37.2 Notwithstanding clause 37.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Homes England Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 37.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 37.2 shall be borne by the parties as follows:
- 37.3.1 by the Help to Buy Agent where the Malicious Software originates from the Help to Buy Agent's software or Homes England Data (whilst Homes England Data was under the control of the Help to Buy Agent); and
- 37.3.2 by Homes England if the Malicious Software originates from Homes England's software or Homes England Data (whilst Homes England Data was under the control of Homes England).

38 Anti-Bribery

- 38.1 The Help to Buy Agent shall:
- 38.1.1 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**);
- 38.1.2 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;
- 38.1.3 comply with Homes England's Ethical, Anti-bribery and Anti-corruption Policies a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**);
- 38.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and clause 38.1.3, and will enforce them where appropriate;
- 38.1.5 immediately report to Homes England's Head of Risk and Assurance Services any request or demand for any undue financial or other advantage of any kind received by the Help to Buy Agent in connection with the performance of this agreement;
- 38.1.6 if required by Homes England, produce a written certificate to it signed by an officer of the Help to Buy Agent, confirming compliance with this clause 38 by the Help to Buy Agent and all persons associated with it under clause 38.2. The Help to Buy

Agent shall provide such supporting evidence of compliance as Homes England may reasonably request.

38.2 The Help to Buy Agent shall ensure that any person associated with the Help to Buy Agent who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Help to Buy Agent in this clause 38 (**Relevant Terms**). The Help to Buy Agent 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.

38.3 Breach of this clause 38 shall be deemed a material breach.

38.4 For the purpose of this clause 38, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 38 a person associated with the Help to Buy Agent includes but is not limited to any subcontractor of the Help to Buy Agent.

39 **Equalities**

39.1 The Help to Buy Agent will comply in all material respects with all Applicable Laws relating to equality and relevant employment matters.

39.2 The Help to Buy Agent confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.

39.3 The Help to Buy Agent 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.

40 **Changes and Special Changes**

40.1 In this Agreement:

40.1.1 changes to this Agreement that are necessitated by the transition from Specification A to Specification B shall be made in accordance with the procedure set out in paragraph 2 of Schedule 12, with any related changes to the Fees being determined in accordance with paragraphs 4.1.1 and 4.1.2 of Schedule 10;

40.1.2 other Special Changes shall be made in accordance with the procedure set out in Schedule 12 and not the procedure set out in Schedule 15; and

40.1.3 all other changes for which no express provision to the contrary is made shall be made in accordance with the procedure set out in Schedule 15 only.

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

EXECUTED as a **DEED** by affixing the)
common seal of)
PLUS DANE HOUSING LIMITED)
in the presence of:)

Authorised signatory

Authorised signatory

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

Authorised Signatory

Schedule 1

Part 1 - Specification A

1 Summary

- 1.1 The Help to Buy Agent shall deliver the Services within the Geographic Service Area on behalf of Homes England.
- 1.2 The Services are categorised into five core services (the Core Services), details of which are set out below. The service requirements and obligations incumbent on the Help to Buy Agent in relation to the administration of each Core Service are set out in this Specification.
- 1.3 Homes England reserves the right to make such amendments to part or all of this Specification during the contract term as it may deem necessary to meet its objectives, acting reasonably.
- 1.4 In this Specification any reference to Investment Management System (IMS) includes such other systems as shall replace or supplement IMS from time to time.
- 1.5 In this Specification any reference to systems and processes include new, replacement or amended systems and process specified from time to time by Homes England.
- 1.6 In this Specification any reference to legislation includes references to legislation as updated and enacted from time to time.

SERVICE REQUIREMENTS

1 CORE SERVICE 1 - Website and signposting

- 1.1 The Help to Buy Agent is required to develop, host, operate and maintain a dedicated website as set out below.
- 1.2 The required website shall hold information generated by Homes England on all AHO Products and Equity Loan Products offered by Homes England in the Geographic Service Area.
- 1.3 All branding and content text shall be provided by Homes England.
- 1.4 The Help to Buy Agent must update website content at the request of Homes England within three (3) Working Days of receipt of a written request to do so.
- 1.5 No product information other than that provided by Homes England should appear on Help to Buy Agent websites.
- 1.6 Homes England shall provide a privacy notice for the Help to Buy Agent to display and shall update this from time to time.
- 1.7 The website must also provide access to a searchable database of new build developments for both Equity Loan and AHO products.
- 1.8 The website must also provide access to a searchable database for Resale properties.

- 1.9 The website must provide the facility for users to search by geographical location, scheme and housing provider.
- 1.10 The website must provide access to an online application form with all fields prescribed by Homes England and processing facilities for AHO Products. Homes England may stipulate that particular wording be included on the form and/or the format of the form itself.
- 1.11 The website must provide access to an online property information form with all fields prescribed by Homes England.
- 1.12 The website must include a tracking code for Google Analytics, which Homes England shall provide to analyse site visits and user behaviour. Homes England may share the monthly analytics report.
- 1.13 Without prejudice to the generality of para 1.3 of this Schedule 1A, the Help to Buy Agent acknowledges that Homes England intends to design and host its own Help to Buy website (“the New Website”), to which Help to Buy Agents will have access. The date of launch of the New Website is not yet known but the parties acknowledge that Homes England’s aspiration is to launch the New Website between April 2020 and June 2020. Homes England will give the Help to Buy Agent as much notice as reasonably practicable of the Launch Date, and in any event no less than one Month’s notice in writing.
- 1.14 The requirement for the Help to Buy Agent to host a Help to Buy Agent website will cease on the date the New Website is launched (“Launch Date”), meaning that with effect from the Launch Date:
- 1.14.1 the Help to Buy Agent must close down its own Help to Buy Agent website save for a landing page redirecting users to the New Website;
 - 1.14.2 the Help to Buy Agent must signpost all enquiries from customers and stakeholders to the New Website;
 - 1.14.3 to the extent that the Service Requirements set out in this Schedule 1A impose obligations on the Help to Buy Agent in respect of, or make reference to, the development, hosting, operation and maintenance of a website by the Help to Buy Agent, they shall be varied mutatis mutandis to remove such obligations and/or references but shall otherwise remain in full force and effect.
- 1.15 Any KPI or Performance Indicator (or part thereof) in this Agreement that relates to the development, hosting, operation and maintenance of a website by the Help to Buy Agent shall cease to have effect after the Launch Date. Homes England may, in its absolute discretion, substitute replacement KPIs or Performance Indicators therefor, and shall give the Help to Buy Agent not less than one calendar month’s notice in writing of its intention to do so.

2 CORE SERVICE 2 – Customer Guidance and Signposting

Service Requirements

- 2.1 The Help to Buy Agent shall provide on their website information and guidance relating to home ownership options in the Geographic Service Area, including AHO Products and Equity Loan Products offered or supported by Homes England.

Information Provision

- 2.2 The Help to Buy Agent is responsible for publishing information provided by Homes England about all relevant AHO Products, Help to Buy Equity Loan Products and related government services available to support home ownership in the Geographic Service Area.
- 2.3 The Help to Buy Agent shall respond to enquiries received electronically, in writing or by telephone by providing accurate information and guidance on relevant products and partner services and/or signposting enquirers to further sources of information and assistance, in line with the KPI notified by Homes England from time to time.
- 2.4 The Help to Buy Agent shall provide information on home ownership options available in the Geographic Service Area from Grant Recipients and Help to Buy Equity Loan Providers.
- 2.5 The Help to Buy Agent shall be responsible for maintaining and ensuring the effective operation of a dedicated telephone enquiry line to be operated as a minimum between Monday - Friday, 9am - 6pm, (except public holidays) in accordance with the requirements of Homes England.
- 2.6 The Help to Buy Agent shall be responsible for ensuring that the telephone enquiry line is accessible to diverse groups, including making use of available assistive technology to support customers with specific needs such as language, hearing impairment etc.
- 2.7 The Help to Buy Agent shall monitor the quality of their customer contact handling in accordance with KPI 8 (% Customer Interactions that meet Homes England's Quality Principles (call/email/letter)) as described in Schedule 2.
- 2.8 Homes England may undertake Mystery Shopping at any time during the period of the contract. The Mystery Shopping criteria will be specified from time to time by Homes England. The Help to Buy Agent shall provide a response to feedback from Mystery Shopping within a maximum of twenty eight (28) days of receipt from Homes England.
- 2.9 The Help to Buy Agent shall ensure that electronic and printable documentation is available on their website to enquirers, Qualifying Applicants, Help to Buy Equity Loan Provider and Grant Recipients is in the current format prescribed by Homes England.
- 2.10 The Help to Buy Agent shall process applications for AHO Products and Equity Loan Products offered or supported by Homes England in accordance with this Specification using the Standard Documents.
- 2.11 Where potential purchasers make direct approaches to a Grant Recipient or Help to Buy Equity Loan Provider in respect of Equity Loan Products or AHO Products, the Grant Recipient or Help to Buy Equity Loan Provider will be responsible for providing applicants with the relevant Standard Documents, and for directing applicants to contact the relevant Help to Buy Agent or assisting them to make an application (AHO Products) or submit a Property Information Form (Equity Loan Products) to the Help to Buy Agent.
- 2.12 Any literature distributed by or on behalf of the Help to Buy Agent in relation to Equity Loan and AHO Products must be in Homes England's prescribed form, as notified to the Help to Buy Agent from time to time.

2.13 Any requests received by the Help to Buy Agent from a Grant Recipient or a Help to Buy Equity Loan Provider to approve any scheme specific literature or marketing shall be referred to Homes England's Marketing and Communications team.

3 CORE SERVICE 3 – AHO Products

Service Requirements

3.1 The Help to Buy Agent shall support the effective administration of AHO Products in the Geographic Service Area by advertising properties on the Help to Buy Agent website and hosting an application form which Grant Recipients can access.

Information Provision

3.2 The Help to Buy Agent shall be responsible for making available information about the types of grant funded AHO Schemes available in the Geographic Service Area. Homes England will provide to Help to Buy Agents, on a quarterly basis, a list of grant funded AHO Scheme allocations.

3.3 In the case of direct approaches from potential purchasers, the Grant Recipient will be responsible for providing applicants with the relevant Standard Documents and directing them to complete the Help to Buy Agents application form. Application forms are to be submitted (online) or returned by post (in exceptional circumstances) to the Help to Buy Agent by the applicant for registration and assessment against the eligibility criteria and such other checks as may be appropriate.

3.4 The Help to Buy Agent shall ensure that its website is enabled to allow Grant Recipients to upload and maintain details of available AHO properties and shall liaise with Grant Recipients in respect of this. In the event Homes England advises that any of the documentation to be provided by the Help to Buy Agent to applicants, or Grant Recipients is to be provided in a revised form, the Help to Buy Agent shall ensure, from the date the new form of document takes effect, that only the new formats are provided to applicants or Grant Recipients in accordance with the requirements of this Specification, and the Help to Buy Agent shall use reasonable endeavours to ensure that Grant Recipients shall provide only the new form of documentation to applicants.

3.5 Where required by Homes England, the Help to Buy Agent shall display on its website a privacy notice provided by Homes England and notified to the Help to Buy Agent to be used for this purpose.

Enquiries from applicants

3.6 Enquiries about AHO Schemes may be made in several ways:

3.6.1 direct to the Help to Buy Agent through the Help to Buy Agent Website or the Help to Buy Agent's dedicated phone line;

3.6.2 via a Grant Recipient;

3.6.3 via a Local Authority;

3.6.4 via any website or medium commissioned by or on behalf of Homes England in order to promote individual or multiple AHO schemes.

- 3.7 In all cases enquirers to Grant Recipients and/or the Help to Buy Agent should be initially assessed by the Help to Buy Agent to ensure they meet the initial eligibility criteria set by Homes England, MHCLG and/or other stakeholders from time to time.
- 3.8 Enquirers from all sources that meet the initial eligibility criteria shall be directed to the Help to Buy Agent's online application form and Standard Documents or, in exceptional cases, provided with hard copies of these documents. The Help to Buy Agent shall provide data to evidence online application numbers on a monthly basis.
- 3.9 The Help to Buy Agent shall ensure that applicants and Grant Recipients are provided with the relevant electronic documentation and access to online application forms (or provided with hard copies if required) within four (4) Working Days of a request to supply such documents.
- 3.10 The Help to Buy Agent shall undertake an ongoing programme of continuous assurance and monitoring of its Service performance. The Help to Buy Agent shall retain responsibility for any improvement and remediation activities required by Homes England.

Applications

- 3.11 The Help to Buy Agent shall assess the application in accordance with Homes England's Customer Due Diligence Requirements.
- 3.12 The Help to Buy Agent shall undertake a headline eligibility assessment of applicants in accordance with the guidance in the Affordable Housing Capital Funding Guide.
- 3.13 The Help to Buy Agent shall register the applicant on a database and inform the applicant of their status (accepted as a Qualifying Applicant, rejected or on-hold (i.e. awaiting further information)) electronically (or in hard copy if requested) within four (4) Working Days of receipt of an application.
- 3.14 When confirming an applicant's eligibility status, the Help to Buy Agent shall advise each and every Qualifying Applicant to seek independent financial advice.
- 3.15 The Help to Buy Agent shall provide contact details for a panel of independent mortgage advisors on its website and also include appropriate caveats to make it clear that applicants are aware that they are free to consult and take advice from any independent mortgage advisor of their choice to confirm actual affordability.
- 3.16 No Qualifying Applicants can be allocated a property under any of the AHO schemes unless they have submitted an application form online (or in hard copy in exceptional circumstances). Applicants must have registered their details with the Help to Buy Agent and have been notified of the outcome of their eligibility and sustainability assessment conducted under paragraph 4.12. The Help to Buy Agent shall include on its Help to Buy Agent website consistent customer information regarding Resales.
- 3.17 In addition to their obligations in relation to AHO schemes generally, the Help to Buy Agent must:
- 3.17.1 have the ability to allow Grant Recipients to market individual properties available as Resales on the Help to Buy Agent's Website;

- 3.17.2 provide applicants with full contact details for Grant Recipients offering current Resale properties.

4 CORE SERVICE 4 – Products (Equity Loan)

Service Requirements

- 4.1 The Help to Buy Agent is required to support the effective administration of Equity Loan Products. The Help to Buy Agent shall assess the application in accordance with Homes England's Customer Due Diligence Requirements. This should be done by following the Core Transaction Process, the key points of which are:
- 4.1.1 undertaking applicant eligibility and sustainability assessments;
 - 4.1.2 administer the Equity Loan Scheme in line with the Core Transaction Process;
 - 4.1.3 support Help to Buy Equity Loan Providers with process queries;
 - 4.1.4 administer the relevant pages within IMS for all Help to Buy Equity Loan Providers;
 - 4.1.5 ensure IMS is updated at each process stage with accurate information and in a timely matter and where relevant in accordance with the timescales set out in this Specification;
 - 4.1.6 administer the claim and cash management process within IMS on behalf of non-IMS Contracted Developers as required by the Core Transaction Process;
 - 4.1.7 on receipt (within five (5) days) update IMS with the actual completion date and/or AP1 date from the relevant Equity Loan document and AP1 for each completed Eligible Unit of completion;
 - 4.1.8 if the Equity Loan and AP1 are not received within five (5) days then the specified post sales documents process shall be followed;
 - 4.1.9 once the HM Land Registry Title Document is received the Agent shall complete the relevant sections of IMS and upload the documents stipulated in the post sales documents process to the Mortgage Administrators Secure File Transmittal Portal (SFTP) or equivalent.

Information Provision

- 4.2 Save in exceptional circumstances where paper based literature is required, Help to Buy Agents shall facilitate access to the information only via the Help to Buy Agent's website.
- 4.3 Homes England shall provide all standard text and documentation for publishing on the Help to Buy Agent website from time to time, including a Privacy Notice.
- 4.4 The Help to Buy Agent is not permitted to create any further marketing or information materials other than those provided by Homes England.

- 4.5 It is acknowledged that the Help to Buy Equity Loan Provider is responsible for scheme specific marketing in line with the funding administration agreement it has entered into with Homes England.
- 4.6 Homes England shall provide three (3) days' advance notice of any changes to their required branding and published information.
- 4.7 Where Homes England has provided new literature and or process documentation or made any changes to the same it shall also issue full instructions to Help to Buy Agents regarding the cut-off date and process between existing and new requirements.

Enquiry Handling

- 4.8 Enquiries about the Help to Buy Equity Loan scheme and or individual sale status may be received via:
- 4.8.1 the Help to Buy Agent through the Help to Buy Agent's dedicated phone line;
 - 4.8.2 the Help to Buy website;
 - 4.8.3 post;
 - 4.8.4 email.
- 4.9 All enquiries must be processed and all personal data handled in a way that considers all Applicable Laws and in accordance with this Agreement including relevant Data Protection Legislation.
- 4.10 The Help to Buy Agent shall advise each Qualifying Applicant in writing to consult an independent mortgage advisor. (Where appropriate the Help to Buy Agent may refer applicants to a nominated panel of independent mortgage advisors) and that any money paid to a Help to Buy Equity Loan Provider in order to reserve a particular property is paid at the Qualifying Applicant's risk (save where such property is withdrawn from such reservation at the discretion of the Help to Buy Equity Loan Provider);
- 4.11 **Selection of a Property**
- 4.11.1 Once an applicant has selected a property they intend to purchase, the applicant shall provide the Help to Buy Agent with a duly completed Property Information Form together with a copy of the Help to Buy Equity Loan Provider's standard reservation form duly completed in respect of the relevant applicant and the property.
- 4.12 **Assessment**
- 4.12.1 Upon receipt of a completed Property Information Form (in electronic or hard copy) the Help to Buy Agent will validate the application and perform an eligibility assessment on behalf of the Help to Buy Equity Loan Provider in accordance Homes England's published criteria for product.
 - 4.12.2 The Help to Buy Agent eligibility assessment shall include use of Homes England's sustainability calculator (which can currently be found at <https://www.gov.uk/government/publications/homes-england-help-to-buy-equity->

[loan-calculator-and-guidance](#)) or such other calculator as Homes England shall direct). To protect Homes England investment applicants must be able to demonstrate to the Help to Buy Agent that they can sustain home ownership in the longer term (which may include for the avoidance of doubt persons subject to immigration control).

- 4.12.3 In relation to Help to Buy Equity Loan purchases, the Help to Buy Agent shall utilise the Standard Documents in the time and manner prescribed by Homes England from initial enquiries to post completion work on each transaction.

4.13 **Authority to Proceed**

- 4.13.1 Using the information contained in the Property Information Form, the Help to Buy Agent shall complete and issue an Authority to Proceed to the Qualifying Applicant and the Help to Buy Equity Loan Provider within four (4) Working Days of receipt of the completed Property Information Form. As part of this exercise the Help to Buy Agent shall ensure that:

- (a) the amount filled in the 'Requisite Amount of Cash Savings to be invested by the Buyer' section of the Authority to Proceed (the **Cash Contribution**) is a minimum of 5% of the Full Purchase Price; and
- (b) the amount filled in the 'Mortgage Level' section of the Authority to Proceed (the **Mortgage Level**) is a minimum of 25% of the Full Purchase Price.

- 4.13.2 On issuing the Authority to Proceed in accordance with Paragraph 4.13.1, the Help to Buy Agent shall confirm to the Qualifying Applicant and the Help to Buy Equity Loan Provider that the Authority to Proceed will only remain valid authorisation for the transfer of the relevant property for a period of three (3) months from the date of issue and only where the Full Purchase Price detailed in the Authority to Proceed is supported by a Valid Valuation.

- 4.13.3 Subject to the provisions of Paragraph 4.13.4, the Help to Buy Agent shall:

- (a) (using the information contained in the PIF as applicable) complete: the Qualifying Applicant's details, the Homes England Contribution, the Initial Market Value, the Initial Proportion, the Review Date (as all are defined in the Standard Documents), paragraph 3.2 of each Help to Buy Equity Loan and the details in the First Schedule of each Help to Buy Equity Loan as applicable (or such other sections of each Help to Buy Equity Loan as Homes England may reasonably require); and
- (b) issue the completed Solicitors Information Pack to the Qualifying Applicant's conveyancer (whose details shall be confirmed by the Qualifying Applicant in the Property Information Form) at the same time as issuing the Authority to Proceed to the Qualifying Applicant and the Help to Buy Equity Loan Provider pursuant to Paragraph 4.13.

- 4.13.4 In the event that exchange of contracts for the purchase of the relevant property does not occur within three (3) months of the date of the issue of the Authority to Proceed and the Help to Buy Equity Loan Provider and the Qualifying Applicant

intend to proceed to exchange of contracts within a further month, the Qualifying Applicant or the Qualifying Applicant's conveyancer may apply to the Help to Buy Agent for the Authority to Proceed to be extended and **provided the** Help to Buy Agent is satisfied that the details in the Authority to Proceed remain correct and are supported by a Valid Valuation, the Help to Buy Agent may extend the validity of the Authority to Proceed for a further month. Provided always that the Help to Buy Agent is satisfied that the requirements of this Paragraph 4.13.4 have been met, this process may be repeated up to a maximum of three times in total in relation a any Authority to Proceed.

- 4.13.5 In the event that exchange of contracts for the purchase of the relevant property does not occur within three (3) months (or any extended period confirmed by the Help to Buy Agent pursuant to Paragraph 4.13.4) of the date of the issue of the Authority to Proceed, the Authority to Proceed shall cease to have effect and the Qualifying Applicant's conveyancer shall provide notification of the same to the Help to Buy Agent. In the event the relevant Qualifying Applicant wishes to proceed with the purchase of the property following the expiry of an Authority to Proceed, the Help to Buy Agent shall refer the case to Homes England for further consideration.

4.14 **Exchange and completion**

- 4.14.1 Following issue of the Authority to Proceed, the Qualifying Applicant and the Help to Buy Equity Loan Provider shall proceed with the conveyancing process in order to achieve exchange and completion of the transfer of the property.
- 4.14.2 In the event the Qualifying Applicant's Mortgage Offer is not equal to the Mortgage Level in the Authority to Proceed, the Qualifying Applicant shall notify the Help to Buy Agent of the terms of such Mortgage Offer and provide such supporting evidence as the Help to Buy Agent shall reasonably require in order to demonstrate why the Mortgage Offer does not equal the Mortgage Level. The Qualifying Applicant shall also confirm whether the actual cash investment in the property differs from the Cash Contribution in the Authority to Proceed.
- 4.14.3 The Help to Buy Agent (acting reasonably) shall review the Qualifying Applicant's Mortgage Offer and supporting information (where required) together with the Qualifying Applicant's financial circumstances in order to determine whether a Revised Authority to Proceed may be issued to reflect the details of the Qualifying Applicant's Mortgage Offer **provided that** a Revised Authority to Proceed may not be issued unless:
- (a) the Help to Buy Agent is satisfied that:
 - i the Qualifying Applicant has used reasonable efforts to obtain a mortgage at the Mortgage Level;
 - ii the reasons for the lower Mortgage Offer do not render the Qualifying Applicant ineligible for a Help to Buy Equity Loan; and
 - iii the applicant's Cash Contribution is reasonable in the circumstances.

- (b) the sum of the Mortgage Offer (taking into account any guidance issued by Homes England) combined with the applicant's Cash Contribution results in the Contribution Percentage increasing by no more than 10% **provided always** that the Contribution Percentage shall not in any case exceed 20%; or
- (c) (where Paragraphs (a) and (b) above do not apply) where Homes England confirms in writing that a Revised Authority to Proceed may be issued in respect of the relevant Qualifying Applicant.

4.14.4 In the event that:

- (a) the Help to Buy Agent is satisfied that a Revised Authority to Proceed may be issued pursuant to Paragraph 4.14.3;
- (b) the Help to Buy Agent receives notification that the sum of the Qualifying Applicant's Mortgage Offer exceeds that Qualifying Applicant's Mortgage Level and the Help to Buy Agent is reasonably satisfied that the relevant Qualifying Applicant will be in a position to manage the level of repayments they would be required to make under the proposed mortgage;
- (c) the Help to Buy Agent receives notification that the Qualifying Applicant's actual cash investment in the property exceeds from the Cash Contribution in the Authority to Proceed; or
- (d) the Help to Buy Agent receives notification that the Qualifying Applicant's cash investment in the property will be less than the Cash Contribution in the Authority to Proceed and the Help to Buy Agent is satisfied that the reduction in the Applicant's Contribution is reasonable in the circumstances,

the Help to Buy Agent shall issue a Revised Authority to Proceed and a revised Help to Buy Equity Loan with the Homes England Contribution and Contribution Percentage adjusted accordingly.

4.14.5 The provisions of Paragraphs 4.13.4 and 4.13.5 above shall equally apply to any Revised Authority to Proceed issued pursuant to Paragraph 4.14.3 or 4.14.4.

4.14.6 Within four (4) Working Days of receipt of the Qualifying Applicant's Mortgage Offer and/or notification in any change to the applicant's Cash Contribution the Help to Buy Agent shall either issue both a Revised Authority to Proceed and Help to Buy Equity Loan in accordance with Paragraph 4.14.4 or shall confirm to the Qualifying Applicant that a Revised Authority to Proceed will not be issued and the Help to Buy Agent's reasons for not doing so.

4.14.7 Where the Help to Buy Agent receives notification from either the Help to Buy Equity Loan Provider, the Qualifying Applicant or the Qualifying Applicant's conveyancer that the mortgage valuation differs from the Full Purchase Price the Help to Buy Agent shall seek confirmation from Homes England that the sale of the property to the relevant Qualifying Applicant may proceed and, where such confirmation is provided on terms that require either the Full Purchase Price or

the Homes England Contribution (as applicable) to be adjusted, the Help to Buy Agent shall issue a Revised Authority to Proceed and a revised Help to Buy Equity Loan with the Homes England Contribution and Contribution Percentage (as applicable) adjusted accordingly.

- 4.14.8 In the event the Help to Buy Agent receives any requests for consent not covered by this Specification from either the Help to Buy Equity Loan Provider, the Qualifying Applicant or the Qualifying Applicant's conveyancer, the Help to Buy Agent shall refer the party making the request to Homes England save where Homes England has issued specific guidance to the Help to Buy Agent in relation to the type of requested consent in which case the consent should be dealt with in accordance with such guidance.
- 4.14.9 The Help to Buy Agent shall procure that the Qualifying Applicant's conveyancer provides a completed Solicitor's Form 1 addressed to both the Help to Buy Agent and Homes England not less than five (5) Working Days prior to the proposed date for exchange. Within one (1) Working Day of receipt of the completed Solicitor's Form 1, the Help to Buy Agent shall enter the required details into IMS, including but not limited to the Qualifying Applicant's details and eligibility status.
- 4.14.10 In the event of any changes to the proposed dates for exchange and completion, the Qualifying Applicant's conveyancer will be required to provide confirmation of such changes to the Help to Buy Agent. Within two (2) Working Days of receipt of notification from the Qualifying Applicant's conveyancer of either the proposed dates for exchange and completion or any changes to such dates, the Help to Buy Agent shall confirm the relevant dates to Homes England via IMS.
- 4.14.11 Within three (3) Working Days of receipt of the Solicitor's Form 1 the Help to Buy Agent shall issue an Authority to Exchange to the Qualifying Applicant's conveyancer copied to the Help to Buy Equity Loan Provider and Homes England.
- 4.14.12 Within two (2) Working Days of exchange (in accordance with Solicitor's Form 1), the Qualifying Applicant's conveyancer will be required to supply (or procure the supply of) a Confirmation of Exchange to the Help to Buy Agent together with written confirmation of:
- (e) the date of exchange; and
 - (f) the proposed (or anticipated) completion date.
- 4.14.13 Within one (1) Working Day of receipt of the Confirmation of Exchange pursuant to Paragraph 4.14.12, the Help to Buy Agent shall update the relevant sections of IMS in order to confirm the date of the issue of the Authority to Exchange and the Qualifying Applicant's eligibility status.
- 4.14.14 The Help to Buy Agent shall procure that the Qualifying Applicant's conveyancer provides a Solicitor's Form 2 addressed to both the Help to Buy Agent and Homes England not less than five (5) Working Days prior to the proposed date for completion (as notified pursuant to Paragraph 4.14.13) and the Help to Buy Agent shall notify Homes England within two (2) Working Days of receipt of the Solicitors Form 2.

- 4.14.15 The Help to Buy Agent shall within two (2) Working Days of receipt of the Solicitor's Form 2 (where such confirmation can be given) provide the Confirmation to the Help to Buy Equity Loan Provider (and/or its nominated solicitor).
- 4.14.16 In the event the Help to Buy Agent does not receive a Solicitor's Form 1 and/or a Solicitor's Form 2 in accordance with Paragraphs 4.14.9 or 4.14.14, it shall promptly notify the Qualifying Applicant's conveyancer and the Help to Buy Equity Loan Provider that it has not received the required documentation and where the Solicitor's Form 1 is not received by the proposed date for exchange or where the Solicitor's Form 2 is not received by the date falling two (2) Working Days prior to the date of completion, the Help to Buy Agent shall notify Homes England within one (1) Working Day of such failure.
- 4.14.17 It is the Help to Buy Agent's responsibility to ensure that the Solicitor's Form 1 and the Solicitor's Form 2 are properly completed, and are supplied with the correct supporting documentation (as referred to therein). The Help to Buy Agent shall not accept any amendments to Solicitor's Form 1 or to the Solicitor's Form 2 without the prior approval of Homes England or in accordance with written guidance from Homes England.
- 4.14.18 In the event the Help to Buy Agent receives notification that either exchange or completion of a property has taken place which is either:
- (a) not in accordance with the terms of the relevant Authority to Proceed or takes place following the expiry of the relevant Authority to Proceed;
 - (b) not supported by a Valid Valuation; or
 - (c) not supported by the Help to Buy Agent having received a Solicitor's Form 2 in accordance with Paragraph 4.14.14, the Help to Buy Agent shall notify Homes England of the exchange or completion (as appropriate) within two (2) Working Days of receiving such notification.
- 4.14.19 Homes England will use reasonable endeavours to ensure that the Help to Buy Equity Loan Provider will inform the Help to Buy Agent within four (4) Working Days where an applicant withdraws from a purchase prior to completion. Homes England shall also procure that where possible the Help to Buy Equity Loan Provider shall inform the Help to Buy Agent of the Qualifying Applicant's reasons for such refusal or withdrawal.

4.15 **Post completion requirements**

- 4.15.1 The Help to Buy Agent must be informed, within five (5) Working Days when a Qualifying Applicant completes their purchase. This information is also required by Homes England as part of the Performance Report.
- 4.15.2 In accordance with the Solicitor's Form 2, the Qualifying Applicant's solicitor undertakes to:
- (a) Provide certified copies of the completed Help to Buy Equity Loan (as applicable) together with a copy of the completed AP1 form (in order to

evidence that the application to HM Land Registry has been progressed in accordance with the undertakings in the Solicitors Form 2) within five (5) Working Days of completion of the sale of the property; and

- (b) Register the Help to Buy Equity Loan at HM Land Registry and send to Homes England/ Help to Buy Agent official copies of the title to the property confirming that the Help to Buy Equity Loan has been registered as soon as practicable but in any event no later than ten (10) Working Days following receipt from HM Land Registry.

4.15.3 In the event the relevant Qualifying Applicant's solicitor does not comply with any part of the Solicitors Form 2 within the relevant time period the Help to Buy Agent shall write to the Qualifying Applicant's solicitor within five (5) Working Days of the end of the relevant time period stating that the Qualifying Applicant's solicitor must carry out the required action. In the event such non-compliance relates to the incorrect filling in of information in the Help to Buy Equity Loan, the Help to Buy Agent shall populate a Deed of Rectification with the correct information and submit the Deed of Rectification (within the five (5) Working Days referred to above) to the Qualifying Applicant's solicitor for execution by the Qualifying Applicant. The Help to Buy Agent shall thereafter send such a letter every 10 Working Days until the Qualifying Applicant's solicitor complies with the obligation.

4.15.4 In the event the relevant Qualifying Applicant's solicitor does not comply with the terms of the Solicitor's Form 2 following two (2) letters from the Help to Buy Agent in accordance with Paragraph 4.15.3, the Help to Buy Agent shall notify Homes England who shall (at its absolute discretion) take action to enforce the terms of the Solicitor's Form 2. In the event Homes England takes action to enforce any the Solicitor's Form 2, the Help to Buy Agent shall provide such assistance as Homes England shall reasonably require.

4.15.5 Within four (4) weeks of the completion date, the Help to Buy Agent shall send:

- (a) a Welcome Letter to the relevant Qualifying Applicant confirming the role and contact details of the Mortgage Administrator; and
- (b) the Mortgage Administrator Key Document Pack to the Mortgage Administrator.

4.15.6 The Help to Buy Agent shall compile and maintain a file of all information and documentation sent to and received from a Qualifying Applicant, the Help to Buy Equity Loan Provider, the Qualifying Applicant's solicitor and the Mortgage Administrator (in such form as Homes England reasonably requires) in relation to an individual Qualifying Applicant (including but not limited to the information referred to in Paragraph 4.15.2); and shall retain a copy of all information handed over for a period of twelve (12) years following completion of the Equity Loan.

4.16 **Variations to the conveyancing process**

4.16.1 From time to time Homes England may wish to make reasonable changes to the administrative process for the sale of Equity Loan Products and will advise the

Help to Buy Agent of such changes in writing together with confirmation of the date such changes are to take effect (the Effective Date).

- 4.16.2 Provided such changes do not materially increase the cost to the Help to Buy Agent of compliance with this Specification, the Help to Buy Agent shall implement such changes from the Effective Date and for the avoidance of doubt the Help to Buy Agent's obligation to comply with this Specification in accordance with paragraph 4.1 shall include an obligation to comply with the Specification as amended or varied by the changes proposed under this Paragraph 4.16.
- 4.16.3 In the event the Help to Buy Agent can demonstrate that the proposed changes will materially increase its costs in complying with this Specification, the parties shall meet in order to discuss in good faith how the changes may be implemented.
- 4.16.4 This Paragraph 4.16 shall not apply to any changes to either Homes England's standard documentation or policies which are expressly permitted by the terms of this Agreement or to any changes required as a result of a change in any Applicable Laws or Applicable Standards.

5 CORE SERVICE 5 – Service Administration

Service Requirements

- 5.1 The Help to Buy Agent is required to maintain consistent and effective administration of Help to Buy Agent Services in the Geographic Service Area. This is in order to provide a high quality service to Homes England and its customers which shall include providing reporting returns to Homes England, maintaining stakeholder relationships, complying with the Benchmarking Standards with particular reference to the obligation to respond to and assist with any requests from any relevant Ombudsman, operating a managed complaints procedure, adhering to Homes England's branding requirements and cooperating with other Help to Buy Agents and the Mortgage Administrator.

Complaints Procedure

- 5.2 The Help to Buy Agent shall operate a complaints procedure that meets the requirements of Homes England. This procedure must be made available to Homes England for review and Homes England may require the Help to Buy Agent to amend it from time to time in accordance with Homes England's requirements. Any Complaints from Grant Recipients, Help to Buy Equity Loan Providers and Qualifying Applicants and others concerning the Help to Buy Agent's performance and compliance with the Specification should be dealt with through the Help to Buy Agent's complaints procedure.
- 5.3 All Complaints must be recorded by the Help to Buy Agent in a log, with brief details of the Complaint, date and ultimate manner of resolution in a manner that meets Homes England's requirements. This must be made available to Homes England upon request and as part of the Performance Report in line with Homes England's complaints recording and reporting standards.

Information requirements

- 5.4 In addition to the performance monitoring, the Help to Buy Agent shall be responsible for completing such monitoring returns for Homes England as Homes England may require on a monthly basis (or such time period as Homes England may require). This should detail the breakdown of Qualifying Applicants and their status in the process together with such information on the AHO schemes and/or Equity Loan Products as Homes England may reasonably require.
- 5.5 The Help to Buy Agent may also be required by Homes England to provide information to Homes England on an ad hoc basis to enable Homes England to respond to for example, requests from third parties such as MHCLG, local authorities and press enquiries. Any enquiries of this nature received directly by the Help to Buy Agent shall immediately be referred to Homes England.

Register

- 5.6 At least once in every six (6) month period the Help to Buy Agent shall write to all Qualifying Applicants whose details have been held on the register for a period in excess of six (6) months to remind them of their rights under Data Protection Legislation, including the right to request that their names be removed from the register. Where Qualifying Applicants indicate that they wish their details to be amended or deleted Help to Buy Agent shall undertake this promptly on receipt of this notification.
- 5.7 Management of the database shall be carried out in compliance with all Applicable Laws, regulations and International Organisation for Standardisation quality standards.
- 5.8 The Help to Buy Agent may use the information provided on application forms and held on the register for the sole purposes of:
- 5.8.1 providing information, and information regarding the availability of homes provided under the AHO schemes and/or using Equity Loan Products in the customers area of choice
 - 5.8.2 processing a Qualifying Applicant's purchase of an Eligible Dwelling. Written permission must be obtained from Qualifying Applicants or any other customer before using their personal details for any other purpose unless otherwise instructed by Homes England.
 - 5.8.3 Qualifying Applicant and any other customer details shall be removed from the database within four (4) Working Days upon receipt of a request from such individual.

5.9 Branding Requirements

Homes England shall provide to the Help to Buy Agent Help to Buy brand guidelines, logos, content and guidance on marketing compliance. The Help to Buy Agent must ensure that it uses all reasonable endeavours to ensure that any Grant Recipient or Help to Buy Equity Loan Provider marketing either AHO Products or Equity Loan Products complies with brand and marketing requirements. Homes England shall provide and (where reasonably practicable) provide three (3) days advance notice of any changes to their required branding and/or logos.

5.10 **Co-operation**

In performing the Services the Help to Buy Agent must use all reasonable endeavours to co-operate and, where relevant, collaborate with Homes England, other Help to Buy Agents, the Mortgage Administrator, Help to Buy Equity Loan Providers, Grant Recipients and any other third parties directed by Homes England and undertake such actions or service improvements (including the implementation of any Service Improvement Plan required pursuant to Clause 5.4) which in the reasonable opinion of Homes England may enhance the administration of the Services.

Part 2 - Specification B

- 1 The Help to Buy Agent will deliver the Services as set out in Specification A, save as varied in accordance with the paragraphs below.
- 2 Homes England is currently undertaking a digital transformation of its business, including Equity Loan Products and AHO products. This transformation is still in its early discovery stage and it is anticipated that transformation will require changes to Homes England systems and processes commensurate with the post-transformation delivery of the Services specified in Specification A.
- 3 At the point at which this Specification B is brought into force, Specification B will be updated to impose on the Help to Buy Agent such obligations as are commensurate and appropriate post-implementation of the digital transformation including, and without limitation, provisions relating to data protection varying clause 31 to the extent deemed necessary by Homes England. Homes England will give the Help to Buy Agent as much notice as reasonably practicable of the proposed changes.
- 4 New Key Performance Indicators and Performance Indicators will be introduced by Homes England to reflect the changes to terminology, processes and systems following the digital transformation and the Service Credits regime will be updated to reflect these. The changes are not intended to impose more onerous obligations on the Help to Buy Agent than were applicable under Specification A, but rather to maintain equally high standards in the post-transformation environment.

Schedule 2

Performance Standard - Key Performance Indicators (KPI) & Performance Indicators (PI)

This Schedule sets out the KPIs and PIs that will be measured to ensure good performance by the Agent under this Agreement and the mechanism by which service failure will be managed during the Term.

1 Definitions in this Schedule

The words and expressions in this Schedule shall, unless specifically stated or the context otherwise requires, have the same meanings as are given to them in clause 1.1 of this Agreement.

Actual Service Volume means the volume of transactions or contacts received by the Help to Buy Agent for handling in line with the Specification;

Annual Service Credit Cap means S. 43

At Risk Amount means the total amount of money that is at risk of being deducted from the Fees as Service Credits related to each KPI shown both annually and monthly in Appendix 3;

Contract Review Meeting means the regular monthly meetings between the Help to Buy Agent and Homes England to manage and review the Help to Buy Agent's performance under this Agreement as further described in Paragraph 3.6 of Part 2 of this Schedule 2;

Corrective Action Report means the Help to Buy Agent's report of the remedial action taken in respect of a Minor KPI Failure or PI failure;

Critical Service Failure means any of the following events:

- (a) the performance of the Services by the Help to Buy Agent falls below the KPI Service Threshold in respect of the same KPI for any month for three months (which need not be three consecutive months) in any rolling 12 month period;
- (b) the Help to Buy Agent reaches the Monthly Service Credits Cap in any month for six months (which need not be six consecutive months) in any rolling 12 month period;
- (c) the Annual Service Credit Cap is reached in any 12 month rolling period;
or
- (d) there is a Rectification Plan Failure;

Homes England Quality Principles means the quality assurance principles described in Appendix 5 to this Schedule 2;

Key Performance Indicator or "KPI" means the key performance indicators identified as KPIs in Appendix 2 to this Schedule (Performance Levels) which term shall for the avoidance of doubt not include Performance Indicators (PIs);

KPI Failure means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

KPI Service Threshold means shall be as measured set out in the "Threshold and Target" boxes in Appendices 1 and 2 against the relevant Key Performance Indicator;

Management Information (MI) means the information that the Help to Buy Agent is required to set out in the Performance Monitoring Report and/or the Balanced Scorecard Report as described in Part 2 of this Schedule 2 together with any other management information reasonably required by Homes England;

Material KPI Failure means any KPI Failure except a Minor KPI Failure;

Material PI Failure is a Default as described in clause 6.3.1 of this Agreement and is as a result of:

- (a) a failure by the Help to Buy Agent to meet the PI Service Threshold in respect of two or more of the Performance Indicators that are to be reported in that Service Period;
- (b) the performance of the Services by the Help to Buy Agent falling below the PI Service Threshold in respect of the same PI for three months (which need not be consecutive months) in a 12 month rolling period;

Measurement Period means the period over which the KPIs or PIs are measured as set out in the relevant "Target threshold and period" column in each respective KPI and PI;

Minor KPI Failure shall be as set out against the relevant Key Performance Indicator

Monthly Performance Report has the meaning given in Clause 4.3 of Part 2 of this Schedule 2;

Monthly Service Credits Cap means s. 43

Performance Failure means a KPI failure or a PI failure;

Performance Indicators or "PI" means the performance indicators set out in Appendix 2 of Schedule 2 which term shall for the avoidance of doubt not include Key Performance Indicators (KPIs);

PI Failure means a failure to meet the Target Performance Level in respect of a Performance Indicator;

PI Service Threshold means the percentage target and measurement periods set out in the "Target" and "Threshold Period" columns in each respective PI;

Rectification Plan means a plan proposed by the Help to Buy Agent to address the impact of, and prevent the reoccurrence of a Material KPI Failure in substantially the form set out in Schedule 14;

Rectification Plan Failure means:

- (a) the Help to Buy Agent failing to submit or resubmit a draft Rectification Plan to Homes England within the timescales specified; or
- (b) Homes England (acting reasonably) rejecting three drafts of the same Rectification Plan submitted by the Help to Buy Agent; or
- (c) the Help to Buy Agent failing to rectify a Material KPI Failure within the timescales set out in the Rectification Plan;

Repeat KPI Failure has the meaning given in clause 4 of Part 1 of this Schedule 2;

Service Credits means Service Credits payable by the Help to Buy Agent to Homes England in respect of one (1) or more KPI Failure;

Service Period means a Month; and

Strategic Senior Management Review Meetings means the regular meetings between the Help to Buy Agent and Homes England to manage and review the Help to Buy Agent's performance under this Agreement as further described in Paragraph 3.7 of Part 2 of this Schedule 2;

Target Performance Level means the target level of performance for a Key Performance, or Performance Indicator which is required by Homes England, as set out in relation to each KPI or PI.

Part 1 - Performance Levels

1 Principles

The objectives of the KPIs, the PIs and the Service Credits are to:

- 1.1 ensure that the Services delivered are of a consistently high quality to meet the requirements of Homes England under this Agreement;
- 1.2 provide a mechanism whereby reputational damage and financial loss to Homes England due to the Help to Buy Agent's failure is recorded;
- 1.3 incentivise the Help to Buy Agent to meet the KPIs and PIs identified within Appendix 2 to this schedule and remedy Performance Failure within a reasonably appropriate time; and
- 1.4 provide a mechanism that will allow for termination and remedy in the event of a Critical Service Failure.

2 This Schedule 2 sets out the mechanism by which Performance Failures will be managed.

2.1 Performance will be measured through the use of KPIs and PIs and the provision of Management Information. KPIs shall be subject to the Service Credits in the event of a KPI Failure. PIs are designed to monitor a wider scope of the Help to Buy Agent's performance and although persistent failure will lead to Help to Buy Agent being required to take steps to rectify the failure and could result in a Warning Notice, they shall not trigger any Service Credits.

2.2 Appendix 1 and 2 sets out the Key Performance Indicators and Performance Indicators which shall be used to measure the performance of the Services carried out by the Help to Buy Agent.

2.3 The Help to Buy Agent shall monitor its performance against each Key Performance Indicator and Performance Indicator and shall send Homes England a Monthly Performance Report detailing the level of services delivered against each KPI and PI for that month and cumulative for the year to date.

2.4 Service Credits shall accrue for any KPI Failure and shall be calculated by reference to the At Risk Amount and the Monthly Service Credit Cap. The Service Credits shall be deducted from the Fees in accordance with the worked example in Appendix 3.

2.5 Failure to achieve a Target Performance Level (whether KPI or PI) shall result in the Help to Buy Agent having to produce either (a) in relation to a Minor KPI Failure or a PI Failure, a Corrective Action Report as part of the Monthly Performance Report or, (b) if there has been a Material KPI Failure, a Rectification Plan. For the avoidance of doubt the Help to Buy Agent cannot charge Homes England any fee for producing a Corrective Action Report or a Rectification Plan.

2.6 For a period of three months following any of the following:

- 2.6.1 2 January 2020;
- 2.6.2 the agreement of any new Service Level Proposal for a new KPI or PI;

2.6.3 the date of implementation of any new Service; or

2.6.4 the Specification Transition Date,

a baseline performance will be measured (in the case of the implementation of a new Service in order to establish the correct level for any relevant new or revised KPI or PI) and Service Credits will not apply.

3 **Service Credits**

3.1 If the level of performance of the Help to Buy Agent during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator then no Service Credits deductions shall be made in respect of that Key Performance Indicator.

3.2 If the level of performance of the Help to Buy Agent during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator then Service Credits shall accrue and deductions will be made from the Fees. Each KPI is weighted by reference to the At Risk Amount, which is detailed in Appendix 3 to this Schedule 2.

3.3 Service Credit deductions will be made within any one Measurement Period and deducted from the Fees for the relevant Service Period on the basis of the weightings and calculations within appendices 1, 2 and 3. The amount in Service Credits deducted increases by the fixed increment shown against the relevant KPI in Appendix 1 for each category (Minor, Serious, Severe) dependent upon the recorded level of performance by the Help to Buy Agent.

3.4 The liability of the Help to Buy Agent in respect of Service Credits shall be subject to the Monthly and Annual Service Credit Cap. For the avoidance of doubt, the operation of the various Service Credit Caps shall not affect the continued monitoring of performance. Service Credits are a reduction of the Fees payable in respect of the relevant Services to reflect the performance failure and the reduced values of the Services actually received and are stated exclusive of VAT.

3.5 A further category of failure is a Critical Service Failure which constitutes Material Default giving rise to Homes England being entitled to terminate this agreement in relation to that part of the Service or to the Agreement as a whole.

3.6 A worked example of the weighting and modelling of the Service Credit values associated with the individual KPIs is provided within Appendix 3.

4 **Repeat KPI Failures**

4.1 Subject to Paragraph 4.3, where a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".

4.2 For a Repeat KPI Failure, the monthly At Risk Amount shall be doubled, subject to the applicable of the Service Credit Cap. The doubling only occurs once in a sequence of consecutive KPI Failures. If there are three consecutive Repeat KPI Failures, the At Risk Amount shall not be trebled but will remain at the level that applied to the second consecutive failure. The At Risk Amount only returns to its original level when the Help to Buy Agent achieves the Target Performance Level during a subsequent Service Period.

Monitoring of performance levels will in any case continue to apply and Repeat KPI Failures will be taken into account for the purposes of assessing whether a Critical Service Failure has occurred.

- 4.3 A Repeat Failure KPI deduction shall not be made when the causes identified within a Rectification Plan have been addressed and rectified and the repeat failure is as a result of a different identified cause.

Part 2 - Performance Monitoring and Performance Review

1 The Help to Buy Agent shall provide all reasonable assistance to enable Homes England to monitor the Help to Buy Agent's performance of its obligations under this Agreement.

2 In addition to Performance Monitoring, the Help to Buy Agent shall promptly respond to any request from Homes England for appropriate information to respond to Ministers, press enquiries, Freedom of Information requests, or litigation matters or such other requests which is reasonably available to the Help to Buy Agent and could reasonably be considered to facilitate the monitoring of the Help to Buy Agent's performance in compliance with this Agreement.

3 Within ten Working Days of the end of each Service Period, the Help to Buy Agent shall provide:

3.1 a Monthly Performance Report to Homes England's Authorised Representative which assesses compliance with the Specification, performance against each of the Key Performance Indicators and Performance Indicators as more particularly described in Paragraph 3.3 (the "**Monthly Performance Report**"); and

3.2 a report to Homes England's Head of Equity Loan Administration which summarises the Help to Buy Agent's performance over the relevant Service Period as more particularly described in Paragraph 3.5 (the "**Balanced Scorecard Report**").

3.3 The Monthly Performance Report

3.3.1 The Monthly Performance Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

- (a) Key Performance Indicators (KPIs), agreed Management Information for each Key Performance Indicator, Performance Indicator and any required supporting Management Information, the actual performance achieved over the Service Period, and that achieved over the previous rolling 12 month period including performance against the Target Performance Level specified for each KPI and PI in Appendix 2 to this Schedule;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Threshold;
- (d) Corrective Action Reports for Minor KPI Failures;
- (e) which Performance Failures remain outstanding and progress in resolving them;
- (f) for any Material KPI Failures occurring or Material PI Failures during the Service Period, the cause of the relevant KPI Failure or PI Failure and the proposed action to be taken subject to Homes England's approval under a Rectification Plan to remedy the performance and reduce the likelihood of future recurrence;

- (g) the status of any outstanding previous approved Rectification Plan processes including a summary of the Help to Buy Agent's progress in implementing that Rectification Plan;
- (h) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (i) relevant particulars of any other aspects of the Help to Buy Agent's performance which fail to meet the requirements of this Agreement including the details of any further significant issues surrounding performance of the services and ways in which such issues have been addressed;
- (j) details of Service Improvement initiatives delivered against any Service Improvement Plan during the Service Period and those due for delivery in the next period; and
- (k) such other details as Homes England may reasonably require from time to time.

3.4 **Information in respect of previous Service Periods**

- 3.4.1 A rolling total of the number of Performance Failures that have occurred over the past 12 Service Periods.
- 3.4.2 The amount of Service Credits that have been incurred by the Help to Buy Agent over the past 12 Service Periods.

3.5 **Balanced Scorecard Report**

- 3.5.1 The Balanced Scorecard Report shall be presented in the form of a dashboard in the template in Appendix 5 and, as a minimum, shall contain a high-level summary of the Help to Buy Agent's performance over the relevant Service Period, including details as required which may include the following:
 - (a) financial indicators/performance relating to Open Book data requirements;
 - (b) summary of the Target Performance Levels achieved (KPI, PIs and MI);
 - (c) strategic performance measures and behavioural indicators as detailed in the Benchmarking Standards
 - (d) performance of Sub-contractors;
 - (e) Management Information relating to staffing to include but not limited to:
 - i number of training days (including induction) per frontline FTE
 - ii attrition/Absenteeism/Sickness data;
 - iii new starters/probationers;

- iv number of staff on performance improvement/capability plans;
- v number of apprentices;
- (f) summary of progress against any internal audit plan provided by Homes England to the Help to Buy Agent from time to time; and
- (g) summary of progress against any risk and issues log provided by Homes England to the Help to Buy Agent from time to time.

3.5.2 The Performance Report and the Balanced Scorecard Report shall be signed off by the Help to Buy Agent's Director of Commercial Development as being correct to the best of their knowledge and belief prior to sending to Homes England's Authorised Representative.

3.6 **Contract Review Meetings**

3.6.1 The Contract Review Meetings shall (unless otherwise agreed):

- (a) take place monthly within ten (10) Working Days of every Monthly Performance Report and Balanced Scorecard Report being issued to Homes England Authorised Representative by the Help to Buy Agent (or such other date as the Parties may agree);
- (b) take place at such location and time (within normal business hours) as Homes England shall reasonably require (unless otherwise agreed in advance); and
- (c) be attended by the Help to Buy Agent Representatives and Homes England Representatives.

3.7 **Strategic Senior Management Review Meetings**

In addition to the Contract Review Meetings, Homes England and the Help to Buy Agent shall hold Strategic Senior Management Review Meetings which shall (unless otherwise agreed);

3.7.1 Take place every six months within ten (10) Working Days of the final monthly Contract Review Meeting held in that Quarter.

3.7.2 The purpose of the Strategic Review Meetings is to provide a forum for the following areas::

- (a) To provide strategic direction between both parties and ensure overall success of the relationship pursuant to the terms of this Agreement.
- (b) To provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (c) To ensure this agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by Homes England and the commercial benefit derived by the Help to Buy Agent;

- (d) To monitor decisions on policy changes and significant service adjustments;
- (e) To have overall responsibility for the scrutiny and audit of the delivery of all Services associated with the contract;

3.7.3 The meetings shall be attended by the Chief Financial Officers of Homes England and the Help to Buy Agent

4 **Performance Records**

- 4.1 The Help to Buy Agent shall keep appropriate data and records in relation to the performance of the Services in such format as Homes England shall require for the duration of the Agreement and provide prompt access to such records (together where required to the supporting systems) on an Open Book basis to Homes England upon Homes England's reasonable request. The records and data of the Help to Buy Agent shall be available for inspection by Homes England, its Internal Audit and Risk Officers and/or its nominee at any reasonable time and Homes England and/or its nominee may make copies of any such records and documents without incurring additional charges from the Help to Buy Agent.
- 4.2 In addition to the requirement in Paragraph 4.1, the Help to Buy Agent shall provide to Homes England such supporting documentation and data as Homes England may reasonably require in order to verify the level of the performance of the Help to Buy Agent and the calculations of the amount of Service Credits for any specified period.
- 4.3 The Help to Buy Agent shall ensure that the Monthly Performance Report, the Balanced Scorecard Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by Homes England are available to Homes England online and are capable of being downloaded and/or printed.

INFORMATION SECURITY POLICY

3RD PARTIES

Document Information	
Document owner	Information Security Officer
Issue date	July 2019
Review date	July 2020
Version	1.5
UDRN	ISMS 034
Approved by: (Date)	BISG (April 2016)

Version History			
Version	Date	Summary of Changes	Editor
1.0	November 2008	New policy for new organisation following transition from English Partnerships	s. 40(2)
1.1	October 2010	Minor policy revisions to reference to Security Policy Framework	s. 40(2)
1.2	October 2011	Requirement for completed 3rd party questionnaire	s. 40(2)
1.3	23/03/16	Minor amendments to document structure. Standalone policy rather than being part of handbook.	s. 40(2)
1.4	January 2018	Rebranded for Homes England and Reviewed	s. 40(2)
1.5	July 2019	DPO request that the Data Protection Act 2018 reference is updated	s. 40(2)

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

IT IS THE POLICY OF HOMES ENGLAND THAT 3rd PARTIES, WHO ARE GRANTED ACCESS TO HOMES ENGLAND INFORMATION ASSETS, IN ANY FORM, WILL:

1. Protect information provided or made available to them by Homes England, from unauthorised access;
2. Ensure the confidentiality of information provided, or made available to them, unless such documents or other materials, data or other information are public knowledge at the time when they are so provided;
3. Ensure the continued integrity of information provided or made available to them; (Safeguarding the accuracy and completeness of information by protecting against unauthorised modification)
4. Adhere to Regulatory and Legislative requirements will be met, including, but not limited to: Data Protection Act 2018 and the General Data Protection Regulation, Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000,
5. Ensure that all of its employees who have access to Homes England information assets will have signed a confidentiality document in an agreed format, and are made aware of the requirements of this policy;
6. Report all breaches or weaknesses of information security, actual or suspected, to Homes England's Information Security Officer (ISO) for investigation. Where required, the ISO will escalate these internally, and where appropriate, to other relevant third parties;
7. Be aware that monitoring tools will be utilised to monitor all network activity on a regular basis, and independent third parties will be engaged to carry out ethical hacking attacks on a regular basis to ensure the effectiveness of Homes England's security implementation against attack
8. Ensure that any access to Homes England's information systems is protected with a strong password, and that user access credentials will be held securely, and will not be shared, or disclosed to unauthorised persons
9. Notify the Homes England Service Desk (01908 353604) in a timely manner, where an employee, or other user, with access to Homes England IT systems, leaves the organisation, or no longer requires system access, so that such access can be revoked in a timely manner

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

Agreement	
Name	
Organisation	
Date	

Schedule 8

Data Protection Declaration

DATA PROTECTION DECLARATION

TO: *[Insert details of HTBA]*

FROM: *[insert details of data recipient]*

We hereby acknowledge that as part of our provision of affordable home ownership schemes funded by Homes England, we will be handling personal data.

Processing of personal data in the UK is subject to the obligations set in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), hereafter referred to as the Data Protection Legislation.

We confirm that we will treat such personal data in accordance with our obligations as data controllers as defined by the Data Protection Legislation as amended or re-enacted from time to time.

In processing any such data, we undertake to act in accordance with the principles of the Data Protection Legislation at all times and will only disclose such data to the extent necessary and only in accordance with the Data Protection Legislation.

Signed for and on behalf of:

Schedule 9

Processing, Personal Data and Data Subjects

- 1 The contact details of Homes England's Data Protection Officer are **s. 40(2)**, DPO@homesengland.gov.uk, telephone **s. 40(2)**.
- 2 The contact details of the Help to Buy Agent's Data Protection Officer are **s. 40(2)** [s.40\(2\)@plusdane.co.uk](mailto:s.40(2)@plusdane.co.uk)
- 3 The Help to Buy Agent shall comply with any further written instructions with respect to processing by Homes England.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The parties acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Controller and the Help to Buy Agent is the Processor, in accordance with Clause 31 of this Agreement.
Subject matter of the processing	All processing undertaken (if any) in connection with the provision of the Services.
Duration of the processing	The Term
Nature and purposes of the processing	Any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means, for purposes arising in connection with the provision of the Services.
Type of Personal Data	Names, addresses, dates of birth, gender, ethnicity, faith, NI numbers, telephone numbers, email addresses, pay, employment status, images, and any other personal data processed in connection with the provision of the Services.
Categories of Data Subject	Applicants for Help to Buy Equity Loans, Applicants for Affordable Home Ownership Schemes, Grant Recipients, Contracted Developers Solicitors for the applicants, Help to Buy Equity Loan Providers, Mortgage Administrator, the legal and other professional advisers of all the above persons; persons who enquire about Help to Buy Equity Loans or Affordable Home Ownership Schemes but do not become applicants, staff (including volunteers, agents,

	and temporary workers) of Homes England, members of the public
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	In accordance with clause 31.17 of this Agreement.

Schedule 11

Geographic Service Areas

Help to Buy Agent Lot Areas

Lot 1 (North of England)

Northumberland
County Durham
Darlington
Stockton-on-Tees
Redcar and Cleveland
Middlesbrough
Hartlepool
Sunderland
South Tyneside
North Tyneside
Newcastle upon Tyne
Gateshead
Wyre
West Lancashire
South Ribble
Rossendale
Ribble Valley
Preston
Pendle
Lancaster
Hyndburn
Fylde
Chorley
Burnley
South Lakeland
Eden
Copeland
Carlisle
Barrow-in-Furness
Allerdale
Blackpool
Blackburn with Darwen
Cheshire West and Chester
Warrington
Halton
Cheshire East
Wirral
Sefton
St. Helens

Liverpool
Knowsley
Wigan
Trafford
Tameside
Stockport
Bolton
Bury
Manchester
Oldham
Rochdale
Salford
Selby
Scarborough
Ryedale
Richmondshire
Harrogate
Hambleton
Craven
York
North Lincolnshire
North East Lincolnshire
East Riding of Yorkshire
Kingston Upon Hull
Wakefield
Leeds
Kirklees
Calderdale
Bradford
Sheffield
Rotherham
Doncaster
Barnsley

Schedule 12
Special Changes

Special Changes Procedure

Part 1

1 Purpose of this Schedule

The purpose of this Schedule is to set out how Homes England and the Help to Buy Agent will co-operate to implement changes, modifications or amendments to this Agreement which arise from:

- 1.1 the adoption of Specification B in substitution for Specification A;
- 1.2 the inclusion of additional Geographic Service areas by Homes England to the Help to Buy Agent;
- 1.3 modifications in Homes England and/or Her Majesty's Government policy and/or legislation which require modification to either or both Specification A or Specification B;
- 1.4 the abandonment of the Help to Buy programme and the adoption by Her Majesty's government and/or Homes England of an alternative programme to assist the purchasers of homes (whether market sales, affordable home ownership sales).

2 Adoption of Schedule 1B

- 2.1 Homes England and the Help to Buy Agent acknowledge that it is currently their intention that Specification B will replace Specification A.
- 2.2 Subject to paragraph 2.4 (below) Homes England may at any time serve three (3) months' written notice on the Help to Buy Agent which shall set out that at the expiry of the same written notice the Help to Buy Agent shall provide the Services in accordance with Schedule 1B (the **Schedule 1B Notice**).
- 2.3 On the expiry of the Schedule 1B Notice the following shall apply the Help to Buy Agent shall provide the Services in accordance with schedule 1B and Schedule 1A shall cease to apply and reference in this Agreement to Services shall be construed accordingly;
- 2.4 The parties may agree in writing to lengthen or shorten the written notice referred to in paragraph 2.2 (above).

3 Inclusion of additional Geographic Service Areas

- 3.1 The parties acknowledge:
 - 3.1.1 that Homes England contemplated how to ensure the provision of Help to Buy continues if a provider of the Help to Buy agency services became insolvent or otherwise had their agreement with Homes England terminated and/or they were suspended from delivering agency services in particular Geographical Service Areas;

- 3.1.2 that Homes England indicated in the procurement of the Help to Buy Agent that if the circumstances in paragraph 3.1.1 arose in relation to another Help to Buy Agent Agreement in relation to a Geographic Service Area not covered by this Agreement that Homes England has the right to require the Help to Buy Agent to provide the Services to any or all of the affected Geographic Service Areas.
- 3.2 Homes England may from time to time give written notice to the Help to Buy Agent of its intention to award the Help to Buy Agent additional Geographic Service Areas (**Additional Areas**) in which the Help to Buy Agent will become responsible for delivering the Services (the **Additional Areas Notice**).
- 3.3 Following service of an Additional Areas Notice Homes England shall promptly provide to the Help to Buy Agent:
- 3.3.1 the historic and anticipated volume of Help to Buy activity in each Additional Area;
- 3.3.2 information (if known) about whether the Transfer Regulations might apply to persons employed by other or previous Help to Buy agency provider;
- 3.3.3 the date on which Homes England would require the Help to Buy Agent to start providing the Services in each of the Additional Areas;
- 3.3.4 such other information as the Help to Buy Agent might reasonably require in order to propose a change to the Fee and to make preparations to deliver the Services to each of the Additional Areas.
- 3.4 In proposing a change to the fees payable under this Agreement (**Fee Adjustment**) the Help to Buy Agent shall:
- 3.4.1 co-operate on with Homes England and provide information and the breakdown of the Fee Adjustment on an Open Book basis;
- 3.4.2 ensure that any proposal to change the ongoing regular Fees payable under this Agreement contained in the Fee Adjustment are based on the Standard Fee and not the Transaction Fee;
- 3.4.3 include details of any additional one-off costs which are likely to be incurred in relation to the Additional Areas are itemised with an explanation (**Exceptional Fee Element**);
- 3.4.4 The Exceptional Fee Element shall:
- (a) not include any profit element;
- (b) only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Standard Fees or Transaction Fees in the Additional Areas.
- 3.5 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Fee Adjustment (with an appropriate breakdown) to Homes England within four (4) weeks of Homes England providing the Help to Buy Agent with the information listed in clause 3.3 of this Schedule 12.

- 3.6 Unless the parties agree otherwise Homes England shall within four (4) weeks review the proposed Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 3.7 Homes England may accept or reject the Help to Buy Agent's proposed Fee Adjustment or request that the Help to Buy Agent modify the same.
- 3.8 If Homes England agrees to the proposed Fee Adjustment then from the date it specifies in a written notice served on the Help to Buy Agent:
- 3.8.1 the Geographic Service Areas shall be modified to include such Additional Areas as Homes England as specified;
 - 3.8.2 the agreed revised Standard Fees shall take into account the impact of any additional Transaction Fees which arise from the provision of the Services to the Additional Areas added to the Geographic Service Areas;
 - 3.8.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 3.9 Homes England is only required to pay any Exceptional Fee Element:
- 3.9.1 It has been approved by Homes England and included as a modification under paragraph 3.8.3; and
 - 3.9.2 It has been incurred by the Help to Buy Agent.
- 4 **Modifications to any Equity Loan Products or AHO Products**
- 4.1 The parties acknowledge the Homes England Equity Loan Products and AHO Products may be subject to policy and legislative changes from time to time and these may require a change to the specification for the delivery of the Services and/or the wider terms of this Agreement.
- 4.2 Homes England may from time to time give written notice to the Help to Buy Agent of its opinion that a proposed or actual policy and/or legislative change means that either the specification for the Services and/or the wider terms of this Agreement require alteration (**Contract Change Notice**).
- 4.3 Following service of the Contract Change Notice Homes England shall promptly provide to the Help to Buy Agent a description of its proposed to Contract Change (**a Contract Change**).
- 4.4 In response to the Contract Change Notice, the Help to Buy Agent shall propose to Homes England a change to the fees payable under this Agreement (**Change Fee Adjustment**) and it shall:
- 4.4.1 co-operate on with Homes England and provide information and the breakdown of the **Change Fee Adjustment** on an Open Book basis;

- 4.4.2 ensure that the Change Fee Adjustment is based on the Standard Fee (and not the Transaction Fee) with any proposed changes to that based on additional services or a reduction in its activities and/or Services which will arise as a consequence of the proposed implementation of the Specification Change;
- 4.4.3 include details of any additional one-off costs which are likely to be incurred in relation to the Change Specification are itemised with an explanation (**Exceptional Fee Element**);
- 4.4.4 the Exceptional Fee Element shall:
 - (a) not include any profit element;
 - (b) shall only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Transaction Fees or Standard Fees.
- 4.5 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Change Fee Adjustment (with an appropriate breakdown) to Homes England within eight (8) weeks of the service of the relevant Contract Change Notice.
- 4.6 Unless the parties agree otherwise Homes England shall within eight (8) weeks review the proposed Change Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 4.7 Homes England may also require the Help to Buy Agent to provide evidence of comparable benchmarking data which evidences (to the Home England's reasonable satisfaction) that any element of the Change Fee Adjustment is comparable or better value for money than open market costings.
- 4.8 Homes England may accept or reject the Help to Buy Agent's proposed Change Fee Adjustment or request that the Help to Buy Agent modify the same.
- 4.9 If Homes England agrees to the proposed Change Fee Adjustment then from the date it specifies in a written notice served on the Help to Buy Agent:
 - 4.9.1 Schedule 1 shall be modified to include the changes Homes England agreed to in relation to the relevant Change Specification;
 - 4.9.2 the Fees shall be modified to incorporate the relevant Change Fee Adjustment (as agreed by Homes England);
 - 4.9.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 4.10 Homes England is only required to pay any Exceptional Fee Element:
 - 4.10.1 It has been approved by Homes England and included as a modification under paragraph 4.7.3; and
 - 4.10.2 It has been incurred by the Help to Buy Agent.

5 Adoption of an alternative scheme

- 1.1 The parties acknowledge that Homes England contemplated that during the Term of this Agreement:
- 5.1.1 that the Help to Buy programme could be terminated and/or reduced in scope; and
 - 5.1.2 the possibility that HM government may in the future introduce support for individuals concerning the purchase of homes (whether purchased on market and/or affordable homeownership terms) (an **Alternative Scheme**);
 - 5.1.3 the substantive services provided by the Help to Buy Agents in an Alternative Scheme must be similar in nature to the Services (whether as specified in Schedules 1A, 1B or as adopted as a change under this Agreement).
- 5.2 Homes England may from time to time give written notice to the Help to Buy Agent of its opinion that a proposed or actual HM Government policy and/or legislative change means that the Help to Buy programme may be reduced and/or an Alternative Scheme may be introduced (**Alternative Scheme Notice**).
- 5.3 Following service of the Alternative Scheme Notice Homes England shall promptly provide to the Help to Buy Agent a description of a new specification in relation to providing services similar to any or all of the Services (**Alternative Services**) proposed.
- 5.4 In response to the Alternative Scheme Notice, the Help to Buy Agent must propose a change to the Fee (**Alternative Fee Adjustment**) and it shall:
- 5.4.1 co-operate on with Homes England and provide information and the breakdown of the Alternative Fee Adjustment on an Open Book basis;
 - 5.4.2 ensure that the Alternative Fee Adjustment is based on the Standard Fee (and not the Transaction Fee) with changes to that based on any additional services or a reduction in its activities and/or Services which will arise as a consequence of the proposed implementation of the Alternative Services;
 - 5.4.3 that any additional one-off costs which are likely to be incurred in relation to the Change Specification are itemised with an explanation (**Exceptional Fee Element**).
- 5.5 The Exceptional Fee Element shall:
- 5.5.1 not include any profit element;
 - 5.5.2 shall only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Standard Fees or Transaction Fees.
- 5.6 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Alternative Fee Adjustment (with an appropriate breakdown) to Homes England within eight (8) weeks of the service of the relevant Alternative Change Notice.

- 5.7 Unless the parties agree otherwise Homes England shall within eight (8) weeks review the proposed Alternative Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Alternative Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 5.8 Homes England may also require the Help to Buy Agent to provide evidence of comparable benchmarking data which evidences (to Home England's reasonable satisfaction) that any element of the Alternative Fee Adjustment is comparable or better value for money than open market costings.
- 5.9 Homes England may accept or reject the Help to Buy Agent's proposed Alternative Fee Adjustment or request that the Help to Buy Agent modify the same.
- 5.10 If Homes England agrees to the proposed Alternative Fee Adjustment then from the date Homes England specifies in a written notice served on the Help to Buy Agent:
- 5.10.1 Schedule 1 shall be modified to include the changes Homes England agreed to in relation to the relevant Alternative Services;
 - 5.10.2 the Fees shall be modified to incorporate the relevant Alternative Fee Adjustment (as agreed by Homes England);
 - 5.10.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 5.11 Homes England is only required to pay any Exceptional Fee Element:
- 5.11.1 It has been approved by Homes England and included as a modification under paragraph 5.10.3; and
 - 5.11.2 these have been incurred by the Help to Buy Agent.

Schedule 13

Exit Plan

Any Exit Plan prepared by the Help to Buy Agent in accordance with clause 13 shall include the following details:

- 1 Full account history of live cases including all account details, contacts and email addresses on file.

For the avoidance of doubt, during any Handover Period the requirements of this Agreement shall continue to apply and the Help to Buy Agent shall:

- 1 continue to provide Performance Reports;
- 2 attend additional weekly meetings with Homes England and any New Provider;
- 3 work with the New Provider on data format for transfers;
- 4 retain staffing numbers until the Agreement ends with an agreed minimum number of operational staff;
- 5 meet the data requirements specified by Homes England or the New Provider based on data items it holds at that time; and
- 6 (where applicable) hand over the Website for Homes England to manage.

Schedule 15

Change Control Procedure

1 DEFINITIONS

In this Schedule the following abbreviations, words and phrases shall have the following meanings, unless the context requires otherwise:

Change Control Form means the template change control form to be used by the parties when requesting a change to this Agreement or the Services a copy of which is attached at paragraph 3 of this Schedule.

2 CHANGE CONTROL PROCEDURE

2.1 Either party may raise change control requests ("CCRs") in writing relating to any changes required to the Services or otherwise to this Agreement. The CCRs shall be raised by the Authorised Representative of the party concerned who has the authority to raise such CCRs. The CCRs raised shall be subject to the Change Control Procedure set out below:

2.2 CCRs raised by Homes England:

2.2.1 The Help to Buy Agent shall enter each CCR into a log which shall be maintained by the Help to Buy Agent and each CCR shall be given a reference number and show the current status of each CCR. The status of each CCR shall be maintained in the log as:

- (a) awaiting estimation or confirmation of estimate;
- (b) awaiting approval;
- (c) approved; or
- (d) rejected.

2.2.2 The Help to Buy Agent's Authorised Representative shall be responsible for reviewing and responding to the CCR. The Help to Buy Agent's Authorised Representative shall then:

- (a) propose a solution for the CCR;
- (b) outline the benefits of the CCR if applicable;
- (c) set out an estimate of the costs of completing and implementing the CCR;
- (d) advise Homes England of the likely financial, technical and time scale impact of any requested or recommended change; and
- (e) capture this information on a Change Control Form.

2.2.3 The Help to Buy Agent shall use reasonable endeavours to complete this Change Control Form within three (3) Business Days of receiving the CCR from Homes

England. However, if due to the complexity of the change required, the Help to Buy Agent reasonably believes that the estimate of the costs of the CCR will take more than five (5) days to complete, then the Help to Buy Agent shall inform Homes England of this and shall be allowed an extension to the three (3) Business Day period and shall complete the Change Control Form as soon as is reasonably practicable. Where an extension applies, the Help to Buy Agent shall also provide an estimate of the cost for arriving at the cost estimation of the CCR and shall obtain Homes England's consent to the estimate before commencing work on the Change Control Form.

2.2.4 Homes England shall use all reasonable endeavours to review the information on the Change Control Form within five (5) Business Days and to reach a decision on whether they will accept or reject the change and, if the change would result in a reduction in the volume and/or scope of the Services, determine a commensurate reduction to the Standard Fee and/or Transaction Fee. If it accepts the change it shall sign the Change Control Form indicating its acceptance and authorising the work to commence. If it rejects the change it shall inform the Help to Buy Agent in writing. If this rejection relates to a CCR that has involved an extension of time for estimation due to its complexity then Homes England shall be liable to pay the Help to Buy Agent for the costs involved in arriving at the estimates.

2.2.5 When a CCR has been accepted and approved by Homes England, the Help to Buy Agent shall use reasonable endeavours to complete and implement the change in the timescale estimated on the Change Control Form.

2.3 CCRs raised by the Help to Buy Agent:

2.3.1 The Help to Buy Agent shall raise a CCR and log it as set out in paragraph 2.2.1 of this Schedule and then complete a Change Control Form as set out in paragraph 2.2.2 of this Schedule for review by Homes England. The procedure in paragraphs 2.2.4 and 2.2.5 shall then be followed except that if Homes England rejects the CCR, then it shall not be liable for any costs in arriving at the estimates for completing and implementing the CCR.

2.3.2 The Help to Buy Agent shall charge and invoice for work carried out on all CCRs (whether raised by Homes England or by the Help to Buy Agent) in accordance with the charge out rates.

2.4 where the change made has the effect of reducing the scope of the service, the Standard Fee and Transaction Fee can be reduced.

3 CHANGE CONTROL FORM

The template for the Change Control Form is attached below:

CHANGE CONTROL FORM - CHANGE REQUEST

ENSURE **ALL** SECTIONS (*EXCEPT SUMMARY*) OF PART 1 ARE COMPLETED WHEN SUBMITTING CC

PART 1: Change Request Description			
CHANGE CONTROL REF			
Homes England			
Priority			
Change Control Title			
Raised by:	Job Title:	Contact No:	Date of Request:

Brief Description of Change Required:
Detailed Requirements:
Exclusions:
Reason for Change:
Proposed Solution:
Impact if Change NOT done:
Benefits:
Date Required by:

SUMMARY					
Department	Name	Effort	Chg out Rate	Cost £	IA Rec'd
			TOTAL		

HOMES ENGLAND ACCEPTANCE OF COST	
Date	
Comments	
Name of Signatory	
Signature	

Appendix 1

Template Incident Report

Incident Report

Incident report to be submitted to Homes England within twenty (20) Working Days of each and every Business Continuity and Disaster Recovery Event.

Please provide the following details:

Incident Title					
Name of person submitting this report					
Key contact / Incident Owner (if different to the above)					
Date and time Incident occurred					
Date and time Incident resolved					
Description of Incident					
Impact of Incident (please consider the services impacted and numbers of customer affected)					
Corrective actions taken (please list all)					
Preventative actions taken (please list all)					
Future Mitigation – Preventing Reoccurrence					
	<table border="1"><thead><tr><th>Action</th><th>Status</th><th>Owner</th><th>Due Date</th></tr></thead></table>	Action	Status	Owner	Due Date
Action	Status	Owner	Due Date		

Actions and / or improvements still to be undertaken and if so please provide target dates for completion (please list all)				
Supporting information if required				
Incident Timeline	Date	Time	Event	

Plus Dane Housing Ltd
Baltimore Buildings
13-15 Rodney Street
Liverpool
L1 9EF

16 December 2020

FAOs. 40(2) [REDACTED] Executive Director Growth

Dear Sirs

**RE APPOINTMENT OF HELP TO BUY AGENT
SERVICE AGREEMENT LOT 1
(the "Agreement")
NOTICE OF VARIATION of the AGREEMENT
Pursuant to Clause 3.2 of the Agreement**

On 23 December 2019, Plus Dane Ltd entered into the Agreement under which it was appointed by Homes England to act as a Help to Buy Agent. The Initial Term of the Agreement expires on 31 March 2021.

We write to give you notice of our intention to extend the Agreement, as set out below.

1. In accordance with Clause 3.2 of the Agreement, Homes England intends to extend the Agreement beyond the Initial Term for a period of 24 months until 31 March 2023. This means the Term shall expire on 31 March 2023.
2. The increase in Fees arising pursuant to Schedule 10 paragraph 4.1.3 shall be calculated on or within 90 days of 1 April 2021 and shall be notified to you in writing.

All other terms remain without variation.

Please sign and date the attached acknowledgment form and return with this letter to me. An electronic signature is acceptable, and you may return the acknowledgment form to me by e mail in accordance with Clauses 21.1 and 21.2.4 of the Agreement. Upon receiving the acknowledgment of the above extension, we shall prepare a Deed of Agreement putting the extension into effect.

Yours faithfully

s. 40(2)

s. 40(2)

Authorised Representative for and on behalf of Homes England

We acknowledge receipt of the notice of the extension of the Agreement as set out in the letter dated 16 December 2020.

SIGNED by Plus Dane Housing Ltd

.....

Authorised Signatory

.....

Authorised Signatory

THIS DEED of AGREEMENT of VARIATION is dated the 7th day of April 2021 and is

made **BETWEEN:**

- 1) Homes and Communities Agency trading as Homes England of One Friargate, Coventry, CV1 2GN (“Homes England”); and
 - 2) **Plus Dane Housing Limited** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 31012R whose registered office is at Baltimore Buildings, 13 – 15 Rodney Street, Liverpool L1 9EF (the “Help to Buy Agent”)
- each known as a “**Party**” to and collectively as “**Parties**”.

WHEREAS

- A) The Parties have entered into an agreement dated 23 December 2019 (the “**Agreement**”) for the appointment of a Help to Buy Agent to provide the Services as defined in the Specification and the Agreement.
- B) The Parties have agreed to vary the Agreement pursuant to Clause 3.2 of the Agreement to extend the Term of the Agreement until 31 March 2023 and further to make provision for the commencement of the application of Service Credits pursuant to Schedule 2 Part 1 of the Agreement.
- C) All other provisions of the Agreement remain unchanged and have full force and effect unless the Agreement is subject to a variation in accordance with the terms of the Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. In the Definitions section the following definitions shall be inserted:
 - 1.2.1: “ Extension Period(s)” means one or more periods of not less than 6 months beyond the expiry of the Initial Term; and
 - 1.2.2 “Term”: shall mean the Initial Term and any Extension Period(s) pursuant to clause 3.2 and shall not extend beyond 30 September 2024.
2. Clause 3.2 shall be deleted and the following paragraph 3.2 shall be inserted:
 - 3.2 Subject to clause 3.3 upon giving reasonable notice to the Help to Buy Agent prior to the expiry of the Initial Term, Homes England may extend the Term beyond the Initial Term for one or more Extension Period(s) provided that the Term shall not expire after 30 September 2024.

3. Clause 3.3 shall be deleted and the following paragraph 3.3 shall be inserted:
 - 3.3 The reasonable period of notice referred to in clause 3.2 shall be at the discretion of Homes England. Notwithstanding the generality of this clause 3.2 Homes England shall aspire to provide the Help to Buy Agent with not less than 3 months' notice of an Extension Period provided that any shorter notice period shall be valid and in accordance with clause 3.1.

4. The following clause 3.4 shall be inserted:
 - 3.4 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:
 - 3.4.1 the end of the Initial Term; or
 - 3.4.2 the expiry of the Extension Period(s) provided that further notice of extension has not been served pursuant to clause 3.2 and in any event the Term shall not expire after 30 September 2024.

5. Paragraph 2.6.2 of Schedule 2 Part 1 shall be deleted and the following paragraph 2.6 shall be inserted:
 - 2.6 For the period beginning on the Commencement Date and ending on 31 March 2021, a baseline performance for the KPIs and the PIs shall be measured for each Measurement Period and Service Credits shall not apply.

6. The following paragraph 2.7 of Schedule 2 Part 1 shall be inserted:
 - 2.7 From 1 April 2021 the baseline performance for the KPIs and the PIs measured pursuant to paragraph 2.6 of this Schedule 2 shall be the Target Performance Level.

7. The following paragraph 2.8 of Schedule 2 Part 1 shall be inserted:
 - 2.8 From the period 1 April 2021 until the end of the Term or earlier termination of the Agreement the provisions of this Schedule 2 shall apply and Service Credits (where so arising) shall be calculated in accordance with paragraph 3 of this Schedule 2.

8. The following paragraph 2.9 of Schedule 2 Part 1 shall be inserted:
 - 2.9 From the three months following any of the following:
 - 2.9.1 the agreement of any new Service Level Proposal for a new KPI or PI;
 - 2.9.2 the date of implementation of any new Service; or
 - 2.9.3 the Specification Transition Date,a baseline performance will be measured (in the case of the implementation of a new Service in order to establish the correct level for any relevant new or revised KPI or PI) and Service Credits will not apply.

9. The Parties shall agree that the increase in Fees arising pursuant to Schedule 10 paragraph 4.1.3 shall be calculated on or within 90 days of 1 April 2021 and shall be notified to the Help to Buy Agent in writing.
10. All other provisions of the Agreement remain without change and in full force and effect unless varied in accordance with the terms of the Agreement.

IN WITNESS whereof the Parties have executed this Deed of Agreement of Variation on the date first before written

EXECUTED as a DEED by HOMES AND COMMUNITIES AGENCY

Authorised Signature **s. 40(2)** C41304

EXECUTED AS A DEED by the HELP TO BUY AGENT

by the Signature of a Director and the Company Secretary

Or of two Directors of the Company:

Sign: **s. 40(2)**

Name **s. 40(2)**

Director

Sign: **s. 40(2)**

Name **s. 40(2)**

~~Director~~/Company Secretary **

Plus Dane Housing Ltd
Baltimore Buildings
13-15 Rodney Street
Liverpool
L1 9EF

11 June 2021

FACs. 40(2) [REDACTED] Executive Director Growth

Dear Sirs

RE: APPOINTMENT OF HELP TO BUY AGENT SERVICE AGREEMENT LOT 1
(the "Agreement")
NOTICE OF VARIATION of the AGREEMENT Pursuant to Clause 3.2 of the
Agreement
Letter Agreement

On 23 December 2019, The Help to Buy Agent entered into the Agreement under which it was appointed by Homes England to act as a Help to Buy Agent. On 28 August 2020 the Parties entered into an agreement by letter (the "Transaction Fee Payment Date Letter") to amend the definition of "Transaction Fee Payment Date" in Schedule 10 of the Agreement. The Transaction Fee Payment Date Letter expiry date was stated to be 31 March 2021.

The Parties have agreed to extend the expiry date of the Transaction Fee Payment Date Letter for a further period of up to six months. The revised expiry date of the Transaction Fee Payment Date Letter shall be no later than 30 September 2021.

Further, there is an error in the Agreement in Schedule 10 definition of "Transaction Fee Payment Date" sub paragraph (b) in that there is the word "of" in the second line of sub paragraph (b). The Parties agree that the word "of" shall be deleted as not being a required word in sub paragraph (b).

All other terms remain without variation.

Please sign and date the attached acknowledgment form and return with this letter to me. An electronic signature is acceptable, and you may return the form to me by e mail in accordance with Clauses 21.1 and 21.2.4 of the Agreement. We shall then execute the signatory page and return an electronic version to you for your records.

Yours faithfully

s. 40(2)

s. 40(2)

s. 40(2)

behalf of Homes England

Authorised Representative on

We agree to the variation of the Agreement as set out in the letter dated 11 June 2021 and the variation shall be effective from 1 April 2021.

IN WITNESS whereof the parties have executed this Letter Agreement this day of 9 September 2021.

Signed by Homes and Communities Agency t/a Homes England

s. 40(2)

C46762

.....

Authorised Signatory

SIGNED by Help to Buy Agent

s. 40(2)

Authorised Signatory

s. 40(2)

Authorised Signatory



dated 23 December 2019

Homes England
and
bpha Limited

Appointment of a Help to Buy Agent

Service Agreement relating to Lot 2 (Midlands and London (London Equity Loan only))

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Agreement

dated 23 December 2019

Parties

- (1) **Homes England** (the trading name of the Homes and Communities Agency) a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (**Homes England**); and
- (2) **bpha Limited** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 26751R whose registered office is at Bedford Heights, Manton Lane, Bedford MK41 7BJ (the **Help to Buy Agent**)

Introduction

- (A) Homes England is empowered under Sections 2, 3 and 5 of the Housing and Regeneration Act 2008 to improve and facilitate the supply of housing in England.
- (B) In accordance with the European Union public sector procurement principles as implemented in the United Kingdom, Homes England has held a competitive tender process to find a service provider to provide a one stop-shop of services providing information about government-supported home ownership products, eligibility and affordability assessment of applicants of affordable home ownership products and eligibility assessment and administration for equity loan product sales in the Geographic Service Area.
- (C) On 3 June 2019 Homes England published a notice in the Official Journal of the European Union in relation to the tender of Homes England's requirements for these services. Homes England issued a SQ to respondents to its notice, then subsequently assessed and selected a short list of candidates.
- (D) Following such assessment and selection, Homes England issued an Invitation to Tender (ITT) to potential service providers (including the Help to Buy Agent) and subsequently evaluated responses to the ITT.
- (E) On the basis of the Help to Buy Agent's responses and subsequent discussions, the parties have agreed to the following terms for the provision and receipt of the Services.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

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

AHO Products means all homeownership products supported by Homes England in accordance with the AHCFG (or any supplementary guidance) including but not limited to: Shared Ownership, Social HomeBuy, HOLD, Older Persons Shared Ownership, Rent to

Buy and any previous or new product of a similar nature made available by Homes England;

AHO Schemes means those affordable housing schemes (including any Nil Grant Units developed in conjunction with that scheme and any schemes agreed by Homes England to be Nil Grant Schemes) provided with the assistance of grant under section 19 of the Housing and Regeneration Act 2008 (or Section 18 or 27a of the Housing Act 1996 where applicable) which will be available for sale or rent on or after the date hereof under the following schemes:

- (a) initial sales of any AHO Product;
- (b) Resales of any relevant AHO Product; and

any additional home ownership for sale products funded via the 2016/21 Shared Ownership and Affordable Homes Programme and/or any additional schemes funded or promoted by Homes England (details of which shall be provided by Homes England);

Affordable Housing Capital Funding Guide or **AHCFG** means Homes England's Affordable Housing Capital Funding Guide as updated, revised or replaced from time to time;

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

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

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

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

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

Authorised Representative means as the case may be the person appointed by Homes England or the Help to Buy Agent respectively to manage all aspects of the Agreement and

who is authorised to make day to day decisions in respect of the operational performance of the Agreement;

Authority to Exchange or **ATE** means a notice served by the Help to Buy Agent in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Authority to Proceed or **ATP** means a notice served by the Help to Buy Agent in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Benchmarking Standards means Homes England's Benchmarking Standards in relation to the Help to Buy Equity Loan Scheme as set out in Schedule 3 (as may be updated and amended from time to time by Homes England);

Business Continuity and Disaster Recovery Event means event that would significantly impact on the ability of the Help to Buy Agent to perform the Services, in whole or in part, in accordance with the terms of this Agreement;

Business Continuity and Disaster Recovery Plan means the Help to Buy Agent's business continuity plan for the Services to minimise the effect of any unplanned interruption or event that would significantly impact on the ability of the Help to Buy Agent to perform the Services, in whole or in part, in accordance with the terms of this Agreement and ensure continuity of business processes and operations supporting the Services following any failure or disruption of processes and operations affecting any element of the Services and the recovery of such processes and operations following a disaster;

Change in Control means any merger or transfer of engagement by the Help to Buy Agent to a third party (which shall include the Help to Buy Agent becoming a subsidiary of any such third party or any business or asset transfer to such party of all or the majority of the Help to Buy Agent's assets) which has not been previously agreed in writing by Homes England;

Commencement Date means 1 December 2019;

Complaint means any expression of dissatisfaction, whether oral or written and whether justified or not, from or on behalf of a Grant Recipient, Help to Buy Equity Loan Provider, Qualifying Applicant or any other party concerning the services provided by the Help to Buy Agent in relation to this Agreement;

Complaints Procedure means the procedure referred to in paragraph 5.2 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B;

Confirmation of Exchange means a letter issued to the Help to Buy Agent by the Qualifying Applicant's Conveyancer pursuant to Paragraph 4.14.12 of Schedule 1A;

Confirmation to Provider means a letter issued by the Help to Buy Agent pursuant to Paragraph 4.14.5 of Schedule 1A providing written confirmation that it is satisfied that the Conditions Precedent has been satisfied

Conditions Precedent means:

- (a) service of the relevant Authority to Proceed together with confirmation that such Authority to Proceed will be current and valid at the date of exchange;
- (b) receipt by the Help to Buy Agent of the Solicitor's Form 2 (with the attached certificate of title completed and signed by the legal advisor acting on behalf of the Eligible Purchaser) in respect of the relevant Eligible Dwelling in respect of the relevant Eligible Unit; and
- (c) receipt by the Help to Buy Agent from the legal advisor acting on behalf of the Eligible Purchaser of a certified copy of either the Eligible Purchaser's final professional valuation (obtained on behalf of an Approved Lender) or (where not available) the Eligible Purchaser's mortgage offer confirming the valuation and valuing the Eligible Dwelling at a sum which is equal to the Full Purchase Price or (at the discretion of Homes England) within a tolerance of that sum determined from time to time by Homes England and notified by the Help to Buy Agent to the Help to Buy Equity Loan Provider in writing;

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

Consumer Credit Legislation means the Consumer Credit Act 1974, Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the Mortgage Credit Directive Order 2015 together with all applicable consumer credit and regulated mortgage contract legislation and regulations to the extent applicable to the Help to Buy Agent's role under this Agreement;

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

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

Core Transaction Process means the transaction process set out in Schedule 4 as may be amended by Homes England from time to time, the parties acknowledging that such amendments may include (without limitation) new or enhanced requirements for credit reference checks and additional eligibility checks and Customer Due Diligence Requirements;

Customer Due Diligence Requirements means such requirements in respect of customer due diligence and any other requirements notified to the Help to Buy Agent by Homes England in writing from time to time. These requirements may include (without limitation) requirements to obtain from applicants and/or their advisers, and to verify the authenticity of, information including (without limitation) identity checks and source of funds/source of wealth and upload these to IMS, and any enhanced due diligence that Homes England may require in cases that it views as higher risk, for examples Politically Exposed Persons or

source of funds/source of wealth from a high risk jurisdiction. Any such requirements notified to the Help to Buy Agent by Homes England will be deemed to be incorporated into the service requirements of Core Service 3 and Core Service 4 in the Specification in Schedule 1 of this Agreement;

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

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

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

Data Protection Declaration means a declaration in substantially the form set out in Schedule 8;

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

Data Protection Legislation means:

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

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

Default shall mean the occurrence of any of the events described in clause 6.3.1;

Dispute Resolution Procedure means the procedure set out in clause 14;

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

EIR Exception means any applicable exemption to the EIR;

Eligible Dwelling means (in relation to Help to Buy Equity Loan) a Dwelling which qualifies as an Eligible Dwelling pursuant to the Help to Buy Equity Loan Provider's funding administration agreement for Help to Buy Equity Loan;

Eligible Purchaser means a person:

- (a) who satisfies the eligibility criteria issued from time to time by Homes England in relation to Help to Buy Equity Loan;
- (b) who has been approved as eligible by the Help to Buy Agent;
- (c) who is taking out a prior first fixed charge with an Approved Lender;
- (d) who is not connected with the Help to Buy Equity Loan Provider (save where Homes England confirms in writing that any such person qualifies as an Eligible Purchaser); and
- (e) who does not (or will not at the point of purchase of the Eligible Dwelling) possess an interest in any other dwelling;

Equity Loan Products means any equity loan scheme funded or promoted by Homes England to assist potential buyers to acquire a home, including Help to Buy Equity Loans;

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

Exit Plan means the exit plan prepared and implemented in accordance with the requirements of Clause 13.3;

Fees means both the Standard Fee and the Transaction Fee payable in accordance with the provisions of Schedule 10;

Final Mobilisation Plan means the plan prepared by the Help to Buy Agent and approved in writing by Homes England which details the actions the Help to Buy Agent will take during the Mobilisation Period, agreed between the parties in accordance with clause 2.4.1;

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

FOIA Exemption means any applicable exemption to the FOIA;

Full Purchase Price means the full selling price of each property (which is to be set by the Help to Buy Equity Loan Provider but which must be equal to the Market Value of the relevant property);

Geographic Service Area means a geographical area prescribed by Homes England from time to time in which a Help to Buy Agent shall deliver the Services in the relevant lot as more particularly described in Schedule 11;

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

and/or the Regulator performing a similar role and to a standard no less than that maintained by the Help to Buy Agent in respect of its own leaseholders (if applicable);

Grant Recipient means an organisation in receipt of grant under Section 19 of the Housing and Regeneration Act 2008 or Section 18 or 27a of the Housing Act 1996;

Group Company means any company of which the Help to Buy Agent is a Subsidiary or which has the same Associate(s) where Subsidiary and Associate have the meanings given to them by Sections 60 and 61 in the Housing Act 1996 and Group shall be construed accordingly;

Handover Period shall mean such period reasonably specified by Homes England in order to facilitate any handover or winding down of the services and which shall, save where otherwise agreed between the parties, be no longer than six (6) months prior to the expiry or termination of this Agreement;

Help to Buy Agent Equipment means the hardware, computer and telecoms devices and equipment supplied by the Help to Buy Agent or its sub-contractors (but not hired, leased or loaned from Homes England) for the provision of the Services;

Help to Buy Agent Personnel means all directors, officers, employees, agents, consultants and contractors of the Help to Buy Agent and/or of any sub-contractor engaged in the performance of its obligations under this Contract;

Help to Buy Agent's Proposals means the proposals and/or commitments made by the Help to Buy Agent in its response to Homes England's SQ and/or ITT;

Help to Buy Agent System means the information and communications technology system used by the Help to Buy Agent in performing the Services including the Help to Buy Agent Equipment and related cabling (but excluding Homes England System);

Help to Buy Equity Loan and Help to Buy Equity Loan Scheme means the government home ownership initiative of the same name as described in the Help to Buy Equity Loan Participation Guidance published by Homes England on 25 March 2013;

Help to Buy Equity Loan Provider means a provider who has entered into an administration agreement with Homes England to enable the provision of Help to Buy Equity Loans to Eligible Purchasers;

HOLD means home ownership for people with long term disabilities, funded under Shared Ownership to enable Qualifying Applicants to purchase a property suitable to their needs on shared ownership terms on the open market;

Homes England Contribution means in relation to Help to Buy Equity Loan Homes England's contribution in value for between 10% (ten per cent) and 20% (twenty per cent) of the Market Value of the property;

Homes England Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- i supplied to the Help to Buy Agent by or on behalf of Homes England; or
 - ii which the Help to Buy Agent is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which Homes England is the Data Controller;

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

ICT Environment means Homes England System and the Help to Buy Agent System;

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

Incident Report means the report to be provided using the template in Appendix 1 of this Agreement by the Help to Buy Agent following every Business Continuity and Disaster Recovery Event that occurs;

Information means:

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

Intellectual Property Rights shall include without limitation all and any rights in and to, and any interests in, any patents, trade marks, service marks, registered designs, utility models, design rights, copyright (including copyright in computer software), database rights, inventions, trade secrets and other confidential information, know-how, business or trade names (including internet domain names and e-mail address names) and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights;

ITT means the Invitation to Tender issued to potential service providers by Homes England on 20 August 2019;

ITT Response means the response to the ITT submitted by the Help to Buy Agent and appended as Appendix 2 to this Agreement and which forms part of this Agreement, save that in the event of conflict between the ITT Response and the terms of the rest of the Agreement, the terms of the rest of the Agreement shall prevail;

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

Key Performance Indicators or KPI means the performance indicators listed Appendix 1 of Schedule 2;

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

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

Market Value means the best price reasonably obtainable in the open market for the relevant property (disregarding the availability of Help to Buy Equity Loan as applicable);

Material Default means the breach by the Help to Buy Agent of any of its obligations under, or incorporated by reference into, this Agreement which breach is, in the reasonable opinion of Homes England, material and includes but is not limited to a Critical Service Failure as defined in Schedule 2;

MHCLG means the Ministry of Housing, Communities and Local Government and shall include any successor or replacement governmental department or any governmental department performing a similar role to the MHCLG;

Mobilisation Period means the period from and including the Commencement Date until and including 29 February 2020;

Month means a calendar month;

Mortgage Administrator means any agent appointed by Homes England to administer their Equity Loan Products and whom Homes England have confirmed in writing will fulfil the role of Mortgage Administrator in relation to this Agreement **provided always that** Homes England may itself fulfil the role of Mortgage Administrator where none has been appointed;

Mortgage Administrator Key Document Pack means a collated pack of documents to be provided by the Help to Buy Agent to the Mortgage Administrator pursuant to Paragraph 4.15.6 of the Specification which shall contain in relation to the relevant Qualifying Applicant:

- (a) the Property Information Form;
- (b) the Authority to Proceed;
- (c) Copy Confirmation to Developer;
- (d) Completed and dated Help to Buy Equity Loan document; and
- (e) Official copy of the registered title to the relevant Eligible Unit.

Mortgage Offer means a Qualifying Applicant's mortgage offer in relation to the Eligible Dwelling;

Mystery Shopping means the use of individuals (whether Homes England employees or independent persons) whose task is to experience and measure compliance by the Help to Buy Agent with this Agreement or the customer service provided by the Help to Buy Agent, by acting as potential Help to Buy customers/actual Help to Buy customers and reporting back on their experiences to Homes England;

New Provider shall mean a New Provider as defined in clause 12.4;

Nil Grant Scheme means a scheme provided by a Grant Recipient consisting only of Nil Grant Units;

Nil Grant Unit means a property developed without the assistance of grant from Homes England which Homes England has confirmed constitutes a nil grant unit;

Older Persons Shared Ownership means the Shared Ownership product made available to older persons in accordance with the requirements of the AHCFG.

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

Outgoing Providers means Orbit Housing Association and Aldwyck Housing Group Limited;

Performance Monitoring means the procedure for monitoring compliance with the specification described in Part 2 of Schedule 2;

Performance Report means the report prepared by the Help to Buy Agent every month in accordance with Part 2 of Schedule 2 as part of the Performance Monitoring;

process/processed/processing has the meaning ascribed to the term in Section 3, Part 1 of the DPA;

Property Information Form or **PIF** means a notice served by the Qualifying Applicant in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

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;

Provisional Mobilisation Plan means the plan prepared by the Help to Buy Agent and included in the ITT Response which details the actions the Help to Buy Agent proposed to take during the Mobilisation Period;

Qualifying Applicant means an applicant who has been assessed by the Help to Buy Agent as eligible to purchase either a AHO product or an Equity Loan Product;

Qualifying Lender means an institution authorised by the Financial Conduct Authority to enter into a regulated mortgage contract as a lender;

Quarter means a rolling three (3) monthly period with the first Quarter commencing on the Commencement Date and the final Quarter ending on the expiry of this Agreement in accordance with clause 3;

Regulator means the Regulator of Social Housing or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

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

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

Resale means a second or subsequent sale of a property which is subject to a Shared Ownership Lease (including HOLD, Social HomeBuy, Older Persons Shared Ownership and any similar Help to Buy or HomeBuy product);

Required Consents means such consents, certificate, licence, approval, permission or otherwise the authorisation necessary for compliance with the Specification;

Revised Authority to Proceed means an Authority to Proceed issued pursuant to Paragraph 4.14.3 or 4.14.4 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph(s) of Specification B;

Security Plan means the Help to Buy Agent's security plan prepared pursuant to paragraph 2 of Schedule 6 (Security Requirements and Plan);

Security Policy means Homes England's security policy referred to in Schedule 6 (Security Requirements and Plan) and set out in Schedule 7 (Security Policy);

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

Service Improvement Plan means the service improvement plan in respect of the Services (as amended from time to time) which is produced by Homes England and shared with the Help to Buy Agent pursuant to Clause 5.4 which contains actions to be adopted as part of the service improvement for the delivery of the Services;

Shared Ownership means a property disposed of on a Shared Ownership Lease (which term shall include any Shared Ownership Leases referred to as NewBuild Help to Buy leases);

Shared Ownership Lease means a lease that meets the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977 and contains the fundamental clauses specified in the Affordable Housing Capital Funding Guide;

Social HomeBuy means a grant funded scheme promoted by Homes England and Local Authorities enabling Qualifying Applicants to purchase a rented property with the benefit of a discount on a Social HomeBuy Lease or outright purchase basis;

Social HomeBuy Lease means a lease that meets the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977 and contains the fundamental clauses specified in the Affordable Housing Capital Funding Guide;

Solicitor's Form 1 means the pro forma document headed Solicitor's Form 1 set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Solicitor's Form 2 means the pro forma document headed Solicitor's Form 2 set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Solicitor's Information Pack means a pack to be provided by the Help to Buy Agent to the Qualifying Applicant's conveyancer in order to administer the Help to Buy Equity Loan Scheme in such form as Homes England shall make available from time to time in relation to the Help to Buy Equity Loan Scheme;

Special Changes means those changes amendments and modifications made to this Agreement under the provisions of Schedule 12;

Specification means (until the Specification Transition Date) Specification A or (from and including Specification Transition Date) Specification B;

Specification A means the specification set out in Schedule 1A;

Specification B means the specification set out in Schedule 1B;

Specification Transition Date means the date on which Specification A ceases to apply and Specification B takes effect;

SQ means the Selection Questionnaire issued to prospective bidders by Homes England on 3 June 2019;

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

Staff Vetting Procedures means the series of checks made by the Help to Buy Agent on all Help to Buy Agent Personnel;

Stakeholders means the Regional Assembly and the Mayor of London (or any successor bodies or organisations) in the Geographic Service Area (where applicable);

Standard Documents means the standard pack of documents, forms and letters issued by Homes England to the Help to Buy Agent including instructions as regards the appropriate manner of and time for use as updated or amended by Homes England from time to time;

Standard Fee means (subject to paragraph 4 of Schedule 10) three hundred and forty-seven thousand one hundred and ninety pounds (£347,190) payable in accordance with Paragraph 2 of Schedule 10 in respect of the Services;

Statutory Requirements means the requirements of any Applicable Law or (but only to the extent that observance of any of the following by the Help to Buy Agent is mandatory as a result of a general rule of law or necessary in order that the Help to Buy Agent complies with its obligations under this Agreement) of any requirement, demand, guideline, policy, code of practice, rule, decision or determination of any competent authority (meaning any entity whose authority is or may be required for the compliance with all or part of the Specification or which otherwise has jurisdiction with regards to all or part of the Specification), whether now or hereafter in effect;

Sub-processor means any third Party appointed to process Personal Data on behalf of the Help to Buy Agent related to this Contract;

Term means either the Initial Term (as defined in clause 3) or any extension by Homes England pursuant to clause 3.2);

Third Party Questionnaire means the Homes England 3rd Party Information Security (Information Security) Questionnaire issued to the Help to Buy Agent under this Agreement as may be varied by Homes England from time to time;

Transaction Fee means s. 43

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time;

Valid Valuation means a survey or valuation report confirming the Market Value of the relevant property obtained in accordance with the requirements of the relevant qualifying applicant's mortgage lender provided such lender is a Qualifying Lender

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

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

Warning Notice means a notice served pursuant to clause 6.3;

Welcome Letter means a letter sent by the Help to Buy Agent as required by KPI 6 (Equity Loan Product and Process) in substantially the form set out in the Standard Documents or such other form (including electronic formats) as Homes England may from time to time reasonably require; and

Working Day means any day Monday to Friday (inclusive) excluding public holidays.

- 1.2 Words importing the singular meaning shall include the plural and vice versa and reference to any gender shall include all other genders.
- 1.3 All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which had been amended, extended, consolidated, or replaced by the same and shall include any orders, regulations or other delegated or subordinate legislation made under the relevant statute.
- 1.4 The headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- 1.5 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity.
- 1.6 Except where the context otherwise requires, references to clauses are references to clauses of this Agreement. A reference to a Section or a part of the Schedule or to a paragraph in a Part of the Schedule is, unless the context otherwise requires, a reference to a Section or a Part of the Schedule or to a paragraph of the Part of the Schedule to the Agreement in which the reference appears.
- 1.7 References to any agreement or document shall be deemed to include (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned from time to time (in each case in accordance with the terms of the relevant agreement or document or this Agreement).
- 1.8 Any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any permitted successor to that person or any person which has taken over the functions or responsibilities of that person.
- 1.9 In the case of any ambiguity or conflict the provisions in the main body of this Agreement shall take precedence over the provisions of any Part of the Schedule.

2 **Purpose**

- 2.1 The purpose of this Agreement is to govern the day-to-day working relationship between the Help to Buy Agent and Homes England. It also details agreed performance standards to be met by the Help to Buy Agent.
- 2.2 The Agreement is intended to cover the sale of all Equity Loan Products and the administration of all AHO Products (including Resales) in accordance with the Specification within the Geographic Service Area where such sale shall occur after the date hereof.

- 2.3 The Help to Buy Agent shall provide the Services from 2 January 2020 unless otherwise agreed with Homes England in writing. Homes England shall act reasonably in considering any request made by the Help to Buy Agent to delay the Services start date in order to allow the Help to Buy Agent sufficient time to mobilise in accordance with the Final Mobilisation Plan. The Parties agree that the Services start date shall be no later than the last day of the Mobilisation Period.
- 2.4 The parties shall co-operate in good faith to ensure that:
- 2.4.1 the Final Mobilisation Plan acceptable to Homes England is agreed by the parties as soon as reasonably practicable and in any event by 23 December 2019; and
- 2.4.2 following the agreement of the Final Mobilisation Plan pursuant to clause 2.4.1, the Final Mobilisation Plan is implemented with all necessary speed and in a manner that will ensure the Help to Buy Agent is ready to commence providing the Services with effect from 2 January 2020
- 2.5 The reasonable costs of preparing and implementing the Final Mobilisation Plan shall be borne by the Help to Buy Agent.

3 **Term**

- 3.1 This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Agreement shall continue in force until 31 March 2021 (the **Initial Term**).
- 3.2 Homes England (at its sole discretion) may extend the Initial Term by a further period or periods not exceeding in total a further three (3) years by giving the Help to Buy Agent reasonable (in Homes England's opinion) written notice prior to the expiry of the Initial Term or any extension to the term. The parties acknowledge that Homes England's aspiration is to give a minimum of three (3) months' notice but this may not be possible and therefore any shorter notice shall be valid and have full force and effect. Any extension pursuant to this clause 3.2 shall be for a minimum period of six (6) months and the overall term of this Agreement shall not in any event be extended beyond 30 September 2024. The Help to Buy Agent agrees that nothing in this Agreement shall oblige Homes England to extend the Agreement following the expiry of either the Initial Term or any individual extension period.
- 3.3 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:
- 3.3.1 the end of the Initial Term; or
- 3.3.2 if Homes England elects to extend the Initial Term, the end of any extension period provided further notice of extension has not been served pursuant to clause 3.2.

4 **Authorised representatives and contacts**

- 4.1 Not later than the date hereof:

- 4.1.1 Homes England shall produce to the Help to Buy Agent details of its Authorised Representative and other nominated staff who will deal with the Help to Buy Agent for the purposes of day-to-day operation of this Agreement; and
- 4.1.2 the Help to Buy Agent shall produce to Homes England details of its Authorised Representative and other nominated staff who will deal with Homes England for the purposes of day-to-day operation of this Agreement.
- 4.2 Each party shall notify the other in advance of any appointment of a replacement for the Authorised Representative and the key personnel whose details are provided pursuant to clause 4.1.
- 5 The Help to Buy Agent's obligations**
- 5.1 The Help to Buy Agent shall with effect from the Commencement Date at all times comply with the Specification as required under this Agreement, in a manner consistent with the following:
- 5.1.1 to comply with the Specification and to perform the Help to Buy Agent's covenants and obligations contained in this Agreement in accordance with Good Industry Practice;
- 5.1.2 (without prejudice to the generality of clause 5.1.1) to implement the Final Mobilisation Plan during the Mobilisation Period
- 5.1.3 to comply with all Statutory Requirements, Applicable Standards (including for the avoidance of doubt the applicable requirements of the Affordable Housing Capital Funding Guide), the Benchmarking Standards any regulations relating to any AHO Schemes and/or Equity Loan Products issued from time to time by Homes England and all conditions of Required Consents which apply to the Specification (it being the responsibility of the Help to Buy Agent to obtain each Required Consent and to provide documentary evidence of such Required Consent to Homes England upon request) and procure so far as reasonably practicable that such Required Consents are capable of assignment or transfer to Homes England or its nominee;
- 5.1.4 to comply with the promises and commitments made by the Help to Buy Agent to Homes England in the Help to Buy Agent's Proposals;
- 5.1.5 (where the Estate Agents Act 1979 applies to the Help to Buy Agent's compliance with the Specification) to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to the extent such regulations apply; and
- 5.1.6 to comply with the provisions of the Consumer Credit Legislation and the Help to Buy Agent shall provide a copy of any required Financial Conduct Authority authorisation to Homes England within two (2) Working Days of receipt of a request.
- 5.2 Homes England shall give the Help to Buy Agent not less than three (3) months' written notice of the Specification Transition Date and such notice shall include the detailed content of Specification B.

- 5.3 The Help to Buy Agent shall indemnify and hold harmless Homes England against any liability which Homes England may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by Homes England to the extent that the same arises by reason of any breach of this Agreement or any tortious act or omission on the Help to Buy Agent's part (and/or any third party to whom the Help to Buy Agent has subcontracted the performance of some or all of the Help to Buy Agent's obligations under this Agreement) in the performance of the Help to Buy Agent's obligations under and in connection with this Agreement.
- 5.4 As part of their overall monitoring of the delivery of the Services, Homes England may produce a Service Improvement Plan. The plan will include detail of any reasonable requirements for improvements to be made to the manner or processes used for delivery of the Services and either party may suggest areas to be covered by any Service Improvement Plan.
- 5.5 Subject to clause 5.6, where a Service Improvement Plan is produced pursuant to Clause 5.4, the process in Schedule 15 shall be followed.
- 5.6 Where a Service Improvement Plan produced pursuant to Clause 5.4 requires that improvements be made or actions be taken under clause 6.2.2, the Help to Buy Agent (with the co-operation of Homes England where necessary) shall implement the Service Improvement Plan in accordance with its terms and for the avoidance of doubt the provisions of Schedule 15 shall have no application in respect of items in the Service Improvement Plan that result from the operation of clause 6.2.

6 **Monitoring and reporting**

6.1 The parties shall comply with the requirements of Schedule 2.

6.2 In addition to the provisions of Schedule 2,

6.2.1 the Help to Buy Agent shall:

- (a) permit Homes England (upon demand) to conduct assurance testing and perform audits of the Help to Buy Agent and as part of this give reasonable access to all relevant assets, including their systems and premises; and
- (b) ensure that it designs and delivers a continuous assurance plan which is compliant with the assurance requirements of Performance Monitoring and which assesses its performance against the requirements of this Agreement including but not limited to all information security requirements, compliance with the KPIs and PIs, overall conduct and quality of provision of customer services and that the outcomes of such strategy are made available to Homes England.

6.2.2 where Homes England determines improvements or actions required either as a result of Performance Monitoring, the assurance plan referred to in Clause 6.2.1(b) or from Homes England's testing of the Help to Buy Agent, the Help to Buy Agent will retain the responsibility to implement these.

6.3 Warning Notices

6.3.1 The occurrence of any of the following is a Default:

- (a) any Complaint or incident which either comes to the attention of Homes England or is recorded by the Help to Buy Agent pursuant to the Complaints Procedure which (in Homes England's reasonable opinion) is likely to have or have had a material and adverse impact on the Help to Buy Agent's performance of its obligations under this Agreement and which is not subsequently shown to be unfounded which shall include (inter alia): or
 - i any Complaint from a Grant Recipient or a Help to Buy Equity Loan Provider that a failure or failures by the Help to Buy Agent has materially and adversely impacted the sales and/or marketing of its properties, which is not subsequently shown to be unfounded;
- (b) any Complaint from a Grant Recipient/Help to Buy Equity Loan Provider (as applicable) that the Help to Buy Agent is persistently failing to either confirm an applicant's eligibility status or issue an Authority to Proceed within four (4) Working Days of receipt of either a properly completed application form or Property Information Form, which is not subsequently shown to be unfounded (and for the purposes of this paragraph 6.3.1(b)) the Help to Buy Agent shall be deemed to be persistently failing if they fail to meet the relevant Key Performance Indicator Target in any three (3) consecutive months;
- (c) Exchange or completion taking place in respect of any purchase by a Qualifying Applicant without the full procedure set out in paragraph 4 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B being followed;
- (d) (where the Help to Buy Agent is a Help to Buy Agent for more than one Geographic Service Area) the Help to Buy Agent commits a Default in relation to any other Help to Buy Agent Contract between the Help to Buy Agent and Homes England; or
- (e) Material PI Failure as defined in Schedule 2.

6.3.2 In the event a Default occurs, the Help to Buy Agent will be required to promptly report to Homes England on the nature and frequency of the Defaults and to identify the potential causes and solutions to reduce or remove the future occurrence of Defaults. For the avoidance of doubt Homes England can make suggestions and recommendations but has no power to require the Help to Buy Agent to carry out any action or implement any changes to working practices to minimise future Defaults.

6.3.3 If Homes England (acting reasonably) is not satisfied with the Help to Buy Agent's report submitted pursuant to Part 2 of Schedule 2 or, if at any time, a further Default occurs then Homes England shall be entitled to serve a Warning Notice on the Help to Buy Agent. For the avoidance of doubt, a Warning Notice shall only be served once in respect of any individual instance of a Default.

- 6.3.4 Any such notice shall state on its face that it is a Warning Notice, the incident(s) or Complaint(s) to which it relates and the circumstances giving rise to the issue of the Warning Notice and shall be signed by or on behalf of Homes England. In the event that any Warning Notice is subsequently revoked, such notice shall be treated as not having been issued for the purposes of clauses 10 and/or 11.3.1.

6.4 **Inspection and audit facilities**

- 6.4.1 The Help to Buy Agent shall as and when requested by Homes England, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement a copy of each of:

- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Help to Buy Agent and any Help to Buy Agent Personnel for the purposes of this Agreement; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the officers, employees, agents or consultants of the Help to Buy Agent and of any Help to Buy Agent Personnel relating to the Services and which have been supplied to the Help to Buy Agent, its and any Help to Buy Agent Personnel for the purposes of this Agreement.

- 6.4.2 The Help to Buy Agent shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by it in respect of the Services, and must procure that any Help to Buy Agent Personnel does likewise in respect of expenditure incurred by it in respect of the Services;
- (b) when required to do so by Homes England, provide a summary of any of the income and expenditure referred to in clause 6.4.2(a) as Homes England may require to enable it to monitor the performance by the Help to Buy Agent of its obligations under this Agreement; and
- (c) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 6.4.

- 6.4.3 The Help to Buy Agent shall ensure that it and any Sub-contractor keeps on an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Services which identify items of revenue received and expenditure incurred in relation to the same.

- 6.4.4 On the expiry of this Agreement or (if earlier) upon its termination, and for a period of three (3) years following expiry or termination, the Help to Buy Agent shall if requested to do so, deliver up to Homes England all the data, materials, documents and accounts referred to in this clause 6.4 which it has in its possession, custody or control and shall procure the delivery by any Sub-contractor to Homes England of the data, materials, documents and accounts

referred to in this Condition 6.4 held by them or as otherwise directed by Homes England.

6.4.5 Compliance with this clause 6.4 shall require the Help to Buy Agent to keep books of account in accordance with best accountancy practice with respect to the Services showing in detail:

- (a) full particulars of the costs of performing the Services;
- (b) a summary of the costs referred to in clause 6.4.2, including details of any funds held by Help to Buy Agent specifically to cover such costs;
- (c) administrative overheads where directly attributed or where apportioned on a pro rata basis;
- (d) a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- (e) such other records as Homes England may reasonably require having regard to the cost to Help to Buy Agent of maintaining and providing such records

and the Help to Buy Agent shall have the books of account evidencing the items listed in this clause 6.4.5 available for inspection by Homes England (and any person appointed pursuant to the Dispute Resolution Procedure to determine a dispute or otherwise authorised by Homes England) upon reasonable notice, and shall submit a report of these to Homes England as and when requested.

6.4.6 The Help to Buy Agent must for a period of ten (10) years from the expiry or termination of this Agreement (howsoever caused) or such period as is agreed in writing between the parties from time to time retain all of the data, documents, materials and accounts referred to in this clause 6.4 and the Help to Buy Agent may retain such data, documents, materials and accounts in electronic form only.

6.5 **Audit Right**

6.5.1 Homes England, its duly authorised agents and identified representatives and staff and agents of the National Audit Office, the Ministry for Housing, Communities and Local Government, the European Court of Auditors and the European Commission and any other duly authorised agents or representatives of Homes England (the **Auditors**) may conduct audits (**Audits**) of the Help to Buy Agent as and when reasonably required for the following purposes in connection with this Agreement:

- (a) to verify the accuracy of the Fees;
- (b) to review the integrity, confidentiality and security of Homes England data;
- (c) to review the Help to Buy Agent's compliance with the Data Protection Legislation and any Applicable Laws;

- (d) to review the Help to Buy Agent's compliance with its obligations under this Agreement;
- (e) to review any books of account and all transaction records and documents kept by the Help to Buy Agent in connection with the provision of the Services;
- (f) to verify the accuracy and completeness of any information delivered or required by this Agreement;
- (g) to verify the Help to Buy Agent's compliance with this Agreement and applicable Law;
 - i to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances Homes England shall have no obligation to inform the Help to Buy Agent of the purpose or objective of its investigations;
 - ii to identify or investigate any circumstances which may impact upon the financial stability of the Help to Buy Agent's ability to perform the Services;
 - iii to review any books of account and the internal contract management accounts kept by the Help to Buy Agent in connection with this Agreement;
 - iv to carry out Homes England's internal and statutory audits and to prepare, examine and/or certify Homes England's annual and interim reports and accounts;
 - v to review any Performance Reports and/or other records relating to the Help to Buy Agent's performance of the Services and to verify that these reflect the Help to Buy Agent's own internal reports and records;
 - vi to inspect the Help to Buy Agent System (or any part of it) and the wider service delivery environment (or any part of it) dedicated to the Services;
 - vii to review any records created during the design and development of the Help to Buy Agent System;
 - viii to review the Help to Buy Agent's quality management systems;
 - ix to review the Help to Buy Agent's compliance with the Key Performance Indicators; and
 - x to review the integrity, confidentiality and security of Homes England Data.

6.5.2 Homes England shall during each Audit comply with those security, sites, systems and facilities operating procedures of the Help to Buy Agent that Homes England deems reasonable and use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Help to Buy Agent or delay the provision of the Services.

- 6.5.3 The Help to Buy Agent shall provide on demand such access to Homes England and the Auditors with all reasonable co-operation and assistance and facilities as the Auditors may reasonably require to visit any place where the records maintained under this clause 6 are held and to examine such records, and shall permit such records to be examined and copied by the Auditors (and shall procure such co-operation and assistance from its subcontractors) in relation to each Audit, including:
- (a) all information requested by Homes England within the permitted scope of the Audit;
 - (b) reasonable access to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Help to Buy Agent System; and
 - (d) access to Help to Buy Agent Personnel.
- 6.5.4 The Help to Buy Agent shall permit the Auditors and their agents, representatives and employees to interview its employees to obtain appropriate information and oral explanations of documents and information provided that the Auditors shall where it is reasonable to do so take account of the Help to Buy Agent's reasonable requirements concerning the conduct of any such interviews.
- 6.5.5 The Help to Buy Agent shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Help to Buy Agent's performance of the Services against the Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators.
- 6.5.6 Homes England shall share its plans for the timing of Audits and use its reasonable endeavours to seek co-ordination between the Auditors so as to limit the administrative burden placed on the Help to Buy Agent.
- 6.5.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their' obligations under this clause 6.5, unless the Audit identifies a Material Default by the Help to Buy Agent in which case the Help to Buy Agent shall reimburse Homes England for all Homes England's reasonable costs incurred in connection with the Audit.
- 6.5.8 Save in the circumstances detailed in clause 6.5.9, Homes England shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an Audit.
- 6.5.9 Homes England shall be permitted (using appropriately authorised personnel) immediate access to the records set out in clause 6.4.1, the Help to Buy Agent's personnel and any premises (or part of any premises) where the Help to Buy Agent provides the Services to carry out investigations and Audits in the following circumstances:
- (a) suspected fraud;

- (b) where Homes England has reasonable grounds to suspect that the Help to Buy Agent has committed a breach of this Agreement or a fraudulent act or where an Audit is required by a Regulatory Body; and
- (c) circumstances have arisen that may permit Homes England to terminate all or part of this Agreement.

6.5.10 If an Audit identifies that:

- (a) the Help to Buy Agent has committed a Default, the procedure set out in clauses 6.3.2 to 6.3.4 shall apply;
- (b) there is an error in any information reported by the Help to Buy Agent to Homes England under this Agreement, the Help to Buy Agent shall promptly rectify the error;
- (c) Homes England has overpaid any Fees, the Help to Buy Agent shall pay to Homes England the amount overpaid within thirty (30) Working Days of Homes England confirming the outcome of the Audit to the Help to Buy Agent. Homes England may deduct the relevant amount from the Fees if the Help to Buy Agent fails to make this payment;
- (d) Homes England has underpaid any Fees, Homes England shall pay to the Help to Buy Agent the amount of the underpayment less the cost of Audit incurred by Homes England if this was due to a Default by the Help to Buy Agent in relation to invoicing within thirty (30) Working Days of Homes England confirming the outcome of the Audit to the Help to Buy Agent.

6.5.11 The provisions of this clause 6.5 shall survive the expiry or termination of this Agreement for a period of twelve (12) months.

7 Co-operation of Grant Recipient

- 7.1 For all AHO Schemes, the Help to Buy Agent shall enter into a Data Protection Declaration with each Grant Recipient in the Geographic Service Area.
- 7.2 The Help to Buy Agent shall enter into a Data Protection Declaration with each Help to Buy Equity Loan Provider in the Geographic Service Area prior to marketing and administering applications for such provider's Help to Buy Equity Loan Schemes.
- 7.3 The Help to Buy Agent shall confirm as part of the Performance Report (submitted in accordance with Part 2 of Schedule 2) the details of all of the Grant Recipients and/or Help to Buy Equity Loan Providers who have signed a Data Protection Declaration pursuant to clause 7.1 and/or 7.2 during the preceding month and shall supply a copy of any of the Data Protection Declarations or variations and extensions it enters into with Grant Recipients and/or Help to Buy Equity Loan Providers to Homes England within four (4) Working Days of receipt of a reasonable request.

8 Information and confidentiality

8.1 Freedom of Information

- 8.1.1 The Help to Buy Agent acknowledges that Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.
- 8.1.2 Homes England shall be responsible for determining in its absolute discretion whether:
- (a) any Information is Exempted Information or remains Exempted Information; or
 - (b) any Information is to be disclosed in response to a Request for Information,
- and in no event shall the Help to Buy Agent respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England.
- 8.1.3 Subject to clause 8.1.4 below, the Help to Buy Agent acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:
- (a) without consulting the Help to Buy Agent; or
 - (b) following consultation with the Help to Buy Agent and having taken (or not taken, as the case may be) its views into account.
- 8.1.4 Without in any way limiting clauses 8.1.2 and 8.1.3, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Help to Buy Agent.
- 8.1.5 The Help to Buy Agent will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its disclosure requirements under the FOIA and the EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:
- (a) transfer any Request for Information received by the Help to Buy Agent to Homes England as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England;
 - (c) provide Homes England with any data or information in its possession or power in the form that Homes England requires within five (5) Working Days (or such other period as Homes England may specify) of Homes England requesting that Information;

(d) permit Homes England to inspect such as requested from time to time.

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

8.1.7 To the extent that the Help to Buy Agent becomes an Authority subject to the FOIA and the EIR during the course of the Agreement, this clause 8.1 will apply mutatis mutandis to both parties.

8.2 Confidentiality

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

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

8.2.3 The obligations of confidence referred to in clause 8.2.2 shall not apply to any Confidential Information which:

- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
- (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to the Confidential Information of the other party.

8.2.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:

- (a) to enable the disclosing party to perform its obligations under this Agreement; or
- (b) by any Applicable Laws or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA, the EIR or the Code of Practice on Access to Government Information and the Help to Buy Agent acknowledges that any lists or schedules provided by it outlining

Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such confidential information; or

- (c) by any Regulatory Body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- (d) in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

8.2.5 The Help to Buy Agent shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:

- (a) is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
- (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
- (c) where it is considered necessary in the opinion of Homes England the Help to Buy Agent shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

8.2.6 Nothing in this clause 8.2 shall prevent Homes England:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources;
- (b) disclosing any Confidential Information obtained from the Help to Buy Agent:
 - i to any other department, office or agency of the Crown; or
 - ii to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
 - iv to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement;

- (c) provided that in disclosing information under clauses 8.2.6(b)i or 8.2.6(b)ii Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

8.2.7 Nothing in this clause 8.2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

8.2.8 The obligations in this clause 8.2 will survive the expiry or termination of this Agreement for a period of three (3) 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.

8.3 **Transparency**

8.3.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Help to Buy Agent hereby consents for Homes England to publish the Agreement to the general public in its entirety (but with any information, which is exempt from disclosure in accordance with the provisions of the FOIA, redacted), including from time to time agreed changes to the contract.

8.3.2 Homes England shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:

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

8.3.3 The Help to Buy Agent shall assist and co-operate with Homes England to enable Homes England to publish this Agreement.

9 **Fees**

9.1 The parties shall comply with the provisions of Schedule 10.

10 **Suspension of Services**

Performance Issues

10.1 Following the occurrence of a Default as described in clause 6.3 Homes England may notify some or all of the Grant Recipients and/or Help to Buy Equity Loan Providers operating in the Geographic Service Area (the **Relevant Counterparties**) that they shall be permitted to refer applicants and Qualifying Applicants to a specified alternate Help to Buy Agent (the

Alternate Help to Buy Agent) until further notice (the **Alternate Help to Buy Agent Period**). Homes England shall send a copy of such notice to the Help to Buy Agent.

10.2 Within one (1) month (or such longer period as Homes England shall specify) of service of the notice under clause 10.1 Homes England shall review the decision and provided either:

- (a) Homes England (acting reasonably) is satisfied that the Help to Buy Agent has not incurred a further Default under clause 6.3; or
- (b) the Help to Buy Agent has demonstrated to Homes England's reasonable satisfaction that it has identified and (where appropriate) implemented the causes and solutions to reduce or remove the future occurrence of such Defaults;

then Homes England shall forthwith notify the Relevant Counterparties that the Alternate Help to Buy Agent Period shall be terminated and that from the date of receipt of such notification only such Relevant Counterparties shall only refer applicants to the Help to Buy Agent.

10.3 In the event that following the first review under clause 10.2, Homes England is not satisfied that either clause 10.2(a) or 10.2(b) apply, further performance reviews shall be carried out at monthly intervals in accordance with the procedure set out in clause 10.2 until Homes England (acting reasonably) concludes that either clause 10.2(a) or 10.2(b) have been complied with.

10.4 For the avoidance of doubt any exercise by Homes England of its rights under this clause 10 does not in any way impact on Homes England's ability to follow the procedure set out in clause 6.3 in respect of any Default.

10.5 If, during the Alternate Help to Buy Agent Period, any applicant referred to the Alternate Help to Buy Agency by a Relevant Grant Recipient proceeds to purchase a property under the Help to Buy Equity Loan Scheme, the Alternate Help to Buy Agent shall be entitled to process such application in accordance with the Specification and claim the Transaction Fee in relation to such purchase. For the avoidance of doubt, where the Alternate Help to Buy Agent is entitled to claim a fee under this clause 10.5, the Help to Buy Agent shall not be entitled to the Transaction Fee for such transaction.

11 **Termination of this Agreement**

11.1 Homes England may at any time by notice terminate this Agreement as from the date of service of such notice if a Material Default has occurred and Homes England has determined to terminate this Agreement in accordance with clause 11.2.

11.2 If Material Default has occurred and:

11.2.1 such Material Default is capable of remedy and the Help to Buy Agent shall have failed to remedy the Material Default within a reasonable period specified by Homes England in a notice to the Help to Buy Agent specifying the Material Default and requiring its remedy; or

11.2.2 such Material Default is not capable of remedy,

then Homes England may terminate this Agreement forthwith by notice to the Help to Buy Agent.

11.3 Homes England may terminate this Agreement on (in the case of clause 11.3.1) three (3) months' notice or (in the cases of clauses 11.3.2 to 11.3.6) forthwith by notice to the Help to Buy Agent if:

11.3.1 the Help to Buy Agent is in receipt of two valid Warning Notices under clause 6 in any rolling twelve (12) month period provided, in each case, that neither of the Warning Notices:

- (a) has been subsequently revoked or determined to be invalid; or
- (b) is the subject of a dispute pursuant to the terms of clause 14; or

11.3.2 the Help to Buy Agent has offered or given or agreed to give to any employee or representative of Homes England or the Crown any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining of this or any other contract with Homes England or for showing or refraining from showing favour or disfavour to any person in relation to this contract or who or appears to have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or

11.3.3 the Help to Buy Agent transfers or assigns this Agreement in contravention of clause 18.1; or

11.3.4 any of the following occurs in relation to the Help to Buy Agent:

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or
- (a) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities); a moratorium is declared in respect of any indebtedness and/or any moratorium pursuant to Section 145 of the HRA 2008; or
- (b) any legal proceedings or other procedure or step is taken in relation to:
 - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed); or
 - ii a composition, compromise, assignment or arrangement with any of its creditors; or
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by Homes England, such

approval not to be unreasonably withheld or delayed), receiver, administrative receiver, housing administrator, administrator, compulsory manager or other similar officer; or

- iv enforcement of any Security over any of its assets; or
- v any analogous procedure or step is taken in any jurisdiction; or

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Working Days of commencement; or

11.3.5 a Change in Control takes place; or

11.3.6 the Alternate Help to Buy Agent Period continues for a period of six (6) months or more.

11.4 Homes England may terminate this Agreement at any time after the Initial Term on not less than six (6) months' written notice to the Help to Buy Agent.

12 **Consequences of Specification Transition and/or expiry/termination**

12.1 Homes England and the Help to Buy Agent agree that there are no individuals employed by the Help to Buy Agent whose contracts of employment will, by virtue of the move from Specification A to Specification B on the Specification Transition Date transfer to Homes England in accordance with TUPE.

12.2 If it is subsequently agreed or determined that there are persons employed by the Help to Buy Agent or any existing third party service provider to the Help to Buy Agent whose contracts of employment do have effect after the Specification Transition Date as if originally made between those persons and Homes England (the **Transferring IT Staff**) then:

12.2.1 the Help to Buy Agent shall within twenty (20) Working Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Help to Buy Agent to some or all of the Transferring IT Staff;

12.2.2 Homes England shall procure that no person to whom a position has been offered in accordance with paragraph 12.2.1 shall be dismissed by reason of redundancy until the period for acceptance of the offer has expired and the person in question has not accepted the offer;

12.2.3 subject to paragraph 12.2.1 and paragraph 12.2.2, Homes England shall be entitled to dismiss any or all of the Transferring IT Staff by reason of redundancy; and

12.2.4 provided that Homes England complies with its obligations under paragraph 12.2.2 any IT Employee Costs reasonably incurred by Homes England shall be indemnified by the Help to Buy Agent. The Help to Buy Agent shall also indemnify Homes England against any loss reasonably incurred by Homes England where such loss arises as a result of any act, fault or omission of the Help to Buy Agent occurring prior to the Specification Transition Date and

relating to claims made against Homes England by any IT Transferring Staff including any cost or liability arising from a claim that Homes England could not lawfully terminate employment by reason of redundancy.

12.3 **IT Employee Costs** means:

- 12.3.1 the costs incurred by Homes England associated with employing any Transferring IT Staff from the Specification Transition Date to earlier of:
- i the date of dismissal by Homes England by reason of redundancy under clause 12.2.3; or
 - ii forty five (45) Working Days from the Specification Transition Date; and
- 12.3.2 any redundancy payment, notice pay or payment in lieu of notice, and any accrued but untaken holiday entitlements and any award due to any Transferring IT Staff and which are required by Legislation or by contract to be made to such Transferring IT Staff and which arise as a result of their dismissal by reason of redundancy under paragraph 12.2.3 where notice is given within two (2) months of the Specification Transition Date as defined in Part 1 of Schedule 1.

12.4 During the six (6) months preceding the expiry of this Agreement or after Homes England has given notice of termination of this Agreement and/or during any Handover Period the Help to Buy Agent shall at its own expense and use its best endeavours to provide such information as may reasonably be required by any alternative provider or Homes England to assist the transfer of the obligations under this Agreement to an alternative provider or providers (a **New Provider**) or the winding down of the AHO Scheme(s) to which this Agreement relates; and

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

- (a) all material facts and matters relating to or concerning the employment of any of the Staff or former Staff including but not limited to their respective ages length of service notice periods all terms and conditions of employment benefits policies or other agreements or arrangements or understandings in respect of each of them and any variation thereto agreed with or imposed upon any of the Staff or former Staff within a period of six (6) months preceding the date of termination or expiry;
- (b) all material facts and matters relating to all or any collective agreements, arrangements or other understanding which the Help to Buy Agent or its agents has with any trade union, staff association or other body representing any of the Staff;
- (c) full details of any representations or statements (whether oral, written or otherwise) made by the Help to Buy Agent or the Agents to any of the Staff or former Staff (or their unions or other representatives) in any way connected with or concerning employment with a New Provider including where applicable Homes England;

(d) all material facts and matters and written records relating to or concerning all or any obligations arising from the Working Time Directive (93/104) including providing to Homes England all and any records relating to the hours worked by every member of Staff.

12.6 Homes England shall provide the Help to Buy Agent with any information that it receives from any New Provider that the Help to Buy Agent requires to comply with its obligations under the Transfer Regulations.

12.7 With effect from the termination or expiry of this Agreement the Help to Buy Agent shall indemnify and keep indemnified Homes England against any claim liability expense or demand made by and on behalf of any member of Staff or former member of Staff or group of Staff or group of any former members of Staff which may be incurred by Homes England or any New Provider as a result of anything done or omitted to be done in breach of its obligations in relation to the employment of such Staff or former member of Staff by the Help to Buy Agent save and to the extent that such claim liability expense or demand would not have arisen except in consequence of a failure by Homes England or any New Provider to comply with regulation 13 of the Transfer Regulations.

12.8 The Help to Buy Agent shall indemnify and hold harmless Homes England against all claims, liabilities, costs and demands (including all expenses associated therewith howsoever arising) arising out of the inaccuracy of any information provided pursuant to clauses 12.4 and 12.5 above or arising out of such information being incomplete.

12.9 During the last six (6) months of either the Initial Term or any extension of this Agreement in accordance with clause 3.2, the Help to Buy Agent hereby undertakes not to make any amendments to the number of Staff employed in relation to complying with the Specification or the terms and conditions of employed Staff save for:

12.9.1 any reasonable salary increase;

12.9.2 any changes already agreed or indicated prior to Homes England's request referred to at clause 12.212.5 above (**provided that** such changes have been notified to Homes England at the time of Homes England's request pursuant to clause 12.5 above).

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

12.10 In the event that the Transfer Regulations apply with effect from the termination or expiry of this Agreement Homes England shall meet the Help to Buy Agent's costs of meeting any claim, liability, expense or demand made by and on behalf of any member of the transferring Staff provided that the Help to Buy Agent:

12.10.1 takes reasonable steps to mitigate any such costs;

12.10.2 keeps Homes England informed in relation to any such claim insofar as is reasonably practicable; and

12.10.3 does not settle any claim giving rise to such costs without the prior written consent of Homes England.

12.11 In the event that the Transfer Regulations apply with effect from the termination or expiry of this Agreement Homes England will take reasonable steps to liaise with the New Provider so that the New Provider provides the Help to Buy Agent with sufficient information to enable it to discharge its consultation obligations under Regulation 13 of the Transfer Regulations.

12.12 In the event of any claim or allegation arising out of or in connection with this clause 12, Homes England and the Help to Buy Agent shall upon written request by the other party, give such assistance or information relevant to such a claim or allegation as may reasonably be requested. Such assistance and/or information shall be given promptly.

13 **Exit management**

13.1 Forthwith upon the termination or expiry of this Agreement and during any Handover Period, the Help to Buy Agent shall make all information and assistance available to Homes England, as well as to any incoming provider, so as to:

13.1.1 maintain the continuity of service under this Agreement while alternative arrangements are put in place;

13.1.2 achieve to the extent reasonably possible a smooth transfer to the New Provider, the facilitate a smooth transfer of the Services and to

13.1.3 minimise any loss or disruption to the Services

provided that nothing in this clause shall oblige the Help to Buy Agent to make available information which the parties agree may be classified as commercially sensitive to any New Provider or to breach any Applicable Laws.

13.2 Upon termination or expiry of this Agreement:

13.2.1 the Help to Buy Agent shall have no further right to perform the Help to Buy Agent's role in complying with the Specification;

13.2.2 Homes England may elect for itself or the New Provider to acquire, in which case the Help to Buy Agent shall insofar as reasonably possible sell, or procure the sale of, any equipment or materials exclusively used in complying with the Specification (and not used by the Help to Buy Agent for any of its other activities) at their market value at a price agreed by the parties or determined under the Dispute Resolution Procedure;

13.2.3 The Help to Buy Agent shall assign to Homes England or if requested by Homes England the New Provider those Required Consents obtained by the Help to Buy Agent and capable of assignment;

13.2.4 The Help to Buy Agent shall deliver to Homes England all software, records, documentation and other data which are owned by Homes England) and (provided such action shall not breach any Applicable Laws) shall make copies available to Homes England or if requested by Homes England the New Provider

to the extent that any such software, records, documentation and other data are either subject to rights in favour of Homes England or relate to the compliance with the Specification by the Help to Buy Agent; and

13.2.5 The Help to Buy Agent shall follow such reasonable instructions issued by Homes England in relation to any website or consumer facing portal in order to achieve a smooth transition of or handling down of the Services.

13.3 Without prejudice to the generality of clauses 13.1 and 13.2, the parties agree that:

13.3.1 as soon as reasonably practicable after the commencement of the Handover Period and in any event within twenty (20) Working Days of such date, the Help to Buy Agent shall provide to Homes England in writing a draft Exit Plan setting out what information and assistance it proposes to provide to Homes England and to any incoming provider so as to either maintain continuity of service and achieve a smooth transfer to any New Provider or achieve smooth winding up of the Service;

13.3.2 the draft Exit Plan referred to in clause 13.3.1 shall include (but shall not be limited to) such matters as are set out in Schedule 13 and such other matters as may be notified to the Help to Buy Agent by Homes England;

13.3.3 at any time following the provision by the Help to Buy Agent of the draft Exit Plan, Homes England may by service of not less than seven (7) days' written notice require the Help to Buy Agent to attend one or more meetings with Homes England to discuss the draft Exit Plan and finalise the final details of the Exit Plan to ensure either the smooth transfer or winding down of the Services;

13.3.4 the parties shall co-operate in good faith to ensure that:

(a) an Exit Plan acceptable to Homes England is agreed by the parties as soon as reasonably practicable and in any event within twenty (20) Working Days of the issue of the draft Exit Plan pursuant to clause 13.3.1; and

(b) following the agreement of an Exit Plan pursuant to clause 13.3.4(a), the Exit Plan is implemented in accordance with its terms.

13.3.5 the reasonable costs of preparing and implementing the Exit Plan shall be borne by the Help to Buy Agent.

13.4 Within 20 Working Days after service by Homes England of a notice to terminate this Agreement the Help to Buy Agent will submit to Homes England for approval (not to be unreasonably withheld) a final detailed summary of the actions it intends to take to achieve an orderly transition of the Services to Homes England or to a New Provider ("an Early Termination Exit Plan) and this Early Termination Exit Plan will incorporate the matters contained in Schedule 13 hereto together with any others matters reasonably required by Homes England.

14 **Dispute Resolution**

- 14.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this clause 14.
- 14.1.1 In the event that the Help to Buy Agent or Homes England consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 14.
- 14.1.2 Representatives of the parties shall meet within five (5) Working Days (or such other longer period not exceeding twenty (20) Working Days as the parties may agree) of receipt of a Notice of Dispute. Homes England's representative at this stage of the process shall be its Director of Help to Buy.
- 14.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 14.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief financial officers (or nominated deputies) of the Help to Buy Agent and Homes England (the **CFOs**).
- 14.1.4 The CFOs shall meet within ten (10) Working Days (or such other longer period not exceeding twenty (20) Working Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the CFOs shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.
- 14.1.5 If the Dispute remains unresolved after ten (10) Working Days following referral to the CFOs, such Dispute must be dealt with in accordance with clause 14.2.
- 14.2 In the circumstances contemplated in clause 14.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:
- 14.2.1 to initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 14.2.2 the mediation shall start not later than twenty eight (28) days after the date of the ADR notice; and
- 14.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.
- 14.3 The fact that the parties are engaged in any part of the dispute resolution process described in this clause 14 shall not prevent Homes England from terminating this Agreement in accordance with its terms where such right to terminate has arisen.

15 Intellectual property rights

- 15.1 All legal and equitable right, title and interest in and to Intellectual Property Rights created or developed or otherwise arising in the course of or pursuant to the Services or otherwise in performance of the Agreement shall (except insofar as Homes England may otherwise agree in advance in writing) vest in Homes England, including (without limitation) any and all Intellectual Property Rights created or developed or otherwise arising in relation to the whole or any part of any physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and information in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents on its behalf. The Help to Buy Agent shall procure (at its own expense) such assignments of the said Intellectual Property Rights as may be necessary in order to enable the Help to Buy Agent to comply with its obligations under and to give effect to this clause 15.1.
- 15.2 The Help to Buy Agent hereby assigns (insofar as permissible by law) and agrees to assign by way of future assignment to Homes England all its right, title and interest in and to the Intellectual Property Rights created or developed or otherwise arising in the course of or pursuant to the Services or otherwise in performance of the Agreement (including, for the avoidance of doubt and without limitation, any and all Intellectual Property Rights created or developed or otherwise arising in relation to the whole or any part of any physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and information in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents on its behalf), and the Help to Buy Agent shall, until such time as any assignment of such Intellectual Property Rights is complete and effective, hold the legal title to them on trust for Homes England. The Help to Buy Agent further agrees that it shall take such steps as Homes England may reasonably request in writing to assist Homes England to register, maintain, defend, protect or enforce any of the aforesaid Intellectual Property Rights.
- 15.3 Without prejudice to the foregoing provisions of this clause 15, if and insofar as any Intellectual Property Rights which are subject to this clause 15 are owned by the Help to Buy Agent or its sub-contractors or agents (or any other third party), the Help to Buy Agent hereby grants and agrees to grant and to do all such acts and things at its own expense as may be necessary to procure the grant of a perpetual, royalty free, irrevocable licence to Homes England (with the right to grant sub-licences) to use such Intellectual Property Rights, including without limitation for the purpose of enabling a third party to deliver the Services or services which are broadly equivalent or similar to the Services.
- 15.4 Homes England hereby grants and agrees to grant to the Help to Buy Agent a royalty free licence to use any and all Intellectual Property Rights which are subject to this clause 15 for the sole purpose of supplying the Services and otherwise performing the Agreement.
- 15.5 At the expiry or earlier termination of this Agreement, the Help to Buy Agent shall forthwith at its expense:
- 15.5.1 deliver and transfer to Homes England, or whomsoever Homes England shall in writing direct, or at Homes England's option destroy or procure the destruction of and in the case of electronic documents cause or procure to be deleted permanently, any and all physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and

databases and records in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents in the course of or pursuant to the Services or otherwise in performance of the Agreement and which are in each case in the Help to Buy Agent's possession, custody or power;

15.5.2 deliver and transfer to Homes England all current and effective user names and passwords of URLs and websites and social media accounts and electronic media howsoever, which in each case are controlled by the Help to Buy Agent or its sub-contractors or agents and are solely or principally used in the course of or pursuant to the Services or otherwise in performance of the Agreement;

15.5.3 deliver and transfer and otherwise communicate to Homes England, or whomsoever Homes England shall in writing direct, in such format and on such physical or electronic media as Homes England may reasonably request, any and all information and/or data of any sort which is compiled or collected or created by the Help to Buy Agent or its sub-contractors or agents (including for the avoidance of doubt the information and documentation referred to in paragraph 5.8.6 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B) in the course of or pursuant to the Services or otherwise in performance of the Agreement perform (or procure the performance of) all such further acts and things, and sign, execute and deliver (or procure the signature, execution and delivery of) all such further documents, instruments and agreements as may be required by law or as Homes England may request to vest in Homes England the full benefit of this clause 15 including, without limitation, to vest in Homes England all right, title and interest in and to such Intellectual Property Rights as may be created or developed or otherwise arise in the course of or pursuant to the Services or otherwise in performance of the Agreement (except insofar as Homes England may otherwise agree in advance in writing);

15.5.4 at the reasonable request and expense of Homes England, to assist Homes England to register, maintain, defend, protect or enforce any and all Intellectual Property Rights which are subject to this clause 15, and to assist with any other proceedings which may be brought by or against Homes England against or by any third party relating to such Intellectual Property Rights.

15.6 The Help to Buy Agent shall indemnify Homes England in respect of any Loss or Damage Homes England may incur in the event that any Intellectual Property Rights assigned by this clause 15 are found to be invalid or impaired in any way or arising from any claim by any third party (whether by way of claim or counterclaim or otherwise, and whether or not meritorious) that the exercise of the rights assigned or licensed by this clause 15 infringes the rights of such third party.

15.7 Subject to any other provision within this clause 15, ownership of and title to all Intellectual Property Rights owned by the Help to Buy Agent that pre-date this Agreement and are not created or developed or do not otherwise arise in the course of or pursuant to the Services or otherwise in performance of the Agreement shall as between the Help to Buy Agent and Homes England remain with the Help to Buy Agent and Homes England shall not acquire any proprietary right, title or interest to the same.

16 **Business Continuity**

- 16.1 Within 40 Working Days from the date of this Agreement, the Help to Buy Agent shall prepare and deliver to Homes England for Homes England's written approval, a Business Continuity and Disaster Recovery Plan.
- 16.2 Throughout the Term, the Help to Buy Agent shall ensure that it holds a Business Continuity and Disaster Recovery Plan that it is able to implement at any time in accordance with its terms to ensure minimal levels of disruption to the delivery of the Services.
- 16.3 The Business Continuity and Disaster Recovery Plan should confirm the requirements including, but not limited to, disaster recovery plans, data integrity and security during Business Continuity and Disaster Recovery Events across all systems, timescales and points of contact for the Help to Buy Agent and Homes England for notification, incident management and escalation.
- 16.4 The Business Continuity and Disaster Recovery Plan should contain a business impact analysis detailing the impact of a Business Continuity and Disaster Recovery Event on the business processes and operations supporting the delivery of the Services.
- 16.5 The Help to Buy Agent shall for the duration of this Agreement ensure that any computer system, database or any other system in which any Data is held (together, Relevant Systems) will be covered by the Business Continuity and Disaster Recovery Plan (including but without limitation off site storage and data backup arrangements) in accordance with current best practice business standards, and in any case of a standard sufficient to allow Homes England access to any Relevant System as soon as reasonably practicable following the occurrence of any event interrupting the business of the Help to Buy Agent.
- 16.6 The Help to Buy Agent should comply with relevant international standards regarding business continuity (currently ISO22301). It shall make the Business Continuity and Disaster Recovery Plan available along with an associated testing schedule of business continuity related activities to Homes England upon request, and will retain the responsibility to implement improvements required by Homes England.
- 16.7 The Help to Buy Agent shall test the Business Continuity and Disaster Recovery Plan on a regular basis, and in any event at least once every twelve (12) months. The Help to Buy Agent shall give Homes England at least twenty (20) Working Days' notice of each test and allow Homes England to participate in those tests.
- 16.8 The Help to Buy Agent shall, within twenty (20) Working Days of the conclusion of each test, provide to Homes England a report in writing setting out:
- a) The outcome of the test;
 - b) any failures in the Business Continuity and Disaster Recovery Plan revealed by the test; and
 - c) the Help to Buy Agent's proposal for remedying any such failures
- 16.9 Following each test, the Help to Buy Agent shall take all measures reasonably requested by Homes England (including requests for the retesting of the Business Continuity and Disaster Recovery Plan within 90 days of the request for the retest) to remedy any failures in the Business Continuity and Disaster Recovery Plan. Such remedial activity shall be completed by the Help to Buy Agent by the date reasonably required by Homes England.

16.10 The Help to Buy Agent shall provide Homes England with an Incident Report within twenty (20) Working Days of each and every Business Continuity and Disaster Recovery Event.

17 **Agency**

17.1 Neither the Help to Buy Agent nor its personnel shall in any circumstances hold itself or themselves out as being the servant or agent of Homes England otherwise than in circumstances expressly permitted by this Agreement.

17.2 Neither the Help to Buy Agent nor its personnel shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of Homes England or in any other way to bind Homes England to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly permitted by this Agreement.

18 **Assignment and sub-contracting**

18.1 The Help to Buy Agent shall not be entitled to assign this Agreement, without the prior written consent of Homes England (such consent not to be unreasonably withheld or delayed in the case of a Group Company) and shall promptly give written notice of any assignment to Homes England.

18.2 The Help to Buy Agent shall only be permitted to employ subcontractors for the execution of any of the Help to Buy Agent's obligations hereunder with Homes England's prior consent (which shall not be unreasonably withheld or delayed in the case of a Group Company) and may only employ such subcontractors as are capable of providing services effectively on terms which enable the Help to Buy Agent to comply with the provisions of this Agreement. The Help to Buy Agent shall not be relieved of any of its obligations under this Agreement by any permitted subcontracting and shall at all times remain primarily liable for the acts and omissions of such subcontractors. If so requested, the Help to Buy Agent will promptly supply Homes England with a copy of any subcontracts.

19 **Human rights**

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

20 **Conflicts**

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

21 Notices

21.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, sent by facsimile, electronic mail or sent by the Recorded Delivery Service addressed in the case of either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses or to any fax numbers as either party may from time to time notify to the other in writing **provided that** such other address is within England and Wales.

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

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

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

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

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

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

22 Waiver

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

23 Concurrent remedies

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

24 Entire agreement

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

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

25 **Severance**

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

26 **No partnership etc.**

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make the Help to Buy Agent the agent of Homes England or authorise the Help to Buy Agent:

26.1 to incur any expenses on behalf of Homes England;

26.2 to enter into any engagement or make any representation or warranty on behalf of Homes England; or

26.3 to commit or bind Homes England in any way whatsoever,
without in each case obtaining Homes England's prior written consent.

27 **Announcement**

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

28 **Survival of this contract**

28.1 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.

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

29 **Good faith and third parties**

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

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

30 **Law**

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

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

31 **Data protection**

31.1 This clause 31 applies where the Help to Buy Agent is Processing Personal Data on behalf of Homes England and shall be of no effect where the Help to Buy Agent is acting as a Data Controller (including as Joint Controllers) under Data Protection Legislation, and for the avoidance of doubt nothing in this clause 31 shall operate so as to prevent or prohibit the Help to Buy Agent in complying with its own obligations as a Data Controller under the Data Protection Legislation to the extent such obligations arise in respect of the Personal Data, the parties hereby acknowledging that in their respective roles as Data Controllers, each party is independently required to comply with any lawful request to exercise a data subject right under the Data Protection Legislation.

31.2 Homes England and the Help to Buy Agent acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Data Controller and the Help to Buy Agent is the Data Processor. The only processing that the Help to Buy Agent is authorised undertake on behalf of Homes England is detailed in Schedule 9 and may not be determined by the Help to Buy Agent.

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

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

31.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

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

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

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

31.5 The Help to Buy Agent undertakes that to the extent that the Help to Buy Agent and/or any of its employees receives, has access to and/or is required to process Personal Data on

behalf of Homes England (**Homes England's Personal Data**) for the purpose of providing the Services, it will at all times comply with the provisions of the Data Protection Legislation.

31.6 The Help to Buy Agent shall not perform its obligations under this Contract in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation. The Help to Buy Agent shall notify Homes England immediately if it considers that any of Homes England's instructions infringe the Data Protection Legislation.

31.7 For the purposes of this Contract, where the Help to Buy Agent is Processing Homes England's Personal Data on behalf of Homes England, it shall:

31.7.1 at all material times have in place and maintain Protective Measures which are appropriate to protect against a Data Loss Event which Homes England may reasonably reject (but failure to reject shall not amount to approval by Homes England of the adequacy of the Protective Measures) having taken into account the:

- i nature of the data to be protected;
- ii harm that might result from a Data Loss Event;
- iii state of technological development; and
- iv cost of implementing any measures

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

31.7.3 only process Personal Data in accordance with Schedule 9 unless the Help to Buy Agent is required to do otherwise by any Applicable Law or any Regulatory Body. Where the Help to Buy Agent is relying on such requirements as the basis for processing Personal Data, the Help to Buy Agent shall promptly notify Homes England of this before performing the Processing unless such requirements prohibit the Help to Buy Agent from so notifying Homes England;

31.7.4 not engage a Sub-processor without:

- (a) prior written authorisation from Homes England and ensuring compliance with any conditions attached to that consent;
- (b) including obligations which give effect to the terms of this clause 31, in a written agreement with any Sub-processor engaged by the Help to Buy Agent to provide the Services to Homes England;
- (c) Provide Homes England with such information regarding the Sub-processor as Homes England may reasonably require.

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

- 31.7.5 allow Homes England (and or its designated auditors) to audit the Help to Buy Agent's compliance with the requirements of this clause 31 on reasonable notice and/or, at Homes England's request, provide Homes England with evidence of the Help to Buy Agent's compliance with the obligations within this clause 31.
- 31.8 The Help to Buy Agent undertakes not to disclose or transfer any of Homes England's Personal Data to any third party without the prior written consent of Homes England save that the Help to Buy Agent shall be entitled to disclose Homes England's Personal Data to Help to Buy Agent Personnel, any Equity Loan Providers, any government or regulatory body which is entitled by law to access such information and any third party that has entered into a Data Protection Declaration to whom such disclosure is reasonably necessary in order for the Help to Buy Agent to carry out the Services, or to the extent required under a court order subject always to compliance with clause 31.9.
- 31.9 In respect of the Help to Buy Agent Personnel, the Help to Buy Agent shall:
- 31.9.1 take reasonable steps to ensure the reliability and integrity of any Help to Buy Agent Personnel who have access to the Personal Data;
- 31.9.2 ensure that all Help to Buy Agent Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, have provided a confidentiality undertaking to the Help to Buy Agent or Sub-processor in relation to the same and comply with the obligations set out in this clause 31;
- 31.9.3 ensure that none of Help to Buy Agent Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Homes England or as otherwise permitted by this Contract;
- 31.9.4 ensure that the Help to Buy Agent Personnel have undertaken adequate training in the law relating to the use, care, protection and handling of Personal Data and are aware of their obligations and those of the Help to Buy Agent under the Data Protection Legislation and this Contract;
- 31.9.5 ensure that the Help to Buy Agent Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 9)
- 31.10 The Help to Buy Agent shall:
- 31.10.1 provide a written description of the technical and organisational methods employed by the Help to Buy Agent for processing Personal Data (within the timescales required by Homes England); and
- 31.10.2 not Process Personal Data outside the United Kingdom without the prior written consent of Homes England and, where Homes England consents to a transfer, to ensure:
- (a) the Help to Buy Agent has provided appropriate safeguards in relation to the transfer as determined by Homes England;
- (b) the Data Subject has enforceable rights and effective legal remedies in relation to such Personal Data;

- (c) the Help to Buy Agent complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Homes England in meeting its obligations); and
- (d) it complies with any reasonable instructions notified to it by Homes England in relation to the Processing of the Personal Data.

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

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

31.11.2 notify Homes England as soon as reasonably practicable without undue delay, and in any event within 24 hours if it:

- (a) receives:
 - i a Data Subject Request (or purported Data Subject Request);
 - ii a request to rectify, block or erase any Personal Data;
 - iii any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - iv any other Complaint, communication or request relating to Homes England's obligations under the Data Protection Legislation;
 - v a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Law,

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

31.12 Taking into account the nature of the processing, the Help to Buy Agent shall provide Homes England with full assistance in relation to either the Help to Buy Agent's or Homes England's obligations under Data Protection Legislation and any Complaint, communication or request made pursuant to clause 31.10 (and in so far as possible within the timescales reasonably required by Homes England) including by promptly providing Homes England:

31.12.1 with full details and copies of the Complaint, communication or request;

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

- 31.12.3 at its request, with any Personal Data it holds in relation to a Data Subject;
- 31.12.4 with such assistance as requested by Homes England:
- (a) following any Data Loss Event;
 - (b) with respect to any request from the Information Commissioner's Office, or any consultation by Homes England with the Information Commissioner's Office.
- 31.13 If the Help to Buy Agent becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to Homes England's Personal Data, or any other Data Loss Event, the Help to Buy Agent shall:
- 31.13.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 31.13.2 notify Homes England of the suspected incident and the findings of the Help to Buy Agent's initial investigation without undue delay after becoming aware of that event, and in any event within 24 hours of becoming so aware. The Help to Buy Agent shall take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England save as permitted by 31.13.4 or as required by law PROVIDED THAT the Help to Buy Agent shall not make a notification to the Information Commissioner or any affected Data Subjects
 - 31.13.3 fully co-operate with Homes England in the course of any investigation undertaken by Homes England and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and /or notification to any affected Data Subjects; and
 - 31.13.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 31.14 The Help to Buy Agent shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Help to Buy Agent employs fewer than 250 staff, unless Homes England determines that the processing:
- 31.14.1 is not occasional;
 - 31.14.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 31.14.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 31.15 The Help to Buy Agent 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 Help to Buy Agent's destruction of and/or damage to or unlawful Processing of any of Homes England's Personal Data processed by the Help to Buy Agent, Help to Buy Agent Personnel or a Sub-processor, or any breach of or other failure to

comply with the obligations in the Data Protection Legislation and/or this clause 31 by the Help to Buy Agent, Help to Buy Agent Personnel or a Sub-processor.

- 31.16 The Help to Buy Agent shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Help to Buy Agent's Processing of Homes England's Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly and in any event within the timescales set out in this Contract.
- 31.17 The Help to Buy Agent undertakes to act upon the written instructions from Homes England in relation to the secure deletion or return of Homes England's Personal Data at the termination or expiry of this Contract or such time that the Help to Buy Agent no longer requires access to Homes England's Personal Data for the purposes of performing its obligations under this Contract, in so far as the Help to Buy Agent is able to take into account its own data retention requirements and, unless the Help to Buy Agent is required by Law to retain the Personal Data.
- 31.18 Homes England may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 31.19 The Help to Buy Agent and Homes England agree to take account of any guidance issued by the Information Commissioner's Office. Homes England may on not less than thirty (30) Working Days' notice to the Help to Buy Agent amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

32 Co-operation

- 32.1 Homes England and the Help to Buy Agent shall act as stated in this Agreement and in a spirit of mutual trust and co-operation.
- 32.2 Without prejudice to any other term of this Agreement, the Help to Buy Agent shall co-operate with the Outgoing Provider so as:
- 32.2.1 to maintain the continuity of and quality of the Services in accordance with this Agreement; and
- 32.2.2 to achieve to the extent reasonably possible a smooth transfer of the Services to the Help to Buy Agent,

provided that nothing in this clause shall oblige the Help to Buy Agent to breach any Applicable Laws.

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

33 Insurance

- 33.1 The Help to Buy Agent shall take out and maintain policies of insurance as are set out in Schedule 5 and shall otherwise comply with the provisions of this clause 33.

- 33.2 The Help to Buy Agent agrees to maintain such insurance at all times until twelve (12) years after expiry of the Term (or, if later, twelve (12) years after the date upon which the Help to Buy Agent completes the provision of Services pursuant to an instruction from Homes England), **provided that** such insurance continues to be available at commercially reasonable rates and upon commercially reasonable terms which it would not be imprudent for the Help to Buy Agent to accept having regard (inter alia) to the premium charged, the terms proposed and the duties undertaken by the Help to Buy Agent in relation to any task or works in respect of which the Help to Buy Agent is instructed pursuant hereto.
- 33.3 The Help to Buy Agent shall, if and when required by Homes England, produce to it a copy of the relevant insurance policies taken out pursuant to clause 33.1 together with documentary proof that such insurance is being maintained.
- 33.4 If the Help to Buy Agent becomes in default of its obligations to insure or continue to insure as set out in this clause 33, the Help to Buy Agent shall pay or allow to Homes England on demand any sum of money reasonably expended by Homes England to effect insurance against any risk or amount in respect of which the default shall have occurred and Homes England may deduct such sum (or part thereof) from any sums due or to become due to the Help to Buy Agent under this Agreement.
- 33.5 The Help to Buy Agent warrants to Homes England that prior to the execution of this Agreement it has (if required by the terms of its insurance) made full disclosure to its insurers of the existence and contents of this Agreement, and as may otherwise be required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and they have not advised the Help to Buy Agent that the cover required under this Agreement is, or may be, declined.
- 33.6 Any insurance required to be taken out by the Help to Buy Agent under this Agreement shall not include any condition which may adversely affect the rights of Homes England to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930. The Help to Buy Agent shall not compromise, settle or waive any claim which it may have under any insurance policy taken out in accordance with this Agreement, in respect of any liability which the Help to Buy Agent may incur under this Agreement, which may in any way prejudice the ability of Homes England to recover the full amount of any claim Homes England may be lawfully entitled to.
- 33.7 For the avoidance of doubt, it is agreed that nothing in this clause 33 shall relieve the Help to Buy Agent from any of his obligations and liabilities under the Agreement.

34 **Staffing Security**

- 34.1 The Help to Buy Agent shall develop and implement its own Staff Vetting Procedures, details of which shall be made available to Homes England within two (2) Working Days of receipt of a request. The Help to Buy Agent shall comply with all Applicable Laws and Applicable Standard in formulating its Staff Vetting Procedures and shall have regard to any reasonable comments made by Homes England.
- 34.2 The Help to Buy Agent shall comply with the Staff Vetting Procedures in respect of all Help to Buy Agent Personnel employed or engaged in the provision of the Services. The Help to Buy Agent confirms that all Help to Buy Agent Personnel employed or engaged by the Help

to Buy Agent at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 34.3 The Help to Buy Agent shall provide training on a continuing basis for all Help to Buy Agent Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

35 **Warranties**

The Help to Buy Agent warrants, represents and undertakes for the duration of the Term that:

- 35.1 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Staff Vetting Procedures and the Security Policy;
- 35.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Help to Buy Agent's obligations under this Agreement;
- 35.3 in performing its obligations under this Agreement, all software used by or on behalf of the Help to Buy Agent will:
- 35.3.1 be currently supported versions of that software; and
 - 35.3.2 perform in all material respects in accordance with its specification;
- 35.4 as at the Commencement Date all statements and representations in the Help to Buy Agent's written response to the ITT are to the best of its knowledge, information and belief, true and accurate and that it will advise Homes England of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- 35.5 the Help to Buy Agent System and assets used in the performance of the Services:
- 35.5.1 will be free of all encumbrances and defects; and
 - 35.5.2 will be Date Compliant;
- 35.6 it shall at all times comply with Applicable Laws in carrying out its obligations under this Agreement.

36 **Security Requirements**

- 36.1 The Help to Buy Agent shall comply, and shall procure the compliance of the Help to Buy Agent Personnel, with the Security Policy and the Security Plan and the Help to Buy Agent shall ensure that the Security Plan produced by the Help to Buy Agent fully complies with the Security Policy.
- 36.2 Homes England shall notify the Help to Buy Agent of any changes or proposed changes to the Security Policy.

37 Malicious Software

- 37.1 The Help to Buy Agent shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 37.2 Notwithstanding clause 37.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Homes England Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 37.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 37.2 shall be borne by the parties as follows:
- 37.3.1 by the Help to Buy Agent where the Malicious Software originates from the Help to Buy Agent's software or Homes England Data (whilst Homes England Data was under the control of the Help to Buy Agent); and
- 37.3.2 by Homes England if the Malicious Software originates from Homes England's software or Homes England Data (whilst Homes England Data was under the control of Homes England).

38 Anti-Bribery

- 38.1 The Help to Buy Agent shall:
- 38.1.1 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**);
- 38.1.2 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;
- 38.1.3 comply with Homes England's Ethical, Anti-bribery and Anti-corruption Policies a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**);
- 38.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and clause 38.1.3, and will enforce them where appropriate;
- 38.1.5 immediately report to Homes England's Head of Risk and Assurance Services any request or demand for any undue financial or other advantage of any kind received by the Help to Buy Agent in connection with the performance of this agreement;
- 38.1.6 if required by Homes England, produce a written certificate to it signed by an officer of the Help to Buy Agent, confirming compliance with this clause 38 by the Help to Buy Agent and all persons associated with it under clause 38.2. The

Help to Buy Agent shall provide such supporting evidence of compliance as Homes England may reasonably request.

38.2 The Help to Buy Agent shall ensure that any person associated with the Help to Buy Agent who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Help to Buy Agent in this clause 38 (**Relevant Terms**). The Help to Buy Agent 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.

38.3 Breach of this clause 38 shall be deemed a material breach.

38.4 For the purpose of this clause 38, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 38 a person associated with the Help to Buy Agent includes but is not limited to any subcontractor of the Help to Buy Agent.

39 **Equalities**

39.1 The Help to Buy Agent will comply in all material respects with all Applicable Laws relating to equality and relevant employment matters.

39.2 The Help to Buy Agent confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.

39.3 The Help to Buy Agent 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.

40 **Changes and Special Changes**

40.1 In this Agreement:

40.1.1 changes to this Agreement that are necessitated by the transition from Specification A to Specification B shall be made in accordance with the procedure set out in paragraph 2 of Schedule 12, with any related changes to the Fees being determined in accordance with paragraphs 4.1.1 and 4.1.2 of Schedule 10;

40.1.2 other Special Changes shall be made in accordance with the procedure set out in Schedule 12 and not the procedure set out in Schedule 15; and

40.1.3 all other changes for which no express provision to the contrary is made shall be made in accordance with the procedure set out in Schedule 15 only.

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

EXECUTED as a **DEED** by affixing the)
common seal of)
BPHA LIMITED)
in the presence of:)

Authorised signatory

Authorised signatory

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

Authorised Signatory

Schedule 1

Part 1 - Specification A

1 Summary

- 1.1 The Help to Buy Agent shall deliver the Services within the Geographic Service Area on behalf of Homes England.
- 1.2 The Services are categorised into five core services (the Core Services), details of which are set out below. The service requirements and obligations incumbent on the Help to Buy Agent in relation to the administration of each Core Service are set out in this Specification.
- 1.3 Homes England reserves the right to make such amendments to part or all of this Specification during the contract term as it may deem necessary to meet its objectives, acting reasonably.
- 1.4 In this Specification any reference to Investment Management System (IMS) includes such other systems as shall replace or supplement IMS from time to time.
- 1.5 In this Specification any reference to systems and processes include new, replacement or amended systems and process specified from time to time by Homes England.
- 1.6 In this Specification any reference to legislation includes references to legislation as updated and enacted from time to time.

SERVICE REQUIREMENTS

1 CORE SERVICE 1 - Website and signposting

- 1.1 The Help to Buy Agent is required to develop, host, operate and maintain a dedicated website as set out below.
- 1.2 The required website shall hold information generated by Homes England on all AHO Products and Equity Loan Products offered by Homes England in the Geographic Service Area.
- 1.3 All branding and content text shall be provided by Homes England.
- 1.4 The Help to Buy Agent must update website content at the request of Homes England within three (3) Working Days of receipt of a written request to do so.
- 1.5 No product information other than that provided by Homes England should appear on Help to Buy Agent websites.
- 1.6 Homes England shall provide a privacy notice for the Help to Buy Agent to display and shall update this from time to time.
- 1.7 The website must also provide access to a searchable database of new build developments for both Equity Loan and AHO products.
- 1.8 The website must also provide access to a searchable database for Resale properties.

- 1.9 The website must provide the facility for users to search by geographical location, scheme and housing provider.
- 1.10 The website must provide access to an online application form with all fields prescribed by Homes England and processing facilities for AHO Products. Homes England may stipulate that particular wording be included on the form and/or the format of the form itself.
- 1.11 The website must provide access to an online property information form with all fields prescribed by Homes England.
- 1.12 The website must include a tracking code for Google Analytics, which Homes England shall provide to analyse site visits and user behaviour. Homes England may share the monthly analytics report.
- 1.13 Without prejudice to the generality of para 1.3 of this Schedule 1A, the Help to Buy Agent acknowledges that Homes England intends to design and host its own Help to Buy website (“the New Website”), to which Help to Buy Agents will have access. The date of launch of the New Website is not yet known but the parties acknowledge that Homes England’s aspiration is to launch the New Website between April 2020 and June 2020. Homes England will give the Help to Buy Agent as much notice as reasonably practicable of the Launch Date, and in any event no less than one Month’s notice in writing.
- 1.14 The requirement for the Help to Buy Agent to host a Help to Buy Agent website will cease on the date the New Website is launched (“Launch Date”), meaning that with effect from the Launch Date:
- 1.14.1 the Help to Buy Agent must close down its own Help to Buy Agent website save for a landing page redirecting users to the New Website;
- 1.14.2 the Help to Buy Agent must signpost all enquiries from customers and stakeholders to the New Website;
- 1.14.3 to the extent that the Service Requirements set out in this Schedule 1A impose obligations on the Help to Buy Agent in respect of, or make reference to, the development, hosting, operation and maintenance of a website by the Help to Buy Agent, they shall be varied mutatis mutandis to remove such obligations and/or references but shall otherwise remain in full force and effect.
- 1.15 Any KPI or Performance Indicator (or part thereof) in this Agreement that relates to the development, hosting, operation and maintenance of a website by the Help to Buy Agent shall cease to have effect after the Launch Date. Homes England may, in its absolute discretion, substitute replacement KPIs or Performance Indicators therefor, and shall give the Help to Buy Agent not less than one calendar month’s notice in writing of its intention to do so.

2 CORE SERVICE 2 – Customer Guidance and Signposting

Service Requirements

- 2.1 The Help to Buy Agent shall provide on their website information and guidance relating to home ownership options in the Geographic Service Area, including AHO Products and Equity Loan Products offered or supported by Homes England.

Information Provision

- 2.2 The Help to Buy Agent is responsible for publishing information provided by Homes England about all relevant AHO Products, Help to Buy Equity Loan Products and related government services available to support home ownership in the Geographic Service Area.
- 2.3 The Help to Buy Agent shall respond to enquiries received electronically, in writing or by telephone by providing accurate information and guidance on relevant products and partner services and/or signposting enquirers to further sources of information and assistance, in line with the KPI notified by Homes England from time to time.
- 2.4 The Help to Buy Agent shall provide information on home ownership options available in the Geographic Service Area from Grant Recipients and Help to Buy Equity Loan Providers.
- 2.5 The Help to Buy Agent shall be responsible for maintaining and ensuring the effective operation of a dedicated telephone enquiry line to be operated as a minimum between Monday - Friday, 9am - 6pm, (except public holidays) in accordance with the requirements of Homes England.
- 2.6 The Help to Buy Agent shall be responsible for ensuring that the telephone enquiry line is accessible to diverse groups, including making use of available assistive technology to support customers with specific needs such as language, hearing impairment etc.
- 2.7 The Help to Buy Agent shall monitor the quality of their customer contact handling in accordance with KPI 8 (% Customer Interactions that meet Homes England's Quality Principles (call/email/letter)) as described in Schedule 2.
- 2.8 Homes England may undertake Mystery Shopping at any time during the period of the contract. The Mystery Shopping criteria will be specified from time to time by Homes England. The Help to Buy Agent shall provide a response to feedback from Mystery Shopping within a maximum of twenty eight (28) days of receipt from Homes England.
- 2.9 The Help to Buy Agent shall ensure that electronic and printable documentation is available on their website to enquirers, Qualifying Applicants, Help to Buy Equity Loan Provider and Grant Recipients is in the current format prescribed by Homes England.
- 2.10 The Help to Buy Agent shall process applications for AHO Products and Equity Loan Products offered or supported by Homes England in accordance with this Specification using the Standard Documents.
- 2.11 Where potential purchasers make direct approaches to a Grant Recipient or Help to Buy Equity Loan Provider in respect of Equity Loan Products or AHO Products, the Grant Recipient or Help to Buy Equity Loan Provider will be responsible for providing applicants with the relevant Standard Documents, and for directing applicants to contact the relevant Help to Buy Agent or assisting them to make an application (AHO Products) or submit a Property Information Form (Equity Loan Products) to the Help to Buy Agent.
- 2.12 Any literature distributed by or on behalf of the Help to Buy Agent in relation to Equity Loan and AHO Products must be in Homes England's prescribed form, as notified to the Help to Buy Agent from time to time.

- 2.13 Any requests received by the Help to Buy Agent from a Grant Recipient or a Help to Buy Equity Loan Provider to approve any scheme specific literature or marketing shall be referred to Homes England's Marketing and Communications team.

3 CORE SERVICE 3 – AHO Products

Service Requirements

- 3.1 The Help to Buy Agent shall support the effective administration of AHO Products in the Geographic Service Area by advertising properties on the Help to Buy Agent website and hosting an application form which Grant Recipients can access.

Information Provision

- 3.2 The Help to Buy Agent shall be responsible for making available information about the types of grant funded AHO Schemes available in the Geographic Service Area. Homes England will provide to Help to Buy Agents, on a quarterly basis, a list of grant funded AHO Scheme allocations.
- 3.3 In the case of direct approaches from potential purchasers, the Grant Recipient will be responsible for providing applicants with the relevant Standard Documents and directing them to complete the Help to Buy Agents application form. Application forms are to be submitted (online) or returned by post (in exceptional circumstances) to the Help to Buy Agent by the applicant for registration and assessment against the eligibility criteria and such other checks as may be appropriate.
- 3.4 The Help to Buy Agent shall ensure that its website is enabled to allow Grant Recipients to upload and maintain details of available AHO properties and shall liaise with Grant Recipients in respect of this. In the event Homes England advises that any of the documentation to be provided by the Help to Buy Agent to applicants, or Grant Recipients is to be provided in a revised form, the Help to Buy Agent shall ensure, from the date the new form of document takes effect, that only the new formats are provided to applicants or Grant Recipients in accordance with the requirements of this Specification, and the Help to Buy Agent shall use reasonable endeavours to ensure that Grant Recipients shall provide only the new form of documentation to applicants.
- 3.5 Where required by Homes England, the Help to Buy Agent shall display on its website a privacy notice provided by Homes England and notified to the Help to Buy Agent to be used for this purpose.

Enquiries from applicants

- 3.6 Enquiries about AHO Schemes may be made in several ways:
- 3.6.1 direct to the Help to Buy Agent through the Help to Buy Agent Website or the Help to Buy Agent's dedicated phone line;
 - 3.6.2 via a Grant Recipient;
 - 3.6.3 via a Local Authority;
 - 3.6.4 via any website or medium commissioned by or on behalf of Homes England in order to promote individual or multiple AHO schemes.

- 3.7 In all cases enquirers to Grant Recipients and/or the Help to Buy Agent should be initially assessed by the Help to Buy Agent to ensure they meet the initial eligibility criteria set by Homes England, MHCLG and/or other stakeholders from time to time.
- 3.8 Enquirers from all sources that meet the initial eligibility criteria shall be directed to the Help to Buy Agent's online application form and Standard Documents or, in exceptional cases, provided with hard copies of these documents. The Help to Buy Agent shall provide data to evidence online application numbers on a monthly basis.
- 3.9 The Help to Buy Agent shall ensure that applicants and Grant Recipients are provided with the relevant electronic documentation and access to online application forms (or provided with hard copies if required) within four (4) Working Days of a request to supply such documents.
- 3.10 The Help to Buy Agent shall undertake an ongoing programme of continuous assurance and monitoring of its Service performance. The Help to Buy Agent shall retain responsibility for any improvement and remediation activities required by Homes England.

Applications

- 3.11 The Help to Buy Agent shall assess the application in accordance with Homes England's Customer Due Diligence Requirements.
- 3.12 The Help to Buy Agent shall undertake a headline eligibility assessment of applicants in accordance with the guidance in the Affordable Housing Capital Funding Guide.
- 3.13 The Help to Buy Agent shall register the applicant on a database and inform the applicant of their status (accepted as a Qualifying Applicant, rejected or on-hold (i.e. awaiting further information)) electronically (or in hard copy if requested) within four (4) Working Days of receipt of an application.
- 3.14 When confirming an applicant's eligibility status, the Help to Buy Agent shall advise each and every Qualifying Applicant to seek independent financial advice.
- 3.15 The Help to Buy Agent shall provide contact details for a panel of independent mortgage advisors on its website and also include appropriate caveats to make it clear that applicants are aware that they are free to consult and take advice from any independent mortgage advisor of their choice to confirm actual affordability.
- 3.16 No Qualifying Applicants can be allocated a property under any of the AHO schemes unless they have submitted an application form online (or in hard copy in exceptional circumstances). Applicants must have registered their details with the Help to Buy Agent and have been notified of the outcome of their eligibility and sustainability assessment conducted under paragraph 4.12. The Help to Buy Agent shall include on its Help to Buy Agent website consistent customer information regarding Resales.
- 3.17 In addition to their obligations in relation to AHO schemes generally, the Help to Buy Agent must:
- 3.17.1 have the ability to allow Grant Recipients to market individual properties available as Resales on the Help to Buy Agent's Website;

- 3.17.2 provide applicants with full contact details for Grant Recipients offering current Resale properties.

4 CORE SERVICE 4 – Products (Equity Loan)

Service Requirements

- 4.1 The Help to Buy Agent is required to support the effective administration of Equity Loan Products. The Help to Buy Agent shall assess the application in accordance with Homes England's Customer Due Diligence Requirements. This should be done by following the Core Transaction Process, the key points of which are:
- 4.1.1 undertaking applicant eligibility and sustainability assessments;
 - 4.1.2 administer the Equity Loan Scheme in line with the Core Transaction Process;
 - 4.1.3 support Help to Buy Equity Loan Providers with process queries;
 - 4.1.4 administer the relevant pages within IMS for all Help to Buy Equity Loan Providers;
 - 4.1.5 ensure IMS is updated at each process stage with accurate information and in a timely matter and where relevant in accordance with the timescales set out in this Specification;
 - 4.1.6 administer the claim and cash management process within IMS on behalf of non-IMS Contracted Developers as required by the Core Transaction Process;
 - 4.1.7 on receipt (within five (5) days) update IMS with the actual completion date and/or AP1 date from the relevant Equity Loan document and AP1 for each completed Eligible Unit of completion;
 - 4.1.8 if the Equity Loan and AP1 are not received within five (5) days then the specified post sales documents process shall be followed;
 - 4.1.9 once the HM Land Registry Title Document is received the Agent shall complete the relevant sections of IMS and upload the documents stipulated in the post sales documents process to the Mortgage Administrators Secure File Transmittal Portal (SFTP) or equivalent.

Information Provision

- 4.2 Save in exceptional circumstances where paper based literature is required, Help to Buy Agents shall facilitate access to the information only via the Help to Buy Agent's website.
- 4.3 Homes England shall provide all standard text and documentation for publishing on the Help to Buy Agent website from time to time, including a Privacy Notice.
- 4.4 The Help to Buy Agent is not permitted to create any further marketing or information materials other than those provided by Homes England.

- 4.5 It is acknowledged that the Help to Buy Equity Loan Provider is responsible for scheme specific marketing in line with the funding administration agreement it has entered into with Homes England.
- 4.6 Homes England shall provide three (3) days' advance notice of any changes to their required branding and published information.
- 4.7 Where Homes England has provided new literature and or process documentation or made any changes to the same it shall also issue full instructions to Help to Buy Agents regarding the cut-off date and process between existing and new requirements.

Enquiry Handling

- 4.8 Enquiries about the Help to Buy Equity Loan scheme and or individual sale status may be received via:
- 4.8.1 the Help to Buy Agent through the Help to Buy Agent's dedicated phone line;
 - 4.8.2 the Help to Buy website;
 - 4.8.3 post;
 - 4.8.4 email.
- 4.9 All enquiries must be processed and all personal data handled in a way that considers all Applicable Laws and in accordance with this Agreement including relevant Data Protection Legislation.
- 4.10 The Help to Buy Agent shall advise each Qualifying Applicant in writing to consult an independent mortgage advisor. (Where appropriate the Help to Buy Agent may refer applicants to a nominated panel of independent mortgage advisors) and that any money paid to a Help to Buy Equity Loan Provider in order to reserve a particular property is paid at the Qualifying Applicant's risk (save where such property is withdrawn from such reservation at the discretion of the Help to Buy Equity Loan Provider);
- 4.11 **Selection of a Property**
- 4.11.1 Once an applicant has selected a property they intend to purchase, the applicant shall provide the Help to Buy Agent with a duly completed Property Information Form together with a copy of the Help to Buy Equity Loan Provider's standard reservation form duly completed in respect of the relevant applicant and the property.
- 4.12 **Assessment**
- 4.12.1 Upon receipt of a completed Property Information Form (in electronic or hard copy) the Help to Buy Agent will validate the application and perform an eligibility assessment on behalf of the Help to Buy Equity Loan Provider in accordance Homes England's published criteria for product.
 - 4.12.2 The Help to Buy Agent eligibility assessment shall include use of Homes England's sustainability calculator (which can currently be found at <https://www.gov.uk/government/publications/homes-england-help-to-buy-equity->

[loan-calculator-and-guidance](#)) or such other calculator as Homes England shall direct). To protect Homes England investment applicants must be able to demonstrate to the Help to Buy Agent that they can sustain home ownership in the longer term (which may include for the avoidance of doubt persons subject to immigration control).

- 4.12.3 In relation to Help to Buy Equity Loan purchases, the Help to Buy Agent shall utilise the Standard Documents in the time and manner prescribed by Homes England from initial enquiries to post completion work on each transaction.

4.13 Authority to Proceed

- 4.13.1 Using the information contained in the Property Information Form, the Help to Buy Agent shall complete and issue an Authority to Proceed to the Qualifying Applicant and the Help to Buy Equity Loan Provider within four (4) Working Days of receipt of the completed Property Information Form. As part of this exercise the Help to Buy Agent shall ensure that:

- (a) the amount filled in the 'Requisite Amount of Cash Savings to be invested by the Buyer' section of the Authority to Proceed (the **Cash Contribution**) is a minimum of 5% of the Full Purchase Price; and
- (b) the amount filled in the 'Mortgage Level' section of the Authority to Proceed (the **Mortgage Level**) is a minimum of 25% of the Full Purchase Price.

- 4.13.2 On issuing the Authority to Proceed in accordance with Paragraph 4.13.1, the Help to Buy Agent shall confirm to the Qualifying Applicant and the Help to Buy Equity Loan Provider that the Authority to Proceed will only remain valid authorisation for the transfer of the relevant property for a period of three (3) months from the date of issue and only where the Full Purchase Price detailed in the Authority to Proceed is supported by a Valid Valuation.

- 4.13.3 Subject to the provisions of Paragraph 4.13.4, the Help to Buy Agent shall:

- (a) (using the information contained in the PIF as applicable) complete: the Qualifying Applicant's details, the Homes England Contribution, the Initial Market Value, the Initial Proportion, the Review Date (as all are defined in the Standard Documents), paragraph 3.2 of each Help to Buy Equity Loan and the details in the First Schedule of each Help to Buy Equity Loan as applicable (or such other sections of each Help to Buy Equity Loan as Homes England may reasonably require); and
- (b) issue the completed Solicitors Information Pack to the Qualifying Applicant's conveyancer (whose details shall be confirmed by the Qualifying Applicant in the Property Information Form) at the same time as issuing the Authority to Proceed to the Qualifying Applicant and the Help to Buy Equity Loan Provider pursuant to Paragraph 4.13.

- 4.13.4 In the event that exchange of contracts for the purchase of the relevant property does not occur within three (3) months of the date of the issue of the Authority to Proceed and the Help to Buy Equity Loan Provider and the Qualifying

Applicant intend to proceed to exchange of contracts within a further month, the Qualifying Applicant or the Qualifying Applicant's conveyancer may apply to the Help to Buy Agent for the Authority to Proceed to be extended and **provided the Help to Buy Agent is satisfied that the details in the Authority to Proceed remain correct and are supported by a Valid Valuation**, the Help to Buy Agent may extend the validity of the Authority to Proceed for a further month. Provided always that the Help to Buy Agent is satisfied that the requirements of this Paragraph 4.13.4 have been met, this process may be repeated up to a maximum of three times in total in relation a any Authority to Proceed.

- 4.13.5 In the event that exchange of contracts for the purchase of the relevant property does not occur within three (3) months (or any extended period confirmed by the Help to Buy Agent pursuant to Paragraph 4.13.4) of the date of the issue of the Authority to Proceed, the Authority to Proceed shall cease to have effect and the Qualifying Applicant's conveyancer shall provide notification of the same to the Help to Buy Agent. In the event the relevant Qualifying Applicant wishes to proceed with the purchase of the property following the expiry of an Authority to Proceed, the Help to Buy Agent shall refer the case to Homes England for further consideration.

4.14 Exchange and completion

- 4.14.1 Following issue of the Authority to Proceed, the Qualifying Applicant and the Help to Buy Equity Loan Provider shall proceed with the conveyancing process in order to achieve exchange and completion of the transfer of the property.
- 4.14.2 In the event the Qualifying Applicant's Mortgage Offer is not equal to the Mortgage Level in the Authority to Proceed, the Qualifying Applicant shall notify the Help to Buy Agent of the terms of such Mortgage Offer and provide such supporting evidence as the Help to Buy Agent shall reasonably require in order to demonstrate why the Mortgage Offer does not equal the Mortgage Level. The Qualifying Applicant shall also confirm whether the actual cash investment in the property differs from the Cash Contribution in the Authority to Proceed.
- 4.14.3 The Help to Buy Agent (acting reasonably) shall review the Qualifying Applicant's Mortgage Offer and supporting information (where required) together with the Qualifying Applicant's financial circumstances in order to determine whether a Revised Authority to Proceed may be issued to reflect the details of the Qualifying Applicant's Mortgage Offer **provided that** a Revised Authority to Proceed may not be issued unless:
- (a) the Help to Buy Agent is satisfied that:
 - i the Qualifying Applicant has used reasonable efforts to obtain a mortgage at the Mortgage Level;
 - ii the reasons for the lower Mortgage Offer do not render the Qualifying Applicant ineligible for a Help to Buy Equity Loan; and
 - iii the applicant's Cash Contribution is reasonable in the circumstances.

- (b) the sum of the Mortgage Offer (taking into account any guidance issued by Homes England) combined with the applicant's Cash Contribution results in the Contribution Percentage increasing by no more than 10% **provided always** that the Contribution Percentage shall not in any case exceed 20%; or
- (c) (where Paragraphs (a) and (b) above do not apply) where Homes England confirms in writing that a Revised Authority to Proceed may be issued in respect of the relevant Qualifying Applicant.

4.14.4 In the event that:

- (a) the Help to Buy Agent is satisfied that a Revised Authority to Proceed may be issued pursuant to Paragraph 4.14.3;
- (b) the Help to Buy Agent receives notification that the sum of the Qualifying Applicant's Mortgage Offer exceeds that Qualifying Applicant's Mortgage Level and the Help to Buy Agent is reasonably satisfied that the relevant Qualifying Applicant will be in a position to manage the level of repayments they would be required to make under the proposed mortgage;
- (c) the Help to Buy Agent receives notification that the Qualifying Applicant's actual cash investment in the property exceeds from the Cash Contribution in the Authority to Proceed; or
- (d) the Help to Buy Agent receives notification that the Qualifying Applicant's cash investment in the property will be less than the Cash Contribution in the Authority to Proceed and the Help to Buy Agent is satisfied that the reduction in the Applicant's Contribution is reasonable in the circumstances,

the Help to Buy Agent shall issue a Revised Authority to Proceed and a revised Help to Buy Equity Loan with the Homes England Contribution and Contribution Percentage adjusted accordingly.

4.14.5 The provisions of Paragraphs 4.13.4 and 4.13.5 above shall equally apply to any Revised Authority to Proceed issued pursuant to Paragraph 4.14.3 or 4.14.4.

4.14.6 Within four (4) Working Days of receipt of the Qualifying Applicant's Mortgage Offer and/or notification in any change to the applicant's Cash Contribution the Help to Buy Agent shall either issue both a Revised Authority to Proceed and Help to Buy Equity Loan in accordance with Paragraph 4.14.4 or shall confirm to the Qualifying Applicant that a Revised Authority to Proceed will not be issued and the Help to Buy Agent's reasons for not doing so.

4.14.7 Where the Help to Buy Agent receives notification from either the Help to Buy Equity Loan Provider, the Qualifying Applicant or the Qualifying Applicant's conveyancer that the mortgage valuation differs from the Full Purchase Price the Help to Buy Agent shall seek confirmation from Homes England that the sale of the property to the relevant Qualifying Applicant may proceed and,

where such confirmation is provided on terms that require either the Full Purchase Price or the Homes England Contribution (as applicable) to be adjusted, the Help to Buy Agent shall issue a Revised Authority to Proceed and a revised Help to Buy Equity Loan with the Homes England Contribution and Contribution Percentage (as applicable) adjusted accordingly.

- 4.14.8 In the event the Help to Buy Agent receives any requests for consent not covered by this Specification from either the Help to Buy Equity Loan Provider, the Qualifying Applicant or the Qualifying Applicant's conveyancer, the Help to Buy Agent shall refer the party making the request to Homes England save where Homes England has issued specific guidance to the Help to Buy Agent in relation to the type of requested consent in which case the consent should be dealt with in accordance with such guidance.
- 4.14.9 The Help to Buy Agent shall procure that the Qualifying Applicant's conveyancer provides a completed Solicitor's Form 1 addressed to both the Help to Buy Agent and Homes England not less than five (5) Working Days prior to the proposed date for exchange. Within one (1) Working Day of receipt of the completed Solicitor's Form 1, the Help to Buy Agent shall enter the required details into IMS, including but not limited to the Qualifying Applicant's details and eligibility status.
- 4.14.10 In the event of any changes to the proposed dates for exchange and completion, the Qualifying Applicant's conveyancer will be required to provide confirmation of such changes to the Help to Buy Agent. Within two (2) Working Days of receipt of notification from the Qualifying Applicant's conveyancer of either the proposed dates for exchange and completion or any changes to such dates, the Help to Buy Agent shall confirm the relevant dates to Homes England via IMS.
- 4.14.11 Within three (3) Working Days of receipt of the Solicitor's Form 1 the Help to Buy Agent shall issue an Authority to Exchange to the Qualifying Applicant's conveyancer copied to the Help to Buy Equity Loan Provider and Homes England.
- 4.14.12 Within two (2) Working Days of exchange (in accordance with Solicitor's Form 1), the Qualifying Applicant's conveyancer will be required to supply (or procure the supply of) a Confirmation of Exchange to the Help to Buy Agent together with written confirmation of:
- (e) the date of exchange; and
 - (f) the proposed (or anticipated) completion date.
- 4.14.13 Within one (1) Working Day of receipt of the Confirmation of Exchange pursuant to Paragraph 4.14.12, the Help to Buy Agent shall update the relevant sections of IMS in order to confirm the date of the issue of the Authority to Exchange and the Qualifying Applicant's eligibility status.
- 4.14.14 The Help to Buy Agent shall procure that the Qualifying Applicant's conveyancer provides a Solicitor's Form 2 addressed to both the Help to Buy Agent and Homes England not less than five (5) Working Days prior to the

proposed date for completion (as notified pursuant to Paragraph 4.14.13) and the Help to Buy Agent shall notify Homes England within two (2) Working Days of receipt of the Solicitors Form 2.

- 4.14.15 The Help to Buy Agent shall within two (2) Working Days of receipt of the Solicitor's Form 2 (where such confirmation can be given) provide the Confirmation to the Help to Buy Equity Loan Provider (and/or its nominated solicitor).
- 4.14.16 In the event the Help to Buy Agent does not receive a Solicitor's Form 1 and/or a Solicitor's Form 2 in accordance with Paragraphs 4.14.9 or 4.14.14, it shall promptly notify the Qualifying Applicant's conveyancer and the Help to Buy Equity Loan Provider that it has not received the required documentation and where the Solicitor's Form 1 is not received by the proposed date for exchange or where the Solicitor's Form 2 is not received by the date falling two (2) Working Days prior to the date of completion, the Help to Buy Agent shall notify Homes England within one (1) Working Day of such failure.
- 4.14.17 It is the Help to Buy Agent's responsibility to ensure that the Solicitor's Form 1 and the Solicitor's Form 2 are properly completed, and are supplied with the correct supporting documentation (as referred to therein). The Help to Buy Agent shall not accept any amendments to Solicitor's Form 1 or to the Solicitor's Form 2 without the prior approval of Homes England or in accordance with written guidance from Homes England.
- 4.14.18 In the event the Help to Buy Agent receives notification that either exchange or completion of a property has taken place which is either:
- (a) not in accordance with the terms of the relevant Authority to Proceed or takes place following the expiry of the relevant Authority to Proceed;
 - (b) not supported by a Valid Valuation; or
 - (c) not supported by the Help to Buy Agent having received a Solicitor's Form 2 in accordance with Paragraph 4.14.14, the Help to Buy Agent shall notify Homes England of the exchange or completion (as appropriate) within two (2) Working Days of receiving such notification.
- 4.14.19 Homes England will use reasonable endeavours to ensure that the Help to Buy Equity Loan Provider will inform the Help to Buy Agent within four (4) Working Days where an applicant withdraws from a purchase prior to completion. Homes England shall also procure that where possible the Help to Buy Equity Loan Provider shall inform the Help to Buy Agent of the Qualifying Applicant's reasons for such refusal or withdrawal.

4.15 **Post completion requirements**

- 4.15.1 The Help to Buy Agent must be informed, within five (5) Working Days when a Qualifying Applicant completes their purchase. This information is also required by Homes England as part of the Performance Report.

- 4.15.2 In accordance with the Solicitor's Form 2, the Qualifying Applicant's solicitor undertakes to:
- (a) Provide certified copies of the completed Help to Buy Equity Loan (as applicable) together with a copy of the completed AP1 form (in order to evidence that the application to HM Land Registry has been progressed in accordance with the undertakings in the Solicitors Form 2) within five (5) Working Days of completion of the sale of the property; and
 - (b) Register the Help to Buy Equity Loan at HM Land Registry and send to Homes England/ Help to Buy Agent official copies of the title to the property confirming that the Help to Buy Equity Loan has been registered as soon as practicable but in any event no later than ten (10) Working Days following receipt from HM Land Registry.
- 4.15.3 In the event the relevant Qualifying Applicant's solicitor does not comply with any part of the Solicitors Form 2 within the relevant time period the Help to Buy Agent shall write to the Qualifying Applicant's solicitor within five (5) Working Days of the end of the relevant time period stating that the Qualifying Applicant's solicitor must carry out the required action. In the event such non-compliance relates to the incorrect filling in of information in the Help to Buy Equity Loan, the Help to Buy Agent shall populate a Deed of Rectification with the correct information and submit the Deed of Rectification (within the five (5) Working Days referred to above) to the Qualifying Applicant's solicitor for execution by the Qualifying Applicant. The Help to Buy Agent shall thereafter send such a letter every 10 Working Days until the Qualifying Applicant's solicitor complies with the obligation.
- 4.15.4 In the event the relevant Qualifying Applicant's solicitor does not comply with the terms of the Solicitor's Form 2 following two (2) letters from the Help to Buy Agent in accordance with Paragraph 4.15.3, the Help to Buy Agent shall notify Homes England who shall (at its absolute discretion) take action to enforce the terms of the Solicitor's Form 2. In the event Homes England takes action to enforce any the Solicitor's Form 2, the Help to Buy Agent shall provide such assistance as Homes England shall reasonably require.
- 4.15.5 Within four (4) weeks of the completion date, the Help to Buy Agent shall send:
- (a) a Welcome Letter to the relevant Qualifying Applicant confirming the role and contact details of the Mortgage Administrator; and
 - (b) the Mortgage Administrator Key Document Pack to the Mortgage Administrator.
- 4.15.6 The Help to Buy Agent shall compile and maintain a file of all information and documentation sent to and received from a Qualifying Applicant, the Help to Buy Equity Loan Provider, the Qualifying Applicant's solicitor and the Mortgage Administrator (in such form as Homes England reasonably requires) in relation to an individual Qualifying Applicant (including but not limited to the information referred to in Paragraph 4.15.2); and shall retain a copy of all information handed over for a period of twelve (12) years following completion of the Equity Loan.

4.16 Variations to the conveyancing process

- 4.16.1 From time to time Homes England may wish to make reasonable changes to the administrative process for the sale of Equity Loan Products and will advise the Help to Buy Agent of such changes in writing together with confirmation of the date such changes are to take effect (the Effective Date).
- 4.16.2 Provided such changes do not materially increase the cost to the Help to Buy Agent of compliance with this Specification, the Help to Buy Agent shall implement such changes from the Effective Date and for the avoidance of doubt the Help to Buy Agent's obligation to comply with this Specification in accordance with paragraph 4.1 shall include an obligation to comply with the Specification as amended or varied by the changes proposed under this Paragraph 4.16.
- 4.16.3 In the event the Help to Buy Agent can demonstrate that the proposed changes will materially increase its costs in complying with this Specification, the parties shall meet in order to discuss in good faith how the changes may be implemented.
- 4.16.4 This Paragraph 4.16 shall not apply to any changes to either Homes England's standard documentation or policies which are expressly permitted by the terms of this Agreement or to any changes required as a result of a change in any Applicable Laws or Applicable Standards.

5 CORE SERVICE 5 – Service Administration

Service Requirements

- 5.1 The Help to Buy Agent is required to maintain consistent and effective administration of Help to Buy Agent Services in the Geographic Service Area. This is in order to provide a high quality service to Homes England and its customers which shall include providing reporting returns to Homes England, maintaining stakeholder relationships, complying with the Benchmarking Standards with particular reference to the obligation to respond to and assist with any requests from any relevant Ombudsman, operating a managed complaints procedure, adhering to Homes England's branding requirements and cooperating with other Help to Buy Agents and the Mortgage Administrator.

Complaints Procedure

- 5.2 The Help to Buy Agent shall operate a complaints procedure that meets the requirements of Homes England. This procedure must be made available to Homes England for review and Homes England may require the Help to Buy Agent to amend it from time to time in accordance with Homes England's requirements. Any Complaints from Grant Recipients, Help to Buy Equity Loan Providers and Qualifying Applicants and others concerning the Help to Buy Agent's performance and compliance with the Specification should be dealt with through the Help to Buy Agent's complaints procedure.
- 5.3 All Complaints must be recorded by the Help to Buy Agent in a log, with brief details of the Complaint, date and ultimate manner of resolution in a manner that meets Homes England's requirements. This must be made available to Homes England upon request

and as part of the Performance Report in line with Homes England's complaints recording and reporting standards.

Information requirements

- 5.4 In addition to the performance monitoring, the Help to Buy Agent shall be responsible for completing such monitoring returns for Homes England as Homes England may require on a monthly basis (or such time period as Homes England may require). This should detail the breakdown of Qualifying Applicants and their status in the process together with such information on the AHO schemes and/or Equity Loan Products as Homes England may reasonably require.
- 5.5 The Help to Buy Agent may also be required by Homes England to provide information to Homes England on an ad hoc basis to enable Homes England to respond to for example, requests from third parties such as MHCLG, local authorities and press enquiries. Any enquiries of this nature received directly by the Help to Buy Agent shall immediately be referred to Homes England.

Register

- 5.6 At least once in every six (6) month period the Help to Buy Agent shall write to all Qualifying Applicants whose details have been held on the register for a period in excess of six (6) months to remind them of their rights under Data Protection Legislation, including the right to request that their names be removed from the register. Where Qualifying Applicants indicate that they wish their details to be amended or deleted Help to Buy Agent shall undertake this promptly on receipt of this notification.
- 5.7 Management of the database shall be carried out in compliance with all Applicable Laws, regulations and International Organisation for Standardisation quality standards.
- 5.8 The Help to Buy Agent may use the information provided on application forms and held on the register for the sole purposes of:
- 5.8.1 providing information, and information regarding the availability of homes provided under the AHO schemes and/or using Equity Loan Products in the customers area of choice
 - 5.8.2 processing a Qualifying Applicant's purchase of an Eligible Dwelling. Written permission must be obtained from Qualifying Applicants or any other customer before using their personal details for any other purpose unless otherwise instructed by Homes England.
 - 5.8.3 Qualifying Applicant and any other customer details shall be removed from the database within four (4) Working Days upon receipt of a request from such individual.

5.9 Branding Requirements

Homes England shall provide to the Help to Buy Agent Help to Buy brand guidelines, logos, content and guidance on marketing compliance. The Help to Buy Agent must ensure that it uses all reasonable endeavours to ensure that any Grant Recipient or Help to Buy Equity Loan Provider marketing either AHO Products or Equity Loan Products

complies with brand and marketing requirements. Homes England shall provide and (where reasonably practicable) provide three (3) days advance notice of any changes to their required branding and/or logos.

5.10 **Co-operation**

In performing the Services the Help to Buy Agent must use all reasonable endeavours to co-operate and, where relevant, collaborate with Homes England, other Help to Buy Agents, the Mortgage Administrator, Help to Buy Equity Loan Providers, Grant Recipients and any other third parties directed by Homes England and undertake such actions or service improvements (including the implementation of any Service Improvement Plan required pursuant to Clause 5.4) which in the reasonable opinion of Homes England may enhance the administration of the Services.

Part 2 - Specification B

- 1 The Help to Buy Agent will deliver the Services as set out in Specification A, save as varied in accordance with the paragraphs below.
- 2 Homes England is currently undertaking a digital transformation of its business, including Equity Loan Products and AHO products. This transformation is still in its early discovery stage and it is anticipated that transformation will require changes to Homes England systems and processes commensurate with the post-transformation delivery of the Services specified in Specification A.
- 3 At the point at which this Specification B is brought into force, Specification B will be updated to impose on the Help to Buy Agent such obligations as are commensurate and appropriate post-implementation of the digital transformation including, and without limitation, provisions relating to data protection varying clause 31 to the extent deemed necessary by Homes England. Homes England will give the Help to Buy Agent as much notice as reasonably practicable of the proposed changes.
- 4 New Key Performance Indicators and Performance Indicators will be introduced by Homes England to reflect the changes to terminology, processes and systems following the digital transformation and the Service Credits regime will be updated to reflect this. The changes are not intended to impose more onerous obligations on the Help to Buy Agent than were applicable under Specification A, but rather to maintain equally high standards in the post-transformation environment.

Schedule 2

Performance Standard - Key Performance Indicators (KPI) & Performance Indicators (PI)

This Schedule sets out the KPIs and PIs that will be measured to ensure good performance by the Agent under this Agreement and the mechanism by which service failure will be managed during the Term.

1 Definitions in this Schedule

The words and expressions in this Schedule shall, unless specifically stated or the context otherwise requires, have the same meanings as are given to them in clause 1.1 of this Agreement.

Actual Service Volume means the volume of transactions or contacts received by the Help to Buy Agent for handling in line with the Specification;

Annual Service Credit Cap means s. 43

At Risk Amount means the total amount of money that is at risk of being deducted from the Fees as Service Credits related to each KPI shown both annually and monthly in Appendix 3;

Contract Review Meeting means the regular monthly meetings between the Help to Buy Agent and Homes England to manage and review the Help to Buy Agent's performance under this Agreement as further described in Paragraph 3.6 of Part 2 of this Schedule 2;

Corrective Action Report means the Help to Buy Agent's report of the remedial action taken in respect of a Minor KPI Failure or PI failure;

Critical Service Failure means any of the following events:

- (a) the performance of the Services by the Help to Buy Agent falls below the KPI Service Threshold in respect of the same KPI for any month for three months (which need not be three consecutive months) in any rolling 12 month period;
- (b) the Help to Buy Agent reaches the Monthly Service Credits Cap in any month for six months (which need not be six consecutive months) in any rolling 12 month period;
- (c) the Annual Service Credit Cap is reached in any 12 month rolling period; or
- (d) there is a Rectification Plan Failure;

Homes England Quality Principles means the quality assurance principles described in Appendix 5 to this Schedule 2;

Key Performance Indicator or "KPI" means the key performance indicators identified as KPIs in Appendix 2 to this Schedule (Performance Levels) which term shall for the avoidance of doubt not include Performance Indicators (PIs);

KPI Failure means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

KPI Service Threshold means shall be as measured set out in the "Threshold and Target" boxes in Appendices 1 and 2 against the relevant Key Performance Indicator;

Management Information (MI) means the information that the Help to Buy Agent is required to set out in the Performance Monitoring Report and/or the Balanced Scorecard Report as described in Part 2 of this Schedule 2 together with any other management information reasonably required by Homes England;

Material KPI Failure means any KPI Failure except a Minor KPI Failure;

Material PI Failure is a Default as described in clause 6.3.1 of this Agreement and is as a result of:

- (a) a failure by the Help to Buy Agent to meet the PI Service Threshold in respect of two or more of the Performance Indicators that are to be reported in that Service Period;
- (b) the performance of the Services by the Help to Buy Agent falling below the PI Service Threshold in respect of the same PI for three months (which need not be consecutive months) in a 12 month rolling period;

Measurement Period means the period over which the KPIs or PIs are measured as set out in the relevant "Target threshold and period" column in each respective KPI and PI;

Minor KPI Failure shall be as set out against the relevant Key Performance Indicator

Monthly Performance Report has the meaning given in Clause 4.3 of Part 2 of this Schedule 2;

Monthly Service Credits Cap means s. 43

Performance Failure means a KPI failure or a PI failure;

Performance Indicators or "PI" means the performance indicators set out in Appendix 2 of Schedule 2 which term shall for the avoidance of doubt not include Key Performance Indicators (KPIs);

PI Failure means a failure to meet the Target Performance Level in respect of a Performance Indicator;

PI Service Threshold means the percentage target and measurement periods set out in the "Target" and "Threshold Period" columns in each respective PI;

Rectification Plan means a plan proposed by the Help to Buy Agent to address the impact of, and prevent the reoccurrence of a Material KPI Failure in substantially the form set out in Schedule 14;

Rectification Plan Failure means:

- (a) the Help to Buy Agent failing to submit or resubmit a draft Rectification Plan to Homes England within the timescales specified; or
- (b) Homes England (acting reasonably) rejecting three drafts of the same Rectification Plan submitted by the Help to Buy Agent; or
- (c) the Help to Buy Agent failing to rectify a Material KPI Failure within the timescales set out in the Rectification Plan;

Repeat KPI Failure has the meaning given in clause 4 of Part 1 of this Schedule 2;

Service Credits means Service Credits payable by the Help to Buy Agent to Homes England in respect of one (1) or more KPI Failure;

Service Period means a Month; and

Strategic Senior Management Review Meetings means the regular meetings between the Help to Buy Agent and Homes England to manage and review the Help to Buy Agent's performance under this Agreement as further described in Paragraph 3.7 of Part 2 of this Schedule 2;

Target Performance Level means the target level of performance for a Key Performance, or Performance Indicator which is required by Homes England, as set out in relation to each KPI or PI.

Part 1 - Performance Levels

1 Principles

The objectives of the KPIs, the PIs and the Service Credits are to:

- 1.1 ensure that the Services delivered are of a consistently high quality to meet the requirements of Homes England under this Agreement;
- 1.2 provide a mechanism whereby reputational damage and financial loss to Homes England due to the Help to Buy Agent's failure is recorded;
- 1.3 incentivise the Help to Buy Agent to meet the KPIs and PIs identified within Appendix 2 to this schedule and remedy Performance Failure within a reasonably appropriate time; and
- 1.4 provide a mechanism that will allow for termination and remedy in the event of a Critical Service Failure.

2 This Schedule 2 sets out the mechanism by which Performance Failures will be managed.

2.1 Performance will be measured through the use of KPIs and PIs and the provision of Management Information. KPIs shall be subject to the Service Credits in the event of a KPI Failure. PIs are designed to monitor a wider scope of the Help to Buy Agent's performance and although persistent failure will lead to Help to Buy Agent being required to take steps to rectify the failure and could result in a Warning Notice, they shall not trigger any Service Credits.

2.2 Appendix 1 and 2 sets out the Key Performance Indicators and Performance Indicators which shall be used to measure the performance of the Services carried out by the Help to Buy Agent.

2.3 The Help to Buy Agent shall monitor its performance against each Key Performance Indicator and Performance Indicator and shall send Homes England a Monthly Performance Report detailing the level of services delivered against each KPI and PI for that month and cumulative for the year to date.

2.4 Service Credits shall accrue for any KPI Failure and shall be calculated by reference to the At Risk Amount and the Monthly Service Credit Cap. The Service Credits shall be deducted from the Fees in accordance with the worked example in Appendix 3.

2.5 Failure to achieve a Target Performance Level (whether KPI or PI) shall result in the Help to Buy Agent having to produce either (a) in relation to a Minor KPI Failure or a PI Failure, a Corrective Action Report as part of the Monthly Performance Report or, (b) if there has been a Material KPI Failure, a Rectification Plan. For the avoidance of doubt the Help to Buy Agent cannot charge Homes England any fee for producing a Corrective Action Report or a Rectification Plan.

2.6 For a period of three months following any of the following:

2.6.1 2 January 2020;

- 2.6.2 the agreement of any new Service Level Proposal for a new KPI or PI;
- 2.6.3 the date of implementation of any new Service; or
- 2.6.4 the Specification Transition Date,

a baseline performance will be measured (in the case of the implementation of a new Service in order to establish the correct level for any relevant new or revised KPI or PI) and Service Credits will not apply.

3 **Service Credits**

- 3.1 If the level of performance of the Help to Buy Agent during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator then no Service Credits deductions shall be made in respect of that Key Performance Indicator.
- 3.2 If the level of performance of the Help to Buy Agent during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator then Service Credits shall accrue and deductions will be made from the Fees. Each KPI is weighted by reference to the At Risk Amount, which is detailed in Appendix 3 to this Schedule 2.
- 3.3 Service Credit deductions will be made within any one Measurement Period and deducted from the Fees for the relevant Service Period on the basis of the weightings and calculations within appendices 1, 2 and 3. The amount in Service Credits deducted increases by the fixed increment shown against the relevant KPI in appendix 1 for each category (Minor, Serious, Severe) dependent upon the recorded level of performance by the Help to Buy Agent.
- 3.4 The liability of the Help to Buy Agent in respect of Service Credits shall be subject to the Monthly and Annual Service Credit Cap. For the avoidance of doubt, the operation of the various Service Credit Caps shall not affect the continued monitoring of performance. Service Credits are a reduction of the Fees payable in respect of the relevant Services to reflect the performance failure and the reduced values of the Services actually received and are stated exclusive of VAT.
- 3.5 A further category of failure is a Critical Service Failure which constitutes Material Default giving rise to Homes England being entitled to terminate this agreement in relation to that part of the Service or to the Agreement as a whole.
- 3.6 A worked example of the weighting and modelling of the Service Credit values associated with the individual KPIs is provided within Appendix 3.

4 **Repeat KPI Failures**

- 4.1 Subject to Paragraph 4.3, where a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".
- 4.2 For a Repeat KPI Failure, the monthly At Risk Amount shall be doubled, subject to the applicable of the Service Credit Cap. The doubling only occurs once in a sequence of consecutive KPI Failures. If there are three consecutive Repeat KPI Failures, the At Risk Amount shall not be trebled but will remain at the level that applied to the second

consecutive failure. The At Risk Amount only returns to its original level when the Help to Buy Agent achieves the Target Performance Level during a subsequent Service Period. Monitoring of performance levels will in any case continue to apply and Repeat KPI Failures will be taken into account for the purposes of assessing whether a Critical Service Failure has occurred.

- 4.3 A Repeat Failure KPI deduction shall not be made when the causes identified within a Rectification Plan have been addressed and rectified and the repeat failure is as a result of a different identified cause.

Part 2 - Performance Monitoring and Performance Review

1 The Help to Buy Agent shall provide all reasonable assistance to enable Homes England to monitor the Help to Buy Agent's performance of its obligations under this Agreement.

2 In addition to Performance Monitoring, the Help to Buy Agent shall promptly respond to any request from Homes England for appropriate information to respond to Ministers, press enquiries, Freedom of Information requests, or litigation matters or such other requests which is reasonably available to the Help to Buy Agent and could reasonably be considered to facilitate the monitoring of the Help to Buy Agent's performance in compliance with this Agreement.

3 Within ten Working Days of the end of each Service Period, the Help to Buy Agent shall provide:

3.1 a Monthly Performance Report to Homes England's Authorised Representative which assesses compliance with the Specification, performance against each of the Key Performance Indicators and Performance Indicators as more particularly described in Paragraph 3.3 (the "**Monthly Performance Report**"); and

3.2 a report to Homes England's Head of Equity Loan Administration which summarises the Help to Buy Agent's performance over the relevant Service Period as more particularly described in Paragraph 3.5 (the "**Balanced Scorecard Report**").

3.3 The Monthly Performance Report

3.3.1 The Monthly Performance Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

- (a) Key Performance Indicators (KPIs), agreed Management Information for each Key Performance Indicator, Performance Indicator and any required supporting Management Information, the actual performance achieved over the Service Period, and that achieved over the previous rolling 12 month period including performance against the Target Performance Level specified for each KPI and PI in Appendix 2 to this Schedule;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Threshold;
- (d) Corrective Action Reports for Minor KPI Failures;
- (e) which Performance Failures remain outstanding and progress in resolving them;

- (f) for any Material KPI Failures occurring or Material PI Failures during the Service Period, the cause of the relevant KPI Failure or PI Failure and the proposed action to be taken subject to Homes England's approval under a Rectification Plan to remedy the performance and reduce the likelihood of future recurrence;
- (g) the status of any outstanding previous approved Rectification Plan processes including a summary of the Help to Buy Agent's progress in implementing that Rectification Plan;
- (h) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (i) relevant particulars of any other aspects of the Help to Buy Agent's performance which fail to meet the requirements of this Agreement including the details of any further significant issues surrounding performance of the services and ways in which such issues have been addressed;
- (j) details of Service Improvement initiatives delivered against any Service Improvement Plan during the Service Period and those due for delivery in the next period; and
- (k) such other details as Homes England may reasonably require from time to time.

3.4 **Information in respect of previous Service Periods**

- 3.4.1 A rolling total of the number of Performance Failures that have occurred over the past 12 Service Periods.
- 3.4.2 The amount of Service Credits that have been incurred by the Help to Buy Agent over the past 12 Service Periods.

3.5 **Balanced Scorecard Report**

- 3.5.1 The Balanced Scorecard Report shall be presented in the form of a dashboard in the template in Appendix 5 and, as a minimum, shall contain a high-level summary of the Help to Buy Agent's performance over the relevant Service Period, including details as required which may include the following:
 - (a) financial indicators/performance relating to Open Book data requirements;
 - (b) summary of the Target Performance Levels achieved (KPI, PIs and MI);
 - (c) strategic performance measures and behavioural indicators as detailed in the Benchmarking Standards
 - (d) performance of Sub-contractors;
 - (e) Management Information relating to staffing to include but not limited to:
 - i Number of training days (including induction) per frontline FTE

- ii. Attrition/Absenteeism/Sickness data
- iii. New starters/probationers
- iv. Number of staff on performance improvement/capability plans
- v. Number of apprentices
- (f) Summary of progress against any internal audit plan provided by Homes England to the Help to Buy Agent from time to time; and
- (g) Summary of progress against any risk and issues log provided by Homes England to the Help to Buy Agent from time to time.

3.5.2 The Performance Report and the Balanced Scorecard Report shall be signed off by the Help to Buy Agent's Director of Commercial Development as being correct to the best of their knowledge and belief prior to sending to Homes England's Authorised Representative.

3.6 **Contract Review Meetings**

3.6.1 The Contract Review Meetings shall (unless otherwise agreed):

- (a) take place monthly within ten (10) Working Days of every Monthly Performance Report and Balanced Scorecard Report being issued to Homes England Authorised Representative by the Help to Buy Agent (or such other date as the Parties may agree);
- (b) take place at such location and time (within normal business hours) as Homes England shall reasonably require (unless otherwise agreed in advance); and
- (c) be attended by the Help to Buy Agent Representatives and Homes England Representatives.

3.7 **Strategic Senior Management Review Meetings**

In addition to the Contract Review Meetings, Homes England and the Help to Buy Agent shall hold Strategic Senior Management Review Meetings which shall (unless otherwise agreed);

3.7.1 Take place every six months within ten (10) Working Days of the final monthly Contract Review Meeting held in that Quarter.

3.7.2 The purpose of the Strategic Review Meetings is to provide a forum for the following areas::

- (a) To provide strategic direction between both parties and ensure overall success of the relationship pursuant to the terms of this Agreement.
- (b) To provide senior level guidance, leadership and strategy for the overall delivery of the Services;

- (c) To ensure this agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by Homes England and the commercial benefit derived by the Help to Buy Agent;
- (d) To monitor decisions on policy changes and significant service adjustments;
- (e) To have overall responsibility for the scrutiny and audit of the delivery of all Services associated with the contract;

3.7.3 The meetings shall be attended by the Chief Financial Officers of Homes England and the Help to Buy Agent

4 **Performance Records**

- 4.1 The Help to Buy Agent shall keep appropriate data and records in relation to the performance of the Services in such format as Homes England shall require for the duration of the Agreement and provide prompt access to such records (together where required to the supporting systems) on an Open Book basis to Homes England upon Homes England's reasonable request. The records and data of the Help to Buy Agent shall be available for inspection by Homes England, its Internal Audit and Risk Officers and/or its nominee at any reasonable time and Homes England and/or its nominee may make copies of any such records and documents without incurring additional charges from the Help to Buy Agent.
- 4.2 In addition to the requirement in Paragraph 4.1, the Help to Buy Agent shall provide to Homes England such supporting documentation and data as Homes England may reasonably require in order to verify the level of the performance of the Help to Buy Agent and the calculations of the amount of Service Credits for any specified period.
- 4.3 The Help to Buy Agent shall ensure that the Monthly Performance Report, the Balanced Scorecard Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by Homes England are available to Homes England online and are capable of being downloaded and/or printed.

Schedule 7
Security Policy

INFORMATION SECURITY POLICY

3RD PARTIES

Document Information	
Document owner	Information Security Officer
Issue date	July 2019
Review date	July 2020
Version	1.5
UDRN	ISMS 034
Approved by: (Date)	BISG (April 2016)

Version History			
Version	Date	Summary of Changes	Editor
1.0	November 2008	New policy for new organisation following transition from English Partnerships	s. 40(2)
1.1	October 2010	Minor policy revisions to reference to Security Policy Framework	s. 40(2)
1.2	October 2011	Requirement for completed 3rd party questionnaire	s. 40(2)
1.3	23/03/16	Minor amendments to document structure. Standalone policy rather than being part of handbook.	s. 40(2)
1.4	January 2018	Rebranded for Homes England and Reviewed	s. 40(2)
1.5	July 2019	DPO request that the Data Protection Act 2018 reference is updated	s. 40(2)

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

IT IS THE POLICY OF HOMES ENGLAND THAT 3rd PARTIES, WHO ARE GRANTED ACCESS TO HOMES ENGLAND INFORMATION ASSETS, IN ANY FORM, WILL:

1. Protect information provided or made available to them by Homes England, from unauthorised access;
2. Ensure the confidentiality of information provided, or made available to them, unless such documents or other materials, data or other information are public knowledge at the time when they are so provided;
3. Ensure the continued integrity of information provided or made available to them; (Safeguarding the accuracy and completeness of information by protecting against unauthorised modification)
4. Adhere to Regulatory and Legislative requirements will be met, including, but not limited to: Data Protection Act 2018 and the General Data Protection Regulation, Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000,
5. Ensure that all of its employees who have access to Homes England information assets will have signed a confidentiality document in an agreed format, and are made aware of the requirements of this policy;
6. Report all breaches or weaknesses of information security, actual or suspected, to Homes England's Information Security Officer (ISO) for investigation. Where required, the ISO will escalate these internally, and where appropriate, to other relevant third parties;
7. Be aware that monitoring tools will be utilised to monitor all network activity on a regular basis, and independent third parties will be engaged to carry out ethical hacking attacks on a regular basis to ensure the effectiveness of Homes England's security implementation against attack
8. Ensure that any access to Homes England's information systems is protected with a strong password, and that user access credentials will be held securely, and will not be shared, or disclosed to unauthorised persons
9. Notify the Homes England Service Desk (01908 353604) in a timely manner, where an employee, or other user, with access to Homes England IT systems, leaves the organisation, or no longer requires system access, so that such access can be revoked in a timely manner

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

Agreement	
Name	
Organisation	
Date	

Schedule 8

Data Protection Declaration

DATA PROTECTION DECLARATION

TO: *[Insert details of HTBA]*

FROM: *[insert details of data recipient]*

We hereby acknowledge that as part of our provision of affordable home ownership schemes funded by Homes England, we will be handling personal data.

Processing of personal data in the UK is subject to the obligations set in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), hereafter referred to as the Data Protection Legislation.

We confirm that we will treat such personal data in accordance with our obligations as data controllers as defined by the Data Protection Legislation as amended or re-enacted from time to time.

In processing any such data, we undertake to act in accordance with the principles of the Data Protection Legislation at all times and will only disclose such data to the extent necessary and only in accordance with the Data Protection Legislation.

Signed for and on behalf of:

Schedule 9

Processing, Personal Data and Data Subjects

1. The contact details of Homes England's Data Protection Officer are DPO@homesengland.gov.uk, telephone [S. 40\(2\)](tel:S.40(2)).
2. The contact details of the Help to Buy Agent's Data Protection Officer are [S. 40\(2\)](mailto:data.protection@bpha.org.uk) Data Protection Office; Direct dial: [S. 40\(2\)](tel:S.40(2)); Email: data.protection@bpha.org.uk
3. The Help to Buy Agent shall comply with any further written instructions with respect to processing by Homes England.
4. Any such further instructions shall be incorporated into this Schedule.
5. As at the date of this Agreement, the Help to Buy has appointed the following as Sub-processors:
 - (a) Spinbox
 - (b) Microsoft

Description	Details
Identity of the Controller and Processor	The parties acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Controller and the Help to Buy Agent is the Processor, in accordance with Clause 31 of this Agreement.
Subject matter of the processing	All processing undertaken (if any) in connection with the provision of the Services.
Duration of the processing	The Term
Nature and purposes of the processing	Any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means, for purposes arising in connection with the provision of the Services.
Type of Personal Data	Names, addresses, dates of birth, gender, ethnicity, faith, NI numbers, telephone numbers, email addresses, pay, employment status, images, and any other personal data processed in connection with the provision of the Services.
Categories of Data	Applicants for Help to Buy Equity Loans, Applicants for Affordable Home Ownership Schemes, Grant

Subject	Recipients, Contracted Developers Solicitors for the applicants, Help to Buy Equity Loan Providers, Mortgage Administrator, the legal and other professional advisers of all the above persons; persons who enquire about Help to Buy Equity Loans or Affordable Home Ownership Schemes but do not become applicants, staff (including volunteers, agents, and temporary workers) of Homes England, members of the public
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	In accordance with clause 31.17 of this Agreement.

Schedule 11

Geographic Service Areas

Help to Buy Agent Lot Areas

Lot 2 (Midlands and London (London Equity Loan only))

Rushcliffe
Newark and Sherwood
Mansfield
Gedling
Broxtowe
Bassetlaw
Ashfield
Wellingborough
South Northamptonshire
Northampton
Kettering
East Northamptonshire
Daventry
Corby
West Lindsey
South Kesteven
South Holland
North Kesteven
Lincoln
East Lindsey
Boston
Oadby and Wigston
North West Leicestershire
Melton
Hinckley and Bosworth
Harborough
Charnwood
Blaby
South Derbyshire
North East Derbyshire
High Peak
Erewash
Derbyshire Dales
Chesterfield
Bolsover
Amber Valley

Nottingham
Rutland
Leicester
Derby
Wyre Forest
Wychavon
Worcester
Redditch
Malvern Hills
Bromsgrove
Warwick
Stratford-on-Avon
Rugby
Nuneaton and Bedworth
North Warwickshire
Tamworth
Staffordshire Moorlands
Stafford
South Staffordshire
Newcastle-under-Lyme
Lichfield
East Staffordshire
Cannock Chase
Stoke-on-Trent
Shropshire
Telford and Wrekin
Herefordshire
Wolverhampton
Walsall
Solihull
Sandwell
Dudley
Coventry
Birmingham
City of London
Barking and Dagenham
Barnet
Bexley
Brent
Bromley
Camden
Croydon
Ealing
Enfield
Greenwich
Hackney
Hammersmith and Fulham

Haringey
Harrow
Havering
Hillingdon
Hounslow
Islington
Kensington and Chelsea
Kingston upon Thames
Lambeth
Lewisham
Merton
Newham
Redbridge
Richmond upon Thames
Southwark
Sutton
Tower Hamlets
Waltham Forest
Wandsworth
Westminster

Schedule 12
Special Changes

Special Changes Procedure

Part 1

1 Purpose of this Schedule

The purpose of this Schedule is to set out how Homes England and the Help to Buy Agent will co-operate to implement changes, modifications or amendments to this Agreement which arise from:

- 1.1 the adoption of Specification B in substitution for Specification A;
- 1.2 the inclusion of additional Geographic Service areas by Homes England to the Help to Buy Agent;
- 1.3 modifications in Homes England and/or Her Majesty's Government policy and/or legislation which require modification to either or both Specification A or Specification B;
- 1.4 the abandonment of the Help to Buy programme and the adoption by Her Majesty's government and/or Homes England of an alternative programme to assist the purchasers of homes (whether market sales, affordable home ownership sales).

2 Adoption of Schedule 1B

- 2.1 Homes England and the Help to Buy Agent acknowledge that it is currently their intention that Specification B will replace Specification A.
- 2.2 Subject to paragraph 2.4 (below) Homes England may at any time serve three (3) months' written notice on the Help to Buy Agent which shall set out that at the expiry of the same written notice the Help to Buy Agent shall provide the Services in accordance with Schedule 1B (the **Schedule 1B Notice**).
- 2.3 On the expiry of the Schedule 1B Notice the following shall apply the Help to Buy Agent shall provide the Services in accordance with schedule 1B and Schedule 1A shall cease to apply and reference in this Agreement to Services shall be construed accordingly;
- 2.4 The parties may agree in writing to lengthen or shorten the written notice referred to in paragraph 2.2 (above).

3 Inclusion of additional Geographic Service Areas

- 3.1 The parties acknowledge:
 - 3.1.1 that Homes England contemplated how to ensure the provision of Help to Buy continues if a provider of the Help to Buy agency services became insolvent or otherwise had their agreement with Homes England terminated and/or they were suspended from delivering agency services in particular Geographical Service Areas;

- 3.1.2 that Homes England indicated in the procurement of the Help to Buy Agent that if the circumstances in paragraph 3.1.1 arose in relation to another Help to Buy Agent Agreement in relation to a Geographic Service Area not covered by this Agreement that Homes England has the right to require the Help to Buy Agent to provide the Services to any or all of the affected Geographic Service Areas.
- 3.2 Homes England may from time to time give written notice to the Help to Buy Agent of its intention to award the Help to Buy Agent additional Geographic Service Areas (**Additional Areas**) in which the Help to Buy Agent will become responsible for delivering the Services (the **Additional Areas Notice**).
- 3.3 Following service of an Additional Areas Notice Homes England shall promptly provide to the Help to Buy Agent:
- 3.3.1 the historic and anticipated volume of Help to Buy activity in each Additional Area;
- 3.3.2 information (if known) about whether the Transfer Regulations might apply to persons employed by other or previous Help to Buy agency provider;
- 3.3.3 the date on which Homes England would require the Help to Buy Agent to start providing the Services in each of the Additional Areas;
- 3.3.4 such other information as the Help to Buy Agent might reasonably require in order to propose a change to the Fee and to make preparations to deliver the Services to each of the Additional Areas.
- 3.4 In proposing a change to the fees payable under this Agreement (**Fee Adjustment**) the Help to Buy Agent shall:
- 3.4.1 co-operate on with Homes England and provide information and the breakdown of the Fee Adjustment on an Open Book basis;
- 3.4.2 ensure that any proposal to change the ongoing regular Fees payable under this Agreement contained in the Fee Adjustment are based on the Standard Fee and not the Transaction Fee;
- 3.4.3 include details of any additional one-off costs which are likely to be incurred in relation to the Additional Areas are itemised with an explanation (**Exceptional Fee Element**);
- 3.4.4 The Exceptional Fee Element shall:
- (a) not include any profit element;
- (b) only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Standard Fees or Transaction Fees in the Additional Areas.
- 3.5 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Fee Adjustment (with an appropriate breakdown) to Homes England within four (4) weeks of Homes England providing the Help to Buy Agent with the information listed in clause 3.3 of this Schedule 12.

- 3.6 Unless the parties agree otherwise Homes England shall within four (4) weeks review the proposed Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 3.7 Homes England may accept or reject the Help to Buy Agent's proposed Fee Adjustment or request that the Help to Buy Agent modify the same.
- 3.8 If Homes England agrees to the proposed Fee Adjustment then from the date it specifies in a written notice served on the Help to Buy Agent:
- 3.8.1 the Geographic Service Areas shall be modified to include such Additional Areas as Homes England as specified;
 - 3.8.2 the agreed revised Standard Fees shall take into account the impact of any additional Transaction Fees which arise from the provision of the Services to the Additional Areas added to the Geographic Service Areas;
 - 3.8.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 3.9 Homes England is only required to pay any Exceptional Fee Element:
- 3.9.1 It has been approved by Homes England and included as a modification under paragraph 3.8.3; and
 - 3.9.2 It has been incurred by the Help to Buy Agent.

4 **Modifications to any Equity Loan Products or AHO Products**

- 4.1 The parties acknowledge the Homes England Equity Loan Products and AHO Products may be subject to policy and legislative changes from time to time and these may require a change to the specification for the delivery of the Services and/or the wider terms of this Agreement.
- 4.2 Homes England may from time to time give written notice to the Help to Buy Agent of its opinion that a proposed or actual policy and/or legislative change means that either the specification for the Services and/or the wider terms of this Agreement require alteration (**Contract Change Notice**).
- 4.3 Following service of the Contract Change Notice Homes England shall promptly provide to the Help to Buy Agent a description of its proposed to Contract Change (**a Contract Change**).
- 4.4 In response to the Contract Change Notice, the Help to Buy Agent shall propose to Homes England a change to the fees payable under this Agreement (**Change Fee Adjustment**) and it shall:
- 4.4.1 co-operate on with Homes England and provide information and the breakdown of the **Change Fee Adjustment** on an Open Book basis;

- 4.4.2 ensure that the Change Fee Adjustment is based on the Standard Fee (and not the Transaction Fee) with any proposed changes to that based on additional services or a reduction in its activities and/or Services which will arise as a consequence of the proposed implementation of the Specification Change;
- 4.4.3 include details of any additional one-off costs which are likely to be incurred in relation to the Change Specification are itemised with an explanation (**Exceptional Fee Element**);
- 4.4.4 the Exceptional Fee Element shall:
 - (a) not include any profit element;
 - (b) shall only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Transaction Fees or Standard Fees.
- 4.5 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Change Fee Adjustment (with an appropriate breakdown) to Homes England within eight (8) weeks of the service of the relevant Contract Change Notice.
- 4.6 Unless the parties agree otherwise Homes England shall within eight (8) weeks review the proposed Change Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 4.7 Homes England may also require the Help to Buy Agent to provide evidence of comparable benchmarking data which evidences (to the Home England's reasonable satisfaction) that any element of the Change Fee Adjustment is comparable or better value for money than open market costings.
- 4.8 Homes England may accept or reject the Help to Buy Agent's proposed Change Fee Adjustment or request that the Help to Buy Agent modify the same.
- 4.9 If Homes England agrees to the proposed Change Fee Adjustment then from the date it specifies in a written notice served on the Help to Buy Agent:
 - 4.9.1 Schedule 1 shall be modified to include the changes Homes England agreed to in relation to the relevant Change Specification;
 - 4.9.2 the Fees shall be modified to incorporate the relevant Change Fee Adjustment (as agreed by Homes England);
 - 4.9.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 4.10 Homes England is only required to pay any Exceptional Fee Element:
 - 4.10.1 It has been approved by Homes England and included as a modification under paragraph 4.7.3; and
 - 4.10.2 It has been incurred by the Help to Buy Agent.

5 Adoption of an alternative scheme

- 1.1 The parties acknowledge that Homes England contemplated that during the Term of this Agreement:
- 5.1.1 that the Help to Buy programme could be terminated and/or reduced in scope; and
 - 5.1.2 the possibility that HM government may in the future introduce support for individuals concerning the purchase of homes (whether purchased on market and/or affordable homeownership terms) (an **Alternative Scheme**);
 - 5.1.3 the substantive services provided by the Help to Buy Agents in an Alternative Scheme must be similar in nature to the Services (whether as specified in Schedules 1A, 1B or as adopted as a change under this Agreement).
- 5.2 Homes England may from time to time give written notice to the Help to Buy Agent of its opinion that a proposed or actual HM Government policy and/or legislative change means that the Help to Buy programme may be reduced and/or an Alternative Scheme may be introduced (**Alternative Scheme Notice**).
- 5.3 Following service of the Alternative Scheme Notice Homes England shall promptly provide to the Help to Buy Agent a description of a new specification in relation to providing services similar to any or all of the Services (**Alternative Services**) proposed.
- 5.4 In response to the Alternative Scheme Notice, the Help to Buy Agent must propose a change to the Fee (**Alternative Fee Adjustment**) and it shall:
- 5.4.1 co-operate on with Homes England and provide information and the breakdown of the Alternative Fee Adjustment on an Open Book basis;
 - 5.4.2 ensure that the Alternative Fee Adjustment is based on the Standard Fee (and not the Transaction Fee) with changes to that based on any additional services or a reduction in its activities and/or Services which will arise as a consequence of the proposed implementation of the Alternative Services;
 - 5.4.3 that any additional one-off costs which are likely to be incurred in relation to the Change Specification are itemised with an explanation (**Exceptional Fee Element**).
- 5.5 The Exceptional Fee Element shall:
- 5.5.1 not include any profit element;
 - 5.5.2 shall only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Standard Fees or Transaction Fees.
- 5.6 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Alternative Fee Adjustment (with an appropriate breakdown) to Homes England within eight (8) weeks of the service of the relevant Alternative Change Notice.

- 5.7 Unless the parties agree otherwise Homes England shall within eight (8) weeks review the proposed Alternative Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Alternative Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 5.8 Homes England may also require the Help to Buy Agent to provide evidence of comparable benchmarking data which evidences (to Home England's reasonable satisfaction) that any element of the Alternative Fee Adjustment is comparable or better value for money than open market costings.
- 5.9 Homes England may accept or reject the Help to Buy Agent's proposed Alternative Fee Adjustment or request that the Help to Buy Agent modify the same.
- 5.10 If Homes England agrees to the proposed Alternative Fee Adjustment then from the date Homes England specifies in a written notice served on the Help to Buy Agent:
- 5.10.1 Schedule 1 shall be modified to include the changes Homes England agreed to in relation to the relevant Alternative Services;
 - 5.10.2 the Fees shall be modified to incorporate the relevant Alternative Fee Adjustment (as agreed by Homes England);
 - 5.10.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 5.11 Homes England is only required to pay any Exceptional Fee Element:
- 5.11.1 It has been approved by Homes England and included as a modification under paragraph 5.10.3; and
 - 5.11.2 these have been incurred by the Help to Buy Agent.

Schedule 13

Exit Plan

Any Exit Plan prepared by the Help to Buy Agent in accordance with clause 13 shall include the following details:

- 1 Full account history of live cases including all account details, contacts and email addresses on file.

For the avoidance of doubt, during any Handover Period the requirements of this Agreement shall continue to apply and the Help to Buy Agent shall:

- 1 continue to provide Performance Reports;
- 2 attend additional weekly meetings with Homes England and any New Provider;
- 3 work with the New Provider on data format for transfers;
- 4 retain staffing numbers until the Agreement ends with an agreed minimum number of operational staff;
- 5 meet the data requirements specified by Homes England or the New Provider based on data items it holds at that time; and
- 6 (where applicable) hand over the Website for Homes England to manage.

Schedule 14

Rectification Plan

Ref	KPI / PI Impacted	Date or Date Range affected	Rectification Description	Root Cause	Impact	Corrective Action	Agreed Outcome	Continuity plan (change in process if needed)	Owner	By When	Status	Evidence of Rectification Provided	Progress Update	Return to Green Status via RAG	Internal (HiB) reference
Finding 1															

Schedule 15

Change Control Procedure

1 DEFINITIONS

In this Schedule the following abbreviations, words and phrases shall have the following meanings, unless the context requires otherwise:

Change Control Form means the template change control form to be used by the parties when requesting a change to this Agreement or the Services a copy of which is attached at paragraph 3 of this Schedule.

2 CHANGE CONTROL PROCEDURE

2.1 Either party may raise change control requests ("CCRs") in writing relating to any changes required to the Services or otherwise to this Agreement. The CCRs shall be raised by the Authorised Representative of the party concerned who has the authority to raise such CCRs. The CCRs raised shall be subject to the Change Control Procedure set out below:

2.2 **CCRs raised by Homes England:**

2.2.1 The Help to Buy Agent shall enter each CCR into a log which shall be maintained by the Help to Buy Agent and each CCR shall be given a reference number and show the current status of each CCR. The status of each CCR shall be maintained in the log as:

- (a) awaiting estimation or confirmation of estimate;
- (b) awaiting approval;
- (c) approved; or
- (d) rejected.

2.2.2 The Help to Buy Agent's Authorised Representative shall be responsible for reviewing and responding to the CCR. The Help to Buy Agent's Authorised Representative shall then:

- (a) propose a solution for the CCR;
- (b) outline the benefits of the CCR if applicable;
- (c) set out an estimate of the costs of completing and implementing the CCR;
- (d) advise Homes England of the likely financial, technical and time scale impact of any requested or recommended change; and
- (e) capture this information on a Change Control Form.

- 2.2.3 The Help to Buy Agent shall use reasonable endeavours to complete this Change Control Form within three (3) Business Days of receiving the CCR from Homes England. However, if due to the complexity of the change required, the Help to Buy Agent reasonably believes that the estimate of the costs of the CCR will take more than five (5) days to complete, then the Help to Buy Agent shall inform Homes England of this and shall be allowed an extension to the three (3) Business Day period and shall complete the Change Control Form as soon as is reasonably practicable. Where an extension applies, the Help to Buy Agent shall also provide an estimate of the cost for arriving at the cost estimation of the CCR and shall obtain Homes England's consent to the estimate before commencing work on the Change Control Form.
- 2.2.4 Homes England shall use all reasonable endeavours to review the information on the Change Control Form within five (5) Business Days and to reach a decision on whether they will accept or reject the change and, if the change would result in a reduction in the volume and/or scope of the Services, determine a commensurate reduction to the Standard Fee and/or Transaction Fee. If it accepts the change it shall sign the Change Control Form indicating its acceptance and authorising the work to commence. If it rejects the change it shall inform the Help to Buy Agent in writing. If this rejection relates to a CCR that has involved an extension of time for estimation due to its complexity then Homes England shall be liable to pay the Help to Buy Agent for the costs involved in arriving at the estimates.
- 2.2.5 When a CCR has been accepted and approved by Homes England, the Help to Buy Agent shall use reasonable endeavours to complete and implement the change in the timescale estimated on the Change Control Form.

2.3 CCRs raised by the Help to Buy Agent:

- 2.3.1 The Help to Buy Agent shall raise a CCR and log it as set out in paragraph 2.2.1 of this Schedule and then complete a Change Control Form as set out in paragraph 2.2.2 of this Schedule for review by Homes England. The procedure in paragraphs 2.2.4 and 2.2.5 shall then be followed except that if Homes England rejects the CCR, then it shall not be liable for any costs in arriving at the estimates for completing and implementing the CCR.
- 2.3.2 The Help to Buy Agent shall charge and invoice for work carried out on all CCRs (whether raised by Homes England or by the Help to Buy Agent) in accordance with the charge out rates.

2.4 where the change made has the effect of reducing the scope of the service, the Standard Fee and Transaction Fee can be reduced.

3 CHANGE CONTROL FORM

The template for the Change Control Form is attached below:

CHANGE CONTROL FORM - CHANGE REQUEST

ENSURE **ALL** SECTIONS (*EXCEPT SUMMARY*) OF PART 1 ARE COMPLETED WHEN SUBMITTING CC

PART 1: Change Request Description			
CHANGE CONTROL REF			
Homes England			
Priority			
Change Control Title			
Raised by:	Job Title:	Contact No:	Date of Request:

Brief Description of Change Required:
Detailed Requirements:
Exclusions:
Reason for Change:
Proposed Solution:
Impact if Change NOT done:
Benefits:
Date Required by:

SUMMARY					
Department	Name	Effort	Chg out Rate	Cost £	IA Rec'd
			TOTAL		

HOMES ENGLAND ACCEPTANCE OF COST	
Date	
Comments	
Name of Signatory	
Signature	

Appendix 1

Template Incident Report

Incident Report

Incident report to be submitted to Homes England within twenty (20) Working Days of each and every Business Continuity and Disaster Recovery Event.

Please provide the following details:

Incident Title				
Name of person submitting this report				
Key contact / Incident Owner (if different to the above)				
Date and time Incident occurred				
Date and time Incident resolved				
Description of Incident				
Impact of Incident (please consider the services impacted and numbers of customer affected)				
Corrective actions taken (please list all)				
Preventative actions taken (please list all)				
Future Mitigation – Preventing Reoccurrence				
Actions and / or improvements still to be undertaken and if so please provide target dates for completion (please list all)	Action	Status	Owner	Due Date
Supporting information if required				

Incident Timeline	Date	Time	Event



Homes
England

bpha Ltd
Bedford Heights
Manton Lane
Bedford
MK41 7BJ

16 December 2020

FAO s. 40(2) [REDACTED] Director of Customers and Services

Dear Sirs

**RE APPOINTMENT OF HELP TO BUY AGENT
SERVICE AGREEMENT LOT 2**

(the "Agreement")

**NOTICE OF EXTENSION of the AGREEMENT
Pursuant to Clause 3.2 of the Agreement**

On 23 December 2019, bpha Ltd entered into the Agreement under which it was appointed by Homes England to act as a Help to Buy Agent. The Initial Term of the Agreement expires on 31 March 2021.

We write to give you notice of our intention to extend the Agreement, as set out below.

1. In accordance with Clause 3.2 of the Agreement, Homes England intends to extend the Agreement beyond the Initial Term for a period of 24 months until 31 March 2023. This means the Term shall expire on 31 March 2023.
2. The increase in Fees arising pursuant to Schedule 10 paragraph 4.1.3 shall be calculated on or within 90 days of 1 April 2021 and shall be notified to you in writing.

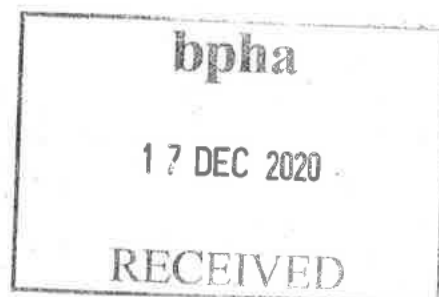
All other terms remain without variation.

Please sign and date the attached acknowledgment form and return with this letter to me. An electronic signature is acceptable, and you may return the form to me by e mail in accordance with Clauses 21.1 and 21.2.4 of the Agreement. Upon receiving your acknowledgment of the above extension, we shall prepare a Deed of Agreement putting the extension into effect.

Homes England
Windsor House, 50 Victoria Street, Westminster, London SW1 H0TL

0300 1234 500

OFFICIAL



Yours faithfully

s. 40(2)

s. 40(2)

Authorised Representative for and on behalf of Homes England

We acknowledge receipt of the notice of the extension of the Agreement as set out in the letter dated 16 December 2020.

SIGNED by bpha Ltd

..... **s. 40(2)**

s. 40(2)

Authorised Signatory

s. 40(2)

Authorised Signatory

THIS DEED of AGREEMENT of VARIATION is dated the 7th day of April 2021 and is

made **BETWEEN:**

- 1) **Homes and Communities Agency** trading as Homes England of One Friargate, Coventry, CV1 2GN ("Homes England"); and
 - 2) **bpha Limited** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 26751R whose registered office is at Bedford Heights, Manton Lane, Bedford MK41 7BJ (the "Help to Buy Agent")
- each known as a "**Party**" to and collectively as "**Parties**".

WHEREAS

- A) The Parties have entered into an agreement dated 23 December 2019 (the "**Agreement**") for the appointment of a Help to Buy Agent to provide the Services as defined in the Specification and the Agreement.
- B) The Parties have agreed to vary the Agreement pursuant to Clause 3.2 of the Agreement to extend the Term of the Agreement until 31 March 2023 and further to make provision for the commencement of the application of Service Credits pursuant to Schedule 2 Part 1 of the Agreement.
- C) All other provisions of the Agreement remain unchanged and have full force and effect unless the Agreement is subject to a variation in accordance with the terms of the Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. In the Definitions section the following definitions shall be inserted:
 - 1.2.1: "Extension Period(s)" means one or more periods of not less than 6 months beyond the expiry of the Initial Term; and
 - 1.2.2 "Term": shall mean the Initial Term and any Extension Period(s) pursuant to clause 3.2 and shall not extend beyond 30 September 2024.
2. Clause 3.2 shall be deleted and the following paragraph 3.2 shall be inserted:
 - 3.2 Subject to clause 3.3 upon giving reasonable notice to the Help to Buy Agent prior to the expiry of the Initial Term, Homes England may extend the Term beyond the Initial Term for one or more Extension Period(s) provided that the Term shall not expire after 30 September 2024.

3. Clause 3.3 shall be deleted and the following paragraph 3.3 shall be inserted:
 - 3.3 The reasonable period of notice referred to in clause 3.2 shall be at the discretion of Homes England. Notwithstanding the generality of this clause 3.2 Homes England shall aspire to provide the Help to Buy Agent with not less than 3 months' notice of an Extension Period provided that any shorter notice period shall be valid and in accordance with clause 3.1.

4. The following clause 3.4 shall be inserted:
 - 3.4 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:
 - 3.4.1 the end of the Initial Term; or
 - 3.4.2 the expiry of the Extension Period(s) provided that further notice of extension has not been served pursuant to clause 3.2 and in any event the Term shall not expire after 30 September 2024.

5. Paragraph 2.6.2 of Schedule 2 Part 1 shall be deleted and the following paragraph 2.6 shall be inserted:
 - 2.6 For the period beginning on the Commencement Date and ending on 31 March 2021, a baseline performance for the KPIs and the PIs shall be measured for each Measurement Period and Service Credits shall not apply.

6. The following paragraph 2.7 of Schedule 2 Part 1 shall be inserted:
 - 2.7 From 1 April 2021 the baseline performance for the KPIs and the PIs measured pursuant to paragraph 2.6 of this Schedule 2 shall be the Target Performance Level.

7. The following paragraph 2.8 of Schedule 2 Part 1 shall be inserted:
 - 2.8 From the period 1 April 2021 until the end of the Term or earlier termination of the Agreement the provisions of this Schedule 2 shall apply and Service Credits (where so arising) shall be calculated in accordance with paragraph 3 of this Schedule 2.

8. The following paragraph 2.9 of Schedule 2 Part 1 shall be inserted:
 - 2.9 From the three months following any of the following:
 - 2.9.1 the agreement of any new Service Level Proposal for a new KPI or PI;
 - 2.9.2 the date of implementation of any new Service; or
 - 2.9.3 the Specification Transition Date,a baseline performance will be measured (in the case of the implementation of a new Service in order to establish the correct level for any relevant new or revised KPI or PI) and Service Credits will not apply.

- 9. The Parties shall agree that the increase in Fees arising pursuant to Schedule 10 paragraph 4.1.3 shall be calculated on or within 90 days of 1 April 2021 and shall be notified to the Help to Buy Agent in writing.
- 10. All other provisions of the Agreement remain without change and in full force and effect unless varied in accordance with the terms of the Agreement.

IN WITNESS whereof the Parties have executed this Deed of Agreement of Variation on the date first before written

EXECUTED as a DEED by HOMES AND COMMUNITIES AGENCY

C41295

Authorised Signature ... **s. 40(2)**

EXECUTED AS A DEED by the HELP TO BUY AGENT

by the Signature of a Director and the Company Secretary

Or of two Directors of the Company:

Sign: **s. 40(2)**

Name

Director



Sign **s. 40(2)**

s. 40(2)

Name

Director/Company Secretary **



dated 23 December 2019

Homes England
and
The Swaythling Housing Society Limited

Appointment of a Help to Buy Agent

Service Agreement relating to Lot 3 (South of England (excluding London))

Trowers & Hamblins LLP
55 Princess Street
Manchester
M2 4EW
t +44 (0)161 838 2000
f +44 (0)161 838 2001
www.trowers.com

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Agreement

dated 23 December 2019

Parties

- (1) **Homes England** (the trading name of the Homes and Communities Agency) a body corporate under Section 1 of the Housing and Regeneration Act 2008, of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (**Homes England**); and
- (2) **The Swaythling Housing Society Limited** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 10237R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire SO50 6AD (the **Help to Buy Agent**)

Introduction

- (A) Homes England is empowered under Sections 2, 3 and 5 of the Housing and Regeneration Act 2008 to improve and facilitate the supply of housing in England.
- (B) In accordance with the European Union public sector procurement principles as implemented in the United Kingdom, Homes England has held a competitive tender process to find a service provider to provide a one stop-shop of services providing information about government-supported home ownership products, eligibility and affordability assessment of applicants of affordable home ownership products and eligibility assessment and administration for equity loan product sales in the Geographic Service Area.
- (C) On 3 June 2019 Homes England published a notice in the Official Journal of the European Union in relation to the tender of Homes England's requirements for these services. Homes England issued a SQ to respondents to its notice, then subsequently assessed and selected a short list of candidates.
- (D) Following such assessment and selection, Homes England issued an Invitation to Tender (**ITT**) to potential service providers (including the Help to Buy Agent) and subsequently evaluated responses to the ITT.
- (E) On the basis of the Help to Buy Agent's responses and subsequent discussions, the parties have agreed to the following terms for the provision and receipt of the Services.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

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

AHO Products means all homeownership products supported by Homes England in accordance with the AHCFCG (or any supplementary guidance) including but not limited to: Shared Ownership, Social HomeBuy, HOLD, Older Persons Shared Ownership, Rent to

Buy and any previous or new product of a similar nature made available by Homes England;

AHO Schemes means those affordable housing schemes (including any Nil Grant Units developed in conjunction with that scheme and any schemes agreed by Homes England to be Nil Grant Schemes) provided with the assistance of grant under section 19 of the Housing and Regeneration Act 2008 (or Section 18 or 27a of the Housing Act 1996 where applicable) which will be available for sale or rent on or after the date hereof under the following schemes:

- (a) initial sales of any AHO Product;
- (b) Resales of any relevant AHO Product; and

any additional home ownership for sale products funded via the 2016/21 Shared Ownership and Affordable Homes Programme and/or any additional schemes funded or promoted by Homes England (details of which shall be provided by Homes England);

Affordable Housing Capital Funding Guide or **AHCFG** means Homes England's Affordable Housing Capital Funding Guide as updated, revised or replaced from time to time;

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

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

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

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

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

Authorised Representative means as the case may be the person appointed by Homes England or the Help to Buy Agent respectively to manage all aspects of the Agreement and

who is authorised to make day to day decisions in respect of the operational performance of the Agreement;

Authority to Exchange or **ATE** means a notice served by the Help to Buy Agent in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Authority to Proceed or **ATP** means a notice served by the Help to Buy Agent in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Benchmarking Standards means Homes England's Benchmarking Standards in relation to the Help to Buy Equity Loan Scheme as set out in Schedule 3 (as may be updated and amended from time to time by Homes England);

Business Continuity and Disaster Recovery Event means event that would significantly impact on the ability of the Help to Buy Agent to perform the Services, in whole or in part, in accordance with the terms of this Agreement;

Business Continuity and Disaster Recovery Plan means the Help to Buy Agent's business continuity plan for the Services to minimise the effect of any unplanned interruption or event that would significantly impact on the ability of the Help to Buy Agent to perform the Services, in whole or in part, in accordance with the terms of this Agreement and ensure continuity of business processes and operations supporting the Services following any failure or disruption of processes and operations affecting any element of the Services and the recovery of such processes and operations following a disaster;

Change in Control means any merger or transfer of engagement by the Help to Buy Agent to a third party (which shall include the Help to Buy Agent becoming a subsidiary of any such third party or any business or asset transfer to such party of all or the majority of the Help to Buy Agent's assets) which has not been previously agreed in writing by Homes England;

Commencement Date means 1 December 2019;

Complaint means any expression of dissatisfaction, whether oral or written and whether justified or not, from or on behalf of a Grant Recipient, Help to Buy Equity Loan Provider, Qualifying Applicant or any other party concerning the services provided by the Help to Buy Agent in relation to this Agreement;

Complaints Procedure means the procedure referred to in paragraph 5.2 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B;

Confirmation of Exchange means a letter issued to the Help to Buy Agent by the Qualifying Applicant's Conveyancer pursuant to Paragraph 4.14.12 of Schedule 1A;

Confirmation to Provider means a letter issued by the Help to Buy Agent pursuant to Paragraph 4.14.5 of Schedule 1A providing written confirmation that it is satisfied that the Conditions Precedent has been satisfied

Conditions Precedent means:

- (a) service of the relevant Authority to Proceed together with confirmation that such Authority to Proceed will be current and valid at the date of exchange;
- (b) receipt by the Help to Buy Agent of the Solicitor's Form 2 (with the attached certificate of title completed and signed by the legal advisor acting on behalf of the Eligible Purchaser) in respect of the relevant Eligible Dwelling in respect of the relevant Eligible Unit; and
- (c) receipt by the Help to Buy Agent from the legal advisor acting on behalf of the Eligible Purchaser of a certified copy of either the Eligible Purchaser's final professional valuation (obtained on behalf of an Approved Lender) or (where not available) the Eligible Purchaser's mortgage offer confirming the valuation and valuing the Eligible Dwelling at a sum which is equal to the Full Purchase Price or (at the discretion of Homes England) within a tolerance of that sum determined from time to time by Homes England and notified by the Help to Buy Agent to the Help to Buy Equity Loan Provider in writing;

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

Consumer Credit Legislation means the Consumer Credit Act 1974, Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, the Mortgage Credit Directive Order 2015 together with all applicable consumer credit and regulated mortgage contract legislation and regulations to the extent applicable to the Help to Buy Agent's role under this Agreement;

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

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

Core Transaction Process means the transaction process set out in Schedule 4 as may be amended by Homes England from time to time, the parties acknowledging that such amendments may include (without limitation) new or enhanced requirements for credit reference checks and additional eligibility checks and Customer Due Diligence Requirements;

Customer Due Diligence Requirements means such requirements in respect of customer due diligence and any other requirements notified to the Help to Buy Agent by Homes England in writing from time to time. These requirements may include (without limitation) requirements to obtain from applicants and/or their advisers, and to verify the authenticity of, information including (without limitation) identity checks and source of funds/source of wealth and upload these to IMS, and any enhanced due diligence that Homes England may require in cases that it views as higher risk, for examples Politically Exposed Persons or

source of funds/source of wealth from a high risk jurisdiction. Any such requirements notified to the Help to Buy Agent by Homes England will be deemed to be incorporated into the service requirements of Core Service 3 and Core Service 4 in the Specification in Schedule 1 of this Agreement;

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

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

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

Data Protection Declaration means a declaration in substantially the form set out in Schedule 8;

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

Data Protection Legislation means:

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

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

Default shall mean the occurrence of any of the events described in clause 6.3.1;

Dispute Resolution Procedure means the procedure set out in clause 14;

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

EIR Exception means any applicable exemption to the EIR;

Eligible Dwelling means (in relation to Help to Buy Equity Loan) a Dwelling which qualifies as an Eligible Dwelling pursuant to the Help to Buy Equity Loan Provider's funding administration agreement for Help to Buy Equity Loan;

Eligible Purchaser means a person:

- (a) who satisfies the eligibility criteria issued from time to time by Homes England in relation to Help to Buy Equity Loan;
- (b) who has been approved as eligible by the Help to Buy Agent;
- (c) who is taking out a prior first fixed charge with an Approved Lender;
- (d) who is not connected with the Help to Buy Equity Loan Provider (save where Homes England confirms in writing that any such person qualifies as an Eligible Purchaser); and
- (e) who does not (or will not at the point of purchase of the Eligible Dwelling) possess an interest in any other dwelling;

Equity Loan Products means any equity loan scheme funded or promoted by Homes England to assist potential buyers to acquire a home, including Help to Buy Equity Loans;

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

Exit Plan means the exit plan prepared and implemented in accordance with the requirements of Clause 13.3;

Fees means both the Standard Fee and the Transaction Fee payable in accordance with the provisions of Schedule 10;

Final Mobilisation Plan means the plan prepared by the Help to Buy Agent and approved in writing by Homes England which details the actions the Help to Buy Agent will take during the Mobilisation Period, agreed between the parties in accordance with clause 2.4.1;

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

FOIA Exemption means any applicable exemption to the FOIA;

Full Purchase Price means the full selling price of each property (which is to be set by the Help to Buy Equity Loan Provider but which must be equal to the Market Value of the relevant property);

Geographic Service Area means a geographical area prescribed by Homes England from time to time in which a Help to Buy Agent shall deliver the Services in the relevant lot as more particularly described in Schedule 11;

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

and/or the Regulator performing a similar role and to a standard no less than that maintained by the Help to Buy Agent in respect of its own leaseholders (if applicable);

Grant Recipient means an organisation in receipt of grant under Section 19 of the Housing and Regeneration Act 2008 or Section 18 or 27a of the Housing Act 1996;

Group Company means any company of which the Help to Buy Agent is a Subsidiary or which has the same Associate(s) where Subsidiary and Associate have the meanings given to them by Sections 60 and 61 in the Housing Act 1996 and Group shall be construed accordingly;

Handover Period shall mean such period reasonably specified by Homes England in order to facilitate any handover or winding down of the services and which shall, save where otherwise agreed between the parties, be no longer than six (6) months prior to the expiry or termination of this Agreement;

Help to Buy Agent Equipment means the hardware, computer and telecoms devices and equipment supplied by the Help to Buy Agent or its sub-contractors (but not hired, leased or loaned from Homes England) for the provision of the Services;

Help to Buy Agent Personnel means all directors, officers, employees, agents, consultants and contractors of the Help to Buy Agent and/or of any sub-contractor engaged in the performance of its obligations under this Contract;

Help to Buy Agent's Proposals means the proposals and/or commitments made by the Help to Buy Agent in its response to Homes England's SQ and/or ITT;

Help to Buy Agent System means the information and communications technology system used by the Help to Buy Agent in performing the Services including the Help to Buy Agent Equipment and related cabling (but excluding Homes England System);

Help to Buy Equity Loan and Help to Buy Equity Loan Scheme means the government home ownership initiative of the same name as described in the Help to Buy Equity Loan Participation Guidance published by Homes England on 25 March 2013;

Help to Buy Equity Loan Provider means a provider who has entered into an administration agreement with Homes England to enable the provision of Help to Buy Equity Loans to Eligible Purchasers;

HOLD means home ownership for people with long term disabilities, funded under Shared Ownership to enable Qualifying Applicants to purchase a property suitable to their needs on shared ownership terms on the open market;

Homes England Contribution means in relation to Help to Buy Equity Loan Homes England's contribution in value for between 10% (ten per cent) and 20% (twenty per cent) of the Market Value of the property;

Homes England Data means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- i supplied to the Help to Buy Agent by or on behalf of Homes England; or
 - ii which the Help to Buy Agent is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which Homes England is the Data Controller;

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

ICT Environment means Homes England System and the Help to Buy Agent System;

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

Incident Report means the report to be provided using the template in Appendix 1 of this Agreement by the Help to Buy Agent following every Business Continuity and Disaster Recovery Event that occurs;

Information means:

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

Intellectual Property Rights shall include without limitation all and any rights in and to, and any interests in, any patents, trade marks, service marks, registered designs, utility models, design rights, copyright (including copyright in computer software), database rights, inventions, trade secrets and other confidential information, know-how, business or trade names (including internet domain names and e-mail address names) and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, whether registered or not or capable of registration or not and including the right to apply for and all applications for any of the foregoing rights and the right to sue for infringements of any of the foregoing rights;

ITT means the Invitation to Tender issued to potential service providers by Homes England on 20 August 2019;

ITT Response means the response to the ITT submitted by the Help to Buy Agent and appended as Appendix 2 to this Agreement and which forms part of this Agreement, save that in the event of conflict between the ITT Response and the terms of the rest of the Agreement, the terms of the rest of the Agreement shall prevail;

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

Key Performance Indicators or KPI means the performance indicators listed Appendix 1 of Schedule 2;

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

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

Market Value means the best price reasonably obtainable in the open market for the relevant property (disregarding the availability of Help to Buy Equity Loan as applicable);

Material Default means the breach by the Help to Buy Agent of any of its obligations under, or incorporated by reference into, this Agreement which breach is, in the reasonable opinion of Homes England, material and includes but is not limited to a Critical Service Failure as defined in Schedule 2;

MHCLG means the Ministry of Housing, Communities and Local Government and shall include any successor or replacement governmental department or any governmental department performing a similar role to the MHCLG;

Mobilisation Period means the period from and including the Commencement Date until and including 29 February 2020;

Month means a calendar month;

Mortgage Administrator means any agent appointed by Homes England to administer their Equity Loan Products and whom Homes England have confirmed in writing will fulfil the role of Mortgage Administrator in relation to this Agreement **provided always that** Homes England may itself fulfil the role of Mortgage Administrator where none has been appointed;

Mortgage Administrator Key Document Pack means a collated pack of documents to be provided by the Help to Buy Agent to the Mortgage Administrator pursuant to Paragraph 4.15.6 of the Specification which shall contain in relation to the relevant Qualifying Applicant:

- (a) the Property Information Form;
- (b) the Authority to Proceed;
- (c) Copy Confirmation to Developer;
- (d) Completed and dated Help to Buy Equity Loan document; and
- (e) Official copy of the registered title to the relevant Eligible Unit.

Mortgage Offer means a Qualifying Applicant's mortgage offer in relation to the Eligible Dwelling;

Mystery Shopping means the use of individuals (whether Homes England employees or independent persons) whose task is to experience and measure compliance by the Help to Buy Agent with this Agreement or the customer service provided by the Help to Buy Agent, by acting as potential Help to Buy customers/actual Help to Buy customers and reporting back on their experiences to Homes England;

New Provider shall mean a New Provider as defined in clause 12.4;

Nil Grant Scheme means a scheme provided by a Grant Recipient consisting only of Nil Grant Units;

Nil Grant Unit means a property developed without the assistance of grant from Homes England which Homes England has confirmed constitutes a nil grant unit;

Older Persons Shared Ownership means the Shared Ownership product made available to older persons in accordance with the requirements of the AHCFG.

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

Outgoing Providers means bpha Limited and Sovereign Housing Association Limited;

Performance Monitoring means the procedure for monitoring compliance with the specification described in Part 2 of Schedule 2;

Performance Report means the report prepared by the Help to Buy Agent every month in accordance with Part 2 of Schedule 2 as part of the Performance Monitoring;

process/processed/processing has the meaning ascribed to the term in Section 3, Part 1 of the DPA;

Property Information Form or **PIF** means a notice served by the Qualifying Applicant in substantially the form set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

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;

Provisional Mobilisation Plan means the plan prepared by the Help to Buy Agent and included in the ITT Response which details the actions the Help to Buy Agent proposed take during the Mobilisation Period;

Qualifying Applicant means an applicant who has been assessed by the Help to Buy Agent as eligible to purchase either a AHO product or an Equity Loan Product;

Qualifying Lender means an institution authorised by the Financial Conduct Authority to enter into a regulated mortgage contract as a lender;

Quarter means a rolling three (3) monthly period with the first Quarter commencing on the Commencement Date and the final Quarter ending on the expiry of this Agreement in accordance with clause 3;

Regulator means the Regulator of Social Housing or any similar future authority (including any statutory successor) carrying on substantially the same regulatory or supervisory functions;

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

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

Resale means a second or subsequent sale of a property which is subject to a Shared Ownership Lease (including HOLD, Social HomeBuy, Older Persons Shared Ownership and any similar Help to Buy or HomeBuy product);

Required Consents means such consents, certificate, licence, approval, permission or otherwise the authorisation necessary for compliance with the Specification;

Revised Authority to Proceed means an Authority to Proceed issued pursuant to Paragraph 4.14.3 or 4.14.4 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph(s) of Specification B;

Security Plan means the Help to Buy Agent's security plan prepared pursuant to paragraph 2 of Schedule 6 (Security Requirements and Plan);

Security Policy means Homes England's security policy referred to in Schedule 6 (Security Requirements and Plan) and set out in Schedule 7 (Security Policy);

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

Service Improvement Plan means the service improvement plan in respect of the Services (as amended from time to time) which is produced by Homes England and shared with the Help to Buy Agent pursuant to Clause 5.4 which contains actions to be adopted as part of the service improvement for the delivery of the Services;

Shared Ownership means a property disposed of on a Shared Ownership Lease (which term shall include any Shared Ownership Leases referred to as NewBuild Help to Buy leases);

Shared Ownership Lease means a lease that meets the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977 and contains the fundamental clauses specified in the Affordable Housing Capital Funding Guide;

Social HomeBuy means a grant funded scheme promoted by Homes England and Local Authorities enabling Qualifying Applicants to purchase a rented property with the benefit of a discount on a Social HomeBuy Lease or outright purchase basis;

Social HomeBuy Lease means a lease that meets the conditions (except conditions (d) and (g)) specified in or under Section 5A(2) of the Rent Act 1977 and contains the fundamental clauses specified in the Affordable Housing Capital Funding Guide;

Solicitor's Form 1 means the pro forma document headed Solicitor's Form 1 set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Solicitor's Form 2 means the pro forma document headed Solicitor's Form 2 set out in the Solicitor's Information Pack or such other form (including electronic formats) as Homes England may from time to time reasonably require;

Solicitor's Information Pack means a pack to be provided by the Help to Buy Agent to the Qualifying Applicant's conveyancer in order to administer the Help to Buy Equity Loan Scheme in such form as Homes England shall make available from time to time in relation to the Help to Buy Equity Loan Scheme;

Special Changes means those changes amendments and modifications made to this Agreement under the provisions of Schedule 12;

Specification means (until the Specification Transition Date) Specification A or (from and including Specification Transition Date) Specification B;

Specification A means the specification set out in Schedule 1A;

Specification B means the specification set out in Schedule 1B;

Specification Transition Date means the date on which Specification A ceases to apply and Specification B takes effect;

SQ means the Selection Questionnaire issued to prospective bidders by Homes England on 3 June 2019;

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

Staff Vetting Procedures means the series of checks made by the Help to Buy Agent on all Help to Buy Agent Personnel;

Stakeholders means the Regional Assembly and the Mayor of London (or any successor bodies or organisations) in the Geographic Service Area (where applicable);

Standard Documents means the standard pack of documents, forms and letters issued by Homes England to the Help to Buy Agent including instructions as regards the appropriate manner of and time for use as updated or amended by Homes England from time to time;

Standard Fee means (subject to paragraph 4 of Schedule 10) six hundred and fifty seven thousand sixty nine pounds and sixty pence (£657,069.60) payable in accordance with Paragraph 2 of Schedule 10 in respect of the Services;

Statutory Requirements means the requirements of any Applicable Law or (but only to the extent that observance of any of the following by the Help to Buy Agent is mandatory as a result of a general rule of law or necessary in order that the Help to Buy Agent complies with its obligations under this Agreement) of any requirement, demand, guideline, policy, code of practice, rule, decision or determination of any competent authority (meaning any entity whose authority is or may be required for the compliance with all or part of the Specification or which otherwise has jurisdiction with regards to all or part of the Specification), whether now or hereafter in effect;

Sub-processor means any third Party appointed to process Personal Data on behalf of the Help to Buy Agent related to this Contract;

Term means either the Initial Term (as defined in clause 3) or any extension by Homes England pursuant to clause 3.2);

Third Party Questionnaire means the Homes England 3rd Party Information Security (Information Security) Questionnaire issued to the Help to Buy Agent under this Agreement as may be varied by Homes England from time to time;

Transaction Fee means s. 43

Transfer Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time;

Valid Valuation means a survey or valuation report confirming the Market Value of the relevant property obtained in accordance with the requirements of the relevant qualifying applicant's mortgage lender provided such lender is a Qualifying Lender

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

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

Warning Notice means a notice served pursuant to clause 6.3;

Welcome Letter means a letter sent by the Help to Buy Agent as required by KPI 6 (Equity Loan Product and Process) in substantially the form set out in the Standard Documents or such other form (including electronic formats) as Homes England may from time to time reasonably require; and

Working Day means any day Monday to Friday (inclusive) excluding public holidays.

- 1.2 Words importing the singular meaning shall include the plural and vice versa and reference to any gender shall include all other genders.
- 1.3 All references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which had been amended, extended, consolidated, or replaced by the same and shall include any orders, regulations or other delegated or subordinate legislation made under the relevant statute.
- 1.4 The headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement.
- 1.5 Words importing persons shall include individuals, firms, partnerships, corporations, governments, governmental bodies and departments, authorities, agencies, unincorporated bodies of persons or associations and any other organisations having legal capacity.
- 1.6 Except where the context otherwise requires, references to clauses are references to clauses of this Agreement. A reference to a Section or a part of the Schedule or to a paragraph in a Part of the Schedule is, unless the context otherwise requires, a reference to a Section or a Part of the Schedule or to a paragraph of the Part of the Schedule to the Agreement in which the reference appears.
- 1.7 References to any agreement or document shall be deemed to include (subject to all relevant approvals) a reference to that agreement or document as amended, supplemented, substituted, novated or assigned from time to time (in each case in accordance with the terms of the relevant agreement or document or this Agreement).
- 1.8 Any reference to a person shall be deemed to include any permitted transferee or assignee of such person and any permitted successor to that person or any person which has taken over the functions or responsibilities of that person.
- 1.9 In the case of any ambiguity or conflict the provisions in the main body of this Agreement shall take precedence over the provisions of any Part of the Schedule.

2 **Purpose**

- 2.1 The purpose of this Agreement is to govern the day-to-day working relationship between the Help to Buy Agent and Homes England. It also details agreed performance standards to be met by the Help to Buy Agent.
- 2.2 The Agreement is intended to cover the sale of all Equity Loan Products and the administration of all AHO Products (including Resales) in accordance with the Specification within the Geographic Service Area where such sale shall occur after the date hereof.

- 2.3 The Help to Buy Agent shall provide the Services from 2 January 2020 unless otherwise agreed with Homes England in writing. Homes England shall act reasonably in considering any request made by the Help to Buy Agent to delay the Services start date in order to allow the Help to Buy Agent sufficient time to mobilise in accordance with the Final Mobilisation Plan. The Parties agree that the Services start date shall be no later than the last day of the Mobilisation Period.
- 2.4 The parties shall co-operate in good faith to ensure that:
- 2.4.1 the Final Mobilisation Plan acceptable to Homes England is agreed by the parties as soon as reasonably practicable and in any event by 23 December 2019; and
- 2.4.2 following the agreement of the Final Mobilisation Plan pursuant to clause 2.4.1, the Final Mobilisation Plan is implemented with all necessary speed and in a manner that will ensure the Help to Buy Agent is ready to commence providing the Services with effect from 2 January 2020
- 2.5 The reasonable costs of preparing and implementing the Final Mobilisation Plan shall be borne by the Help to Buy Agent.

3 **Term**

- 3.1 This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Agreement shall continue in force until 31 March 2021 (the **Initial Term**).
- 3.2 Homes England (at its sole discretion) may extend the Initial Term by a further period or periods not exceeding in total a further three (3) years by giving the Help to Buy Agent reasonable (in Homes England's opinion) written notice prior to the expiry of the Initial Term or any extension to the term. The parties acknowledge that Homes England's aspiration is to give a minimum of three (3) months' notice but this may not be possible and therefore any shorter notice shall be valid and have full force and effect. Any extension pursuant to this clause 3.2 shall be for a minimum period of six (6) months and the overall term of this Agreement shall not in any event be extended beyond 30 September 2024. The Help to Buy Agent agrees that nothing in this Agreement shall oblige Homes England to extend the Agreement following the expiry of either the Initial Term or any individual extension period.
- 3.3 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:
- 3.3.1 the end of the Initial Term; or
- 3.3.2 if Homes England elects to extend the Initial Term, the end of any extension period provided further notice of extension has not been served pursuant to clause 3.2.

4 **Authorised representatives and contacts**

- 4.1 Not later than the date hereof:

- 4.1.1 Homes England shall produce to the Help to Buy Agent details of its Authorised Representative and other nominated staff who will deal with the Help to Buy Agent for the purposes of day-to-day operation of this Agreement; and
- 4.1.2 the Help to Buy Agent shall produce to Homes England details of its Authorised Representative and other nominated staff who will deal with Homes England for the purposes of day-to-day operation of this Agreement.
- 4.2 Each party shall notify the other in advance of any appointment of a replacement for the Authorised Representative and the key personnel whose details are provided pursuant to clause 4.1.
- 5 The Help to Buy Agent's obligations**
- 5.1 The Help to Buy Agent shall with effect from the Commencement Date at all times comply with the Specification as required under this Agreement, in a manner consistent with the following:
- 5.1.1 to comply with the Specification and to perform the Help to Buy Agent's covenants and obligations contained in this Agreement in accordance with Good Industry Practice;
- 5.1.2 (without prejudice to the generality of clause 5.1.1) to implement the Final Mobilisation Plan during the Mobilisation Period
- 5.1.3 to comply with all Statutory Requirements, Applicable Standards (including for the avoidance of doubt the applicable requirements of the Affordable Housing Capital Funding Guide), the Benchmarking Standards any regulations relating to any AHO Schemes and/or Equity Loan Products issued from time to time by Homes England and all conditions of Required Consents which apply to the Specification (it being the responsibility of the Help to Buy Agent to obtain each Required Consent and to provide documentary evidence of such Required Consent to Homes England upon request) and procure so far as reasonably practicable that such Required Consents are capable of assignment or transfer to Homes England or its nominee;
- 5.1.4 to comply with the promises and commitments made by the Help to Buy Agent to Homes England in the Help to Buy Agent's Proposals;
- 5.1.5 (where the Estate Agents Act 1979 applies to the Help to Buy Agent's compliance with the Specification) to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to the extent such regulations apply; and
- 5.1.6 to comply with the provisions of the Consumer Credit Legislation and the Help to Buy Agent shall provide a copy of any required Financial Conduct Authority authorisation to Homes England within two (2) Working Days of receipt of a request.
- 5.2 Homes England shall give the Help to Buy Agent not less than three (3) months' written notice of the Specification Transition Date and such notice shall include the detailed content of Specification B.

- 5.3 The Help to Buy Agent shall indemnify and hold harmless Homes England against any liability which Homes England may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by Homes England to the extent that the same arises by reason of any breach of this Agreement or any tortious act or omission on the Help to Buy Agent's part (and/or any third party to whom the Help to Buy Agent has subcontracted the performance of some or all of the Help to Buy Agent's obligations under this Agreement) in the performance of the Help to Buy Agent's obligations under and in connection with this Agreement.
- 5.4 As part of their overall monitoring of the delivery of the Services, Homes England may produce a Service Improvement Plan. The plan will include detail of any reasonable requirements for improvements to be made to the manner or processes used for delivery of the Services and either party may suggest areas to be covered by any Service Improvement Plan.
- 5.5 Subject to clause 5.6, where a Service Improvement Plan is produced pursuant to Clause 5.4, the process in Schedule 15 shall be followed.
- 5.6 Where a Service Improvement Plan produced pursuant to Clause 5.4 requires that improvements be made or actions be taken under clause 6.2.2, the Help to Buy Agent (with the co-operation of Homes England where necessary) shall implement the Service Improvement Plan in accordance with its terms and for the avoidance of doubt the provisions of Schedule 15 shall have no application in respect of items in the Service Improvement Plan that result from the operation of clause 6.2.

6 **Monitoring and reporting**

6.1 The parties shall comply with the requirements of Schedule 2.

6.2 In addition to the provisions of Schedule 2,

6.2.1 the Help to Buy Agent shall:

- (a) permit Homes England (upon demand) to conduct assurance testing and perform audits of the Help to Buy Agent and as part of this give reasonable access to all relevant assets, including their systems and premises; and
- (b) ensure that it designs and delivers a continuous assurance plan which is compliant with the assurance requirements of Performance Monitoring and which assesses its performance against the requirements of this Agreement including but not limited to all information security requirements, compliance with the KPIs and PIs, overall conduct and quality of provision of customer services and that the outcomes of such strategy are made available to Homes England.

6.2.2 where Homes England determines improvements or actions required either as a result of Performance Monitoring, the assurance plan referred to in Clause 6.2.1(b) or from Homes England's testing of the Help to Buy Agent, the Help to Buy Agent will retain the responsibility to implement these.

6.3 Warning Notices

6.3.1 The occurrence of any of the following is a Default:

- (a) any Complaint or incident which either comes to the attention of Homes England or is recorded by the Help to Buy Agent pursuant to the Complaints Procedure which (in Homes England's reasonable opinion) is likely to have or have had a material and adverse impact on the Help to Buy Agent's performance of its obligations under this Agreement and which is not subsequently shown to be unfounded which shall include (inter alia): or
 - i any Complaint from a Grant Recipient or a Help to Buy Equity Loan Provider that a failure or failures by the Help to Buy Agent has materially and adversely impacted the sales and/or marketing of its properties, which is not subsequently shown to be unfounded;
- (b) any Complaint from a Grant Recipient/Help to Buy Equity Loan Provider (as applicable) that the Help to Buy Agent is persistently failing to either confirm an applicant's eligibility status or issue an Authority to Proceed within four (4) Working Days of receipt of either a properly completed application form or Property Information Form, which is not subsequently shown to be unfounded (and for the purposes of this paragraph 6.3.1(b)) the Help to Buy Agent shall be deemed to be persistently failing if they fail to meet the relevant Key Performance Indicator Target in any three (3) consecutive months;
- (c) Exchange or completion taking place in respect of any purchase by a Qualifying Applicant without the full procedure set out in paragraph 4 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B being followed;
- (d) (where the Help to Buy Agent is a Help to Buy Agent for more than one Geographic Service Area) the Help to Buy Agent commits a Default in relation to any other Help to Buy Agent Contract between the Help to Buy Agent and Homes England; or
- (e) Material PI Failure as defined in Schedule 2.

6.3.2 In the event a Default occurs, the Help to Buy Agent will be required to promptly report to Homes England on the nature and frequency of the Defaults and to identify the potential causes and solutions to reduce or remove the future occurrence of Defaults. For the avoidance of doubt Homes England can make suggestions and recommendations but has no power to require the Help to Buy Agent to carry out any action or implement any changes to working practices to minimise future Defaults.

6.3.3 If Homes England (acting reasonably) is not satisfied with the Help to Buy Agent's report submitted pursuant to Part 2 of Schedule 2 or, if at any time, a further Default occurs then Homes England shall be entitled to serve a Warning Notice on the Help to Buy Agent. For the avoidance of doubt, a Warning Notice shall only be served once in respect of any individual instance of a Default.

- 6.3.4 Any such notice shall state on its face that it is a Warning Notice, the incident(s) or Complaint(s) to which it relates and the circumstances giving rise to the issue of the Warning Notice and shall be signed by or on behalf of Homes England. In the event that any Warning Notice is subsequently revoked, such notice shall be treated as not having been issued for the purposes of clauses 10 and/or 11.3.1.

6.4 **Inspection and audit facilities**

- 6.4.1 The Help to Buy Agent shall as and when requested by Homes England, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement a copy of each of:

- (a) all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of the Help to Buy Agent and any Help to Buy Agent Personnel for the purposes of this Agreement; and
- (b) all such data, materials, documents and accounts created, acquired or brought into existence by the officers, employees, agents or consultants of the Help to Buy Agent and of any Help to Buy Agent Personnel relating to the Services and which have been supplied to the Help to Buy Agent, its and any Help to Buy Agent Personnel for the purposes of this Agreement.

- 6.4.2 The Help to Buy Agent shall at all times:

- (a) maintain a full record of particulars of all the income received and expenditure incurred by it in respect of the Services, and must procure that any Help to Buy Agent Personnel does likewise in respect of expenditure incurred by it in respect of the Services;
- (b) when required to do so by Homes England, provide a summary of any of the income and expenditure referred to in clause 6.4.2(a) as Homes England may require to enable it to monitor the performance by the Help to Buy Agent of its obligations under this Agreement; and
- (c) provide such facilities as Homes England may require for its representatives to visit any place where the records are held and examine the records maintained under this clause 6.4.

- 6.4.3 The Help to Buy Agent shall ensure that it and any Sub-contractor keeps on an Open Book basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the Services which identify items of revenue received and expenditure incurred in relation to the same.

- 6.4.4 On the expiry of this Agreement or (if earlier) upon its termination, and for a period of three (3) years following expiry or termination, the Help to Buy Agent shall if requested to do so, deliver up to Homes England all the data, materials, documents and accounts referred to in this clause 6.4 which it has in its possession, custody or control and shall procure the delivery by any Sub-contractor to Homes England of the data, materials, documents and accounts

referred to in this Condition 6.4 held by them or as otherwise directed by Homes England.

6.4.5 Compliance with this clause 6.4 shall require the Help to Buy Agent to keep books of account in accordance with best accountancy practice with respect to the Services showing in detail:

- (a) full particulars of the costs of performing the Services;
- (b) a summary of the costs referred to in clause 6.4.2, including details of any funds held by Help to Buy Agent specifically to cover such costs;
- (c) administrative overheads where directly attributed or where apportioned on a pro rata basis;
- (d) a full record of all incidents relating to health, safety and security which occur during the term of this Agreement; and
- (e) such other records as Homes England may reasonably require having regard to the cost to Help to Buy Agent of maintaining and providing such records

and the Help to Buy Agent shall have the books of account evidencing the items listed in this clause 6.4.5 available for inspection by Homes England (and any person appointed pursuant to the Dispute Resolution Procedure to determine a dispute or otherwise authorised by Homes England) upon reasonable notice, and shall submit a report of these to Homes England as and when requested.

6.4.6 The Help to Buy Agent must for a period of ten (10) years from the expiry or termination of this Agreement (howsoever caused) or such period as is agreed in writing between the parties from time to time retain all of the data, documents, materials and accounts referred to in this clause 6.4 and the Help to Buy Agent may retain such data, documents, materials and accounts in electronic form only.

6.5 **Audit Right**

6.5.1 Homes England, its duly authorised agents and identified representatives and staff and agents of the National Audit Office, the Ministry for Housing, Communities and Local Government, the European Court of Auditors and the European Commission and any other duly authorised agents or representatives of Homes England (the **Auditors**) may conduct audits (**Audits**) of the Help to Buy Agent as and when reasonably required for the following purposes in connection with this Agreement:

- (a) to verify the accuracy of the Fees;
- (b) to review the integrity, confidentiality and security of Homes England data;
- (c) to review the Help to Buy Agent's compliance with the Data Protection Legislation and any Applicable Laws;

- (d) to review the Help to Buy Agent's compliance with its obligations under this Agreement;
- (e) to review any books of account and all transaction records and documents kept by the Help to Buy Agent in connection with the provision of the Services;
- (f) to verify the accuracy and completeness of any information delivered or required by this Agreement;
- (g) to verify the Help to Buy Agent's compliance with this Agreement and applicable Law;
 - i to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances Homes England shall have no obligation to inform the Help to Buy Agent of the purpose or objective of its investigations;
 - ii to identify or investigate any circumstances which may impact upon the financial stability of the Help to Buy Agent's ability to perform the Services;
 - iii to review any books of account and the internal contract management accounts kept by the Help to Buy Agent in connection with this Agreement;
 - iv to carry out Homes England's internal and statutory audits and to prepare, examine and/or certify Homes England's annual and interim reports and accounts;
 - v to review any Performance Reports and/or other records relating to the Help to Buy Agent's performance of the Services and to verify that these reflect the Help to Buy Agent's own internal reports and records;
 - vi to inspect the Help to Buy Agent System (or any part of it) and the wider service delivery environment (or any part of it) dedicated to the Services;
 - vii to review any records created during the design and development of the Help to Buy Agent System;
 - viii to review the Help to Buy Agent's quality management systems;
 - ix to review the Help to Buy Agent's compliance with the Key Performance Indicators; and
 - x to review the integrity, confidentiality and security of Homes England Data.

6.5.2 Homes England shall during each Audit comply with those security, sites, systems and facilities operating procedures of the Help to Buy Agent that Homes England deems reasonable and use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Help to Buy Agent or delay the provision of the Services.

- 6.5.3 The Help to Buy Agent shall provide on demand such access to Homes England and the Auditors with all reasonable co-operation and assistance and facilities as the Auditors may reasonably require to visit any place where the records maintained under this clause 6 are held and to examine such records, and shall permit such records to be examined and copied by the Auditors (and shall procure such co-operation and assistance from its subcontractors) in relation to each Audit, including:
- (a) all information requested by Homes England within the permitted scope of the Audit;
 - (b) reasonable access to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Help to Buy Agent System; and
 - (d) access to Help to Buy Agent Personnel.
- 6.5.4 The Help to Buy Agent shall permit the Auditors and their agents, representatives and employees to interview its employees to obtain appropriate information and oral explanations of documents and information provided that the Auditors shall where it is reasonable to do so take account of the Help to Buy Agent's reasonable requirements concerning the conduct of any such interviews.
- 6.5.5 The Help to Buy Agent shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Help to Buy Agent's performance of the Services against the Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators.
- 6.5.6 Homes England shall share its plans for the timing of Audits and use its reasonable endeavours to seek co-ordination between the Auditors so as to limit the administrative burden placed on the Help to Buy Agent.
- 6.5.7 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their' obligations under this clause 6.5, unless the Audit identifies a Material Default by the Help to Buy Agent in which case the Help to Buy Agent shall reimburse Homes England for all Homes England's reasonable costs incurred in connection with the Audit.
- 6.5.8 Save in the circumstances detailed in clause 6.5.9, Homes England shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an Audit.
- 6.5.9 Homes England shall be permitted (using appropriately authorised personnel) immediate access to the records set out in clause 6.4.1, the Help to Buy Agent's personnel and any premises (or part of any premises) where the Help to Buy Agent provides the Services to carry out investigations and Audits in the following circumstances:
- (a) suspected fraud;

- (b) where Homes England has reasonable grounds to suspect that the Help to Buy Agent has committed a breach of this Agreement or a fraudulent act or where an Audit is required by a Regulatory Body; and
- (c) circumstances have arisen that may permit Homes England to terminate all or part of this Agreement.

6.5.10 If an Audit identifies that:

- (a) the Help to Buy Agent has committed a Default, the procedure set out in clauses 6.3.2 to 6.3.4 shall apply;
- (b) there is an error in any information reported by the Help to Buy Agent to Homes England under this Agreement, the Help to Buy Agent shall promptly rectify the error;
- (c) Homes England has overpaid any Fees, the Help to Buy Agent shall pay to Homes England the amount overpaid within thirty (30) Working Days of Homes England confirming the outcome of the Audit to the Help to Buy Agent. Homes England may deduct the relevant amount from the Fees if the Help to Buy Agent fails to make this payment;
- (d) Homes England has underpaid any Fees, Homes England shall pay to the Help to Buy Agent the amount of the underpayment less the cost of Audit incurred by Homes England if this was due to a Default by the Help to Buy Agent in relation to invoicing within thirty (30) Working Days of Homes England confirming the outcome of the Audit to the Help to Buy Agent.

6.5.11 The provisions of this clause 6.5 shall survive the expiry or termination of this Agreement for a period of twelve (12) months.

7 Co-operation of Grant Recipient

- 7.1 For all AHO Schemes, the Help to Buy Agent shall enter into a Data Protection Declaration with each Grant Recipient in the Geographic Service Area.
- 7.2 The Help to Buy Agent shall enter into a Data Protection Declaration with each Help to Buy Equity Loan Provider in the Geographic Service Area prior to marketing and administering applications for such provider's Help to Buy Equity Loan Schemes.
- 7.3 The Help to Buy Agent shall confirm as part of the Performance Report (submitted in accordance with Part 2 of Schedule 2) the details of all of the Grant Recipients and/or Help to Buy Equity Loan Providers who have signed a Data Protection Declaration pursuant to clause 7.1 and/or 7.2 during the preceding month and shall supply a copy of any of the Data Protection Declarations or variations and extensions it enters into with Grant Recipients and/or Help to Buy Equity Loan Providers to Homes England within four (4) Working Days of receipt of a reasonable request.

8 Information and confidentiality

8.1 Freedom of Information

8.1.1 The Help to Buy Agent acknowledges that Homes England is subject to legal duties which may require the release of information under the FOIA and/or the EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.

8.1.2 Homes England shall be responsible for determining in its absolute discretion whether:

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

and in no event shall the Help to Buy Agent respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England.

8.1.3 Subject to clause 8.1.4 below, the Help to Buy Agent acknowledges that Homes England may be obliged under the FOIA or the EIR to disclose Information:

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

8.1.4 Without in any way limiting clauses 8.1.2 and 8.1.3, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Help to Buy Agent.

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

- (a) transfer any Request for Information received by the Help to Buy Agent to Homes England as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide all such assistance as may be required from time to time by Homes England and supply such data or information as may be requested by Homes England;
- (c) provide Homes England with any data or information in its possession or power in the form that Homes England requires within five (5) Working Days (or such other period as Homes England may specify) of Homes England requesting that Information;

(d) permit Homes England to inspect such as requested from time to time.

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

8.1.7 To the extent that the Help to Buy Agent becomes an Authority subject to the FOIA and the EIR during the course of the Agreement, this clause 8.1 will apply mutatis mutandis to both parties.

8.2 Confidentiality

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

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

8.2.3 The obligations of confidence referred to in clause 8.2.2 shall not apply to any Confidential Information which:

- (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
- (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
- (c) is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
- (d) is independently developed without access to the Confidential Information of the other party.

8.2.4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:

- (a) to enable the disclosing party to perform its obligations under this Agreement; or
- (b) by any Applicable Laws or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under the FOIA, the EIR or the Code of Practice on Access to Government Information and the Help to Buy Agent acknowledges that any lists or schedules provided by it outlining

Confidential Information are of indicative value only and Homes England may nevertheless be obliged to disclose such confidential information; or

- (c) by any Regulatory Body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- (d) in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.

8.2.5 The Help to Buy Agent shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:

- (a) is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
- (b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
- (c) where it is considered necessary in the opinion of Homes England the Help to Buy Agent shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

8.2.6 Nothing in this clause 8.2 shall prevent Homes England:

- (a) disclosing any Confidential Information for the purpose of:
 - i the examination and certification of Homes England's accounts; or
 - ii any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources;
- (b) disclosing any Confidential Information obtained from the Help to Buy Agent:
 - i to any other department, office or agency of the Crown; or
 - ii to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - iii on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
 - iv to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Agreement;

- (c) provided that in disclosing information under clauses 8.2.6(b)i or 8.2.6(b)ii Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

8.2.7 Nothing in this clause 8.2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

8.2.8 The obligations in this clause 8.2 will survive the expiry or termination of this Agreement for a period of three (3) 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.

8.3 **Transparency**

8.3.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, the Help to Buy Agent hereby consents for Homes England to publish the Agreement to the general public in its entirety (but with any information, which is exempt from disclosure in accordance with the provisions of the FOIA, redacted), including from time to time agreed changes to the contract.

8.3.2 Homes England shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA either:

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

8.3.3 The Help to Buy Agent shall assist and co-operate with Homes England to enable Homes England to publish this Agreement.

9 **Fees**

9.1 The parties shall comply with the provisions of Schedule 10.

10 **Suspension of Services**

Performance Issues

10.1 Following the occurrence of a Default as described in clause 6.3 Homes England may notify some or all of the Grant Recipients and/or Help to Buy Equity Loan Providers operating in the Geographic Service Area (the **Relevant Counterparties**) that they shall be permitted to refer applicants and Qualifying Applicants to a specified alternate Help to Buy Agent (the

Alternate Help to Buy Agent) until further notice (the **Alternate Help to Buy Agent Period**). Homes England shall send a copy of such notice to the Help to Buy Agent.

10.2 Within one (1) month (or such longer period as Homes England shall specify) of service of the notice under clause 10.1 Homes England shall review the decision and provided either:

- (a) Homes England (acting reasonably) is satisfied that the Help to Buy Agent has not incurred a further Default under clause 6.3; or
- (b) the Help to Buy Agent has demonstrated to Homes England's reasonable satisfaction that it has identified and (where appropriate) implemented the causes and solutions to reduce or remove the future occurrence of such Defaults;

then Homes England shall forthwith notify the Relevant Counterparties that the Alternate Help to Buy Agent Period shall be terminated and that from the date of receipt of such notification only such Relevant Counterparties shall only refer applicants to the Help to Buy Agent.

10.3 In the event that following the first review under clause 10.2, Homes England is not satisfied that either clause 10.2(a) or 10.2(b) apply, further performance reviews shall be carried out at monthly intervals in accordance with the procedure set out in clause 10.2 until Homes England (acting reasonably) concludes that either clause 10.2(a) or 10.2(b) have been complied with.

10.4 For the avoidance of doubt any exercise by Homes England of its rights under this clause 10 does not in any way impact on Homes England's ability to follow the procedure set out in clause 6.3 in respect of any Default.

10.5 If, during the Alternate Help to Buy Agent Period, any applicant referred to the Alternate Help to Buy Agency by a Relevant Grant Recipient proceeds to purchase a property under the Help to Buy Equity Loan Scheme, the Alternate Help to Buy Agent shall be entitled to process such application in accordance with the Specification and claim the Transaction Fee in relation to such purchase. For the avoidance of doubt, where the Alternate Help to Buy Agent is entitled to claim a fee under this clause 10.5, the Help to Buy Agent shall not be entitled to the Transaction Fee for such transaction.

11 **Termination of this Agreement**

11.1 Homes England may at any time by notice terminate this Agreement as from the date of service of such notice if a Material Default has occurred and Homes England has determined to terminate this Agreement in accordance with clause 11.2.

11.2 If Material Default has occurred and:

11.2.1 such Material Default is capable of remedy and the Help to Buy Agent shall have failed to remedy the Material Default within a reasonable period specified by Homes England in a notice to the Help to Buy Agent specifying the Material Default and requiring its remedy; or

11.2.2 such Material Default is not capable of remedy,

then Homes England may terminate this Agreement forthwith by notice to the Help to Buy Agent.

11.3 Homes England may terminate this Agreement on (in the case of clause 11.3.1) three (3) months' notice or (in the cases of clauses 11.3.2 to 11.3.6) forthwith by notice to the Help to Buy Agent if:

11.3.1 the Help to Buy Agent is in receipt of two valid Warning Notices under clause 6 in any rolling twelve (12) month period provided, in each case, that neither of the Warning Notices:

- (a) has been subsequently revoked or determined to be invalid; or
- (b) is the subject of a dispute pursuant to the terms of clause 14; or

11.3.2 the Help to Buy Agent has offered or given or agreed to give to any employee or representative of Homes England or the Crown any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining of this or any other contract with Homes England or for showing or refraining from showing favour or disfavour to any person in relation to this contract or who or appears to have committed any offence under the Prevention of Corruption Acts 1889 to 1916; or

11.3.3 the Help to Buy Agent transfers or assigns this Agreement in contravention of clause 18.1; or

11.3.4 any of the following occurs in relation to the Help to Buy Agent:

- (a) it is unable or admits an inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness; or
- (a) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities); a moratorium is declared in respect of any indebtedness and/or any moratorium pursuant to Section 145 of the HRA 2008; or
- (b) any legal proceedings or other procedure or step is taken in relation to:
 - i the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed); or
 - ii a composition, compromise, assignment or arrangement with any of its creditors; or
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by Homes England, such

approval not to be unreasonably withheld or delayed), receiver, administrative receiver, housing administrator, administrator, compulsory manager or other similar officer; or

- iv enforcement of any Security over any of its assets; or
- v any analogous procedure or step is taken in any jurisdiction; or

other than any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within ten (10) Working Days of commencement; or

11.3.5 a Change in Control takes place; or

11.3.6 the Alternate Help to Buy Agent Period continues for a period of six (6) months or more.

11.4 Homes England may terminate this Agreement at any time after the Initial Term on not less than six (6) months' written notice to the Help to Buy Agent.

12 Consequences of Specification Transition and/or expiry/termination

12.1 Homes England and the Help to Buy Agent agree that there are no individuals employed by the Help to Buy Agent whose contracts of employment will, by virtue of the move from Specification A to Specification B on the Specification Transition Date transfer to Homes England in accordance with TUPE.

12.2 If it is subsequently agreed or determined that there are persons employed by the Help to Buy Agent or any existing third party service provider to the Help to Buy Agent whose contracts of employment do have effect after the Specification Transition Date as if originally made between those persons and Homes England (the **Transferring IT Staff**) then:

12.2.1 the Help to Buy Agent shall within twenty (20) Working Days of the date on which it was so agreed or determined have the opportunity to offer a position as an employee of the Help to Buy Agent to some or all of the Transferring IT Staff;

12.2.2 Homes England shall procure that no person to whom a position has been offered in accordance with paragraph 12.2.1 shall be dismissed by reason of redundancy until the period for acceptance of the offer has expired and the person in question has not accepted the offer;

12.2.3 subject to paragraph 12.2.1 and paragraph 12.2.2, Homes England shall be entitled to dismiss any or all of the Transferring IT Staff by reason of redundancy; and

12.2.4 provided that Homes England complies with its obligations under paragraph 12.2.2 any IT Employee Costs reasonably incurred by Homes England shall be indemnified by the Help to Buy Agent. The Help to Buy Agent shall also indemnify Homes England against any loss reasonably incurred by Homes England where such loss arises as a result of any act, fault or omission of the Help to Buy Agent occurring prior to the Specification Transition Date and

relating to claims made against Homes England by any IT Transferring Staff including any cost or liability arising from a claim that Homes England could not lawfully terminate employment by reason of redundancy.

12.3 **IT Employee Costs** means:

- 12.3.1 the costs incurred by Homes England associated with employing any Transferring IT Staff from the Specification Transition Date to earlier of:
- i the date of dismissal by Homes England by reason of redundancy under clause 12.2.3; or
 - ii forty five (45) Working Days from the Specification Transition Date; and
- 12.3.2 any redundancy payment, notice pay or payment in lieu of notice, and any accrued but untaken holiday entitlements and any award due to any Transferring IT Staff and which are required by Legislation or by contract to be made to such Transferring IT Staff and which arise as a result of their dismissal by reason of redundancy under paragraph 12.2.3 where notice is given within two (2) months of the Specification Transition Date as defined in Part 1 of Schedule 1.

12.4 During the six (6) months preceding the expiry of this Agreement or after Homes England has given notice of termination of this Agreement and/or during any Handover Period the Help to Buy Agent shall at its own expense and use its best endeavours to provide such information as may reasonably be required by any alternative provider or Homes England to assist the transfer of the obligations under this Agreement to an alternative provider or providers (a **New Provider**) or the winding down of the AHO Scheme(s) to which this Agreement relates; and

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

- (a) all material facts and matters relating to or concerning the employment of any of the Staff or former Staff including but not limited to their respective ages length of service notice periods all terms and conditions of employment benefits policies or other agreements or arrangements or understandings in respect of each of them and any variation thereto agreed with or imposed upon any of the Staff or former Staff within a period of six (6) months preceding the date of termination or expiry;
- (b) all material facts and matters relating to all or any collective agreements, arrangements or other understanding which the Help to Buy Agent or its agents has with any trade union, staff association or other body representing any of the Staff;
- (c) full details of any representations or statements (whether oral, written or otherwise) made by the Help to Buy Agent or the Agents to any of the Staff or former Staff (or their unions or other representatives) in any way connected with or concerning employment with a New Provider including where applicable Homes England;

(d) all material facts and matters and written records relating to or concerning all or any obligations arising from the Working Time Directive (93/104) including providing to Homes England all and any records relating to the hours worked by every member of Staff.

12.6 Homes England shall provide the Help to Buy Agent with any information that it receives from any New Provider that the Help to Buy Agent requires to comply with its obligations under the Transfer Regulations.

12.7 With effect from the termination or expiry of this Agreement the Help to Buy Agent shall indemnify and keep indemnified Homes England against any claim liability expense or demand made by and on behalf of any member of Staff or former member of Staff or group of Staff or group of any former members of Staff which may be incurred by Homes England or any New Provider as a result of anything done or omitted to be done in breach of its obligations in relation to the employment of such Staff or former member of Staff by the Help to Buy Agent save and to the extent that such claim liability expense or demand would not have arisen except in consequence of a failure by Homes England or any New Provider to comply with regulation 13 of the Transfer Regulations.

12.8 The Help to Buy Agent shall indemnify and hold harmless Homes England against all claims, liabilities, costs and demands (including all expenses associated therewith howsoever arising) arising out of the inaccuracy of any information provided pursuant to clauses 12.4 and 12.5 above or arising out of such information being incomplete.

12.9 During the last six (6) months of either the Initial Term or any extension of this Agreement in accordance with clause 3.2, the Help to Buy Agent hereby undertakes not to make any amendments to the number of Staff employed in relation to complying with the Specification or the terms and conditions of employed Staff save for:

12.9.1 any reasonable salary increase;

12.9.2 any changes already agreed or indicated prior to Homes England's request referred to at clause 12.212.5 above (**provided that** such changes have been notified to Homes England at the time of Homes England's request pursuant to clause 12.5 above).

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

12.10 In the event that the Transfer Regulations apply with effect from the termination or expiry of this Agreement Homes England shall meet the Help to Buy Agent's costs of meeting any claim, liability, expense or demand made by and on behalf of any member of the transferring Staff provided that the Help to Buy Agent:

12.10.1 takes reasonable steps to mitigate any such costs;

12.10.2 keeps Homes England informed in relation to any such claim insofar as is reasonably practicable; and

12.10.3 does not settle any claim giving rise to such costs without the prior written consent of Homes England.

12.11 In the event that the Transfer Regulations apply with effect from the termination or expiry of this Agreement Homes England will take reasonable steps to liaise with the New Provider so that the New Provider provides the Help to Buy Agent with sufficient information to enable it to discharge its consultation obligations under Regulation 13 of the Transfer Regulations.

12.12 In the event of any claim or allegation arising out of or in connection with this clause 12, Homes England and the Help to Buy Agent shall upon written request by the other party, give such assistance or information relevant to such a claim or allegation as may reasonably be requested. Such assistance and/or information shall be given promptly.

13 **Exit management**

13.1 Forthwith upon the termination or expiry of this Agreement and during any Handover Period, the Help to Buy Agent shall make all information and assistance available to Homes England, as well as to any incoming provider, so as to:

13.1.1 maintain the continuity of service under this Agreement while alternative arrangements are put in place;

13.1.2 achieve to the extent reasonably possible a smooth transfer to the New Provider, the facilitate a smooth transfer of the Services and to

13.1.3 minimise any loss or disruption to the Services

provided that nothing in this clause shall oblige the Help to Buy Agent to make available information which the parties agree may be classified as commercially sensitive to any New Provider or to breach any Applicable Laws.

13.2 Upon termination or expiry of this Agreement:

13.2.1 the Help to Buy Agent shall have no further right to perform the Help to Buy Agent's role in complying with the Specification;

13.2.2 Homes England may elect for itself or the New Provider to acquire, in which case the Help to Buy Agent shall insofar as reasonably possible sell, or procure the sale of, any equipment or materials exclusively used in complying with the Specification (and not used by the Help to Buy Agent for any of its other activities) at their market value at a price agreed by the parties or determined under the Dispute Resolution Procedure;

13.2.3 The Help to Buy Agent shall assign to Homes England or if requested by Homes England the New Provider those Required Consents obtained by the Help to Buy Agent and capable of assignment;

13.2.4 The Help to Buy Agent shall deliver to Homes England all software, records, documentation and other data which are owned by Homes England) and (provided such action shall not breach any Applicable Laws) shall make copies available to Homes England or if requested by Homes England the New Provider

to the extent that any such software, records, documentation and other data are either subject to rights in favour of Homes England or relate to the compliance with the Specification by the Help to Buy Agent; and

13.2.5 The Help to Buy Agent shall follow such reasonable instructions issued by Homes England in relation to any website or consumer facing portal in order to achieve a smooth transition of or handling down of the Services.

13.3 Without prejudice to the generality of clauses 13.1 and 13.2, the parties agree that:

13.3.1 as soon as reasonably practicable after the commencement of the Handover Period and in any event within twenty (20) Working Days of such date, the Help to Buy Agent shall provide to Homes England in writing a draft Exit Plan setting out what information and assistance it proposes to provide to Homes England and to any incoming provider so as to either maintain continuity of service and achieve a smooth transfer to any New Provider or achieve smooth winding up of the Service;

13.3.2 the draft Exit Plan referred to in clause 13.3.1 shall include (but shall not be limited to) such matters as are set out in Schedule 13 and such other matters as may be notified to the Help to Buy Agent by Homes England;

13.3.3 at any time following the provision by the Help to Buy Agent of the draft Exit Plan, Homes England may by service of not less than seven (7) days' written notice require the Help to Buy Agent to attend one or more meetings with Homes England to discuss the draft Exit Plan and finalise the final details of the Exit Plan to ensure either the smooth transfer or winding down of the Services;

13.3.4 the parties shall co-operate in good faith to ensure that:

(a) an Exit Plan acceptable to Homes England is agreed by the parties as soon as reasonably practicable and in any event within twenty (20) Working Days of the issue of the draft Exit Plan pursuant to clause 13.3.1; and

(b) following the agreement of an Exit Plan pursuant to clause 13.3.4(a), the Exit Plan is implemented in accordance with its terms.

13.3.5 the reasonable costs of preparing and implementing the Exit Plan shall be borne by the Help to Buy Agent.

13.4 Within 20 Working Days after service by Homes England of a notice to terminate this Agreement the Help to Buy Agent will submit to Homes England for approval (not to be unreasonably withheld) a final detailed summary of the actions it intends to take to achieve an orderly transition of the Services to Homes England or to a New Provider ("an Early Termination Exit Plan) and this Early Termination Exit Plan will incorporate the matters contained in Schedule 13 hereto together with any others matters reasonably required by Homes England.

14 **Dispute Resolution**

14.1 All disputes and differences arising out of or in connection with this Agreement (a **Dispute**) shall be resolved pursuant to the terms of this clause 14.

14.1.1 In the event that the Help to Buy Agent or Homes England consider that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the parties shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 14.

14.1.2 Representatives of the parties shall meet within five (5) Working Days (or such other longer period not exceeding twenty (20) Working Days as the parties may agree) of receipt of a Notice of Dispute. Homes England's representative at this stage of the process shall be its Director of Help to Buy.

14.1.3 Where either no representatives of both parties are available to meet within the period set out in clause 14.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief financial officers (or nominated deputies) of the Help to Buy Agent and Homes England (the **CFOs**).

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

14.1.5 If the Dispute remains unresolved after ten (10) Working Days following referral to the CFOs, such Dispute must be dealt with in accordance with clause 14.2.

14.2 In the circumstances contemplated in clause 14.1.5, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the parties, the mediator will be nominated by CEDR. The parties agree that:

14.2.1 to initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the Dispute requesting a mediation. A copy of the request should be sent to CEDR.

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

14.2.3 except where the right to issue proceedings would be prejudiced by a delay, no party may commence any court proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation.

14.3 The fact that the parties are engaged in any part of the dispute resolution process described in this clause 14 shall not prevent Homes England from terminating this Agreement in accordance with its terms where such right to terminate has arisen.

15 Intellectual property rights

- 15.1 All legal and equitable right, title and interest in and to Intellectual Property Rights created or developed or otherwise arising in the course of or pursuant to the Services or otherwise in performance of the Agreement shall (except insofar as Homes England may otherwise agree in advance in writing) vest in Homes England, including (without limitation) any and all Intellectual Property Rights created or developed or otherwise arising in relation to the whole or any part of any physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and information in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents on its behalf. The Help to Buy Agent shall procure (at its own expense) such assignments of the said Intellectual Property Rights as may be necessary in order to enable the Help to Buy Agent to comply with its obligations under and to give effect to this clause 15.1.
- 15.2 The Help to Buy Agent hereby assigns (insofar as permissible by law) and agrees to assign by way of future assignment to Homes England all its right, title and interest in and to the Intellectual Property Rights created or developed or otherwise arising in the course of or pursuant to the Services or otherwise in performance of the Agreement (including, for the avoidance of doubt and without limitation, any and all Intellectual Property Rights created or developed or otherwise arising in relation to the whole or any part of any physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and databases and information in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents on its behalf), and the Help to Buy Agent shall, until such time as any assignment of such Intellectual Property Rights is complete and effective, hold the legal title to them on trust for Homes England. The Help to Buy Agent further agrees that it shall take such steps as Homes England may reasonably request in writing to assist Homes England to register, maintain, defend, protect or enforce any of the aforesaid Intellectual Property Rights.
- 15.3 Without prejudice to the foregoing provisions of this clause 15, if and insofar as any Intellectual Property Rights which are subject to this clause 15 are owned by the Help to Buy Agent or its sub-contractors or agents (or any other third party), the Help to Buy Agent hereby grants and agrees to grant and to do all such acts and things at its own expense as may be necessary to procure the grant of a perpetual, royalty free, irrevocable licence to Homes England (with the right to grant sub-licences) to use such Intellectual Property Rights, including without limitation for the purpose of enabling a third party to deliver the Services or services which are broadly equivalent or similar to the Services.
- 15.4 Homes England hereby grants and agrees to grant to the Help to Buy Agent a royalty free licence to use any and all Intellectual Property Rights which are subject to this clause 15 for the sole purpose of supplying the Services and otherwise performing the Agreement.
- 15.5 At the expiry or earlier termination of this Agreement, the Help to Buy Agent shall forthwith at its expense:
- 15.5.1 deliver and transfer to Homes England, or whomsoever Homes England shall in writing direct, or at Homes England's option destroy or procure the destruction of and in the case of electronic documents cause or procure to be deleted permanently, any and all physical or electronic documents, websites and domain names and social media accounts, other materials, software, data files and

databases and records in any form, which in each case are created or developed by the Help to Buy Agent or its sub-contractors or agents in the course of or pursuant to the Services or otherwise in performance of the Agreement and which are in each case in the Help to Buy Agent's possession, custody or power;

15.5.2 deliver and transfer to Homes England all current and effective user names and passwords of URLs and websites and social media accounts and electronic media howsoever, which in each case are controlled by the Help to Buy Agent or its sub-contractors or agents and are solely or principally used in the course of or pursuant to the Services or otherwise in performance of the Agreement;

15.5.3 deliver and transfer and otherwise communicate to Homes England, or whomsoever Homes England shall in writing direct, in such format and on such physical or electronic media as Homes England may reasonably request, any and all information and/or data of any sort which is compiled or collected or created by the Help to Buy Agent or its sub-contractors or agents (including for the avoidance of doubt the information and documentation referred to in paragraph 5.8.6 of Specification A or (with effect from the Specification Transition Date) the equivalent paragraph of Specification B) in the course of or pursuant to the Services or otherwise in performance of the Agreement perform (or procure the performance of) all such further acts and things, and sign, execute and deliver (or procure the signature, execution and delivery of) all such further documents, instruments and agreements as may be required by law or as Homes England may request to vest in Homes England the full benefit of this clause 15 including, without limitation, to vest in Homes England all right, title and interest in and to such Intellectual Property Rights as may be created or developed or otherwise arise in the course of or pursuant to the Services or otherwise in performance of the Agreement (except insofar as Homes England may otherwise agree in advance in writing);

15.5.4 at the reasonable request and expense of Homes England, to assist Homes England to register, maintain, defend, protect or enforce any and all Intellectual Property Rights which are subject to this clause 15, and to assist with any other proceedings which may be brought by or against Homes England against or by any third party relating to such Intellectual Property Rights.

15.6 The Help to Buy Agent shall indemnify Homes England in respect of any Loss or Damage Homes England may incur in the event that any Intellectual Property Rights assigned by this clause 15 are found to be invalid or impaired in any way or arising from any claim by any third party (whether by way of claim or counterclaim or otherwise, and whether or not meritorious) that the exercise of the rights assigned or licensed by this clause 15 infringes the rights of such third party.

15.7 Subject to any other provision within this clause 15, ownership of and title to all Intellectual Property Rights owned by the Help to Buy Agent that pre-date this Agreement and are not created or developed or do not otherwise arise in the course of or pursuant to the Services or otherwise in performance of the Agreement shall as between the Help to Buy Agent and Homes England remain with the Help to Buy Agent and Homes England shall not acquire any proprietary right, title or interest to the same.

16 Business Continuity

- 16.1 Within 40 Working Days from the date of this Agreement, the Help to Buy Agent shall prepare and deliver to Homes England for Homes England's written approval, a Business Continuity and Disaster Recovery Plan.
- 16.2 Throughout the Term, the Help to Buy Agent shall ensure that it holds a Business Continuity and Disaster Recovery Plan that it is able to implement at any time in accordance with its terms to ensure minimal levels of disruption to the delivery of the Services.
- 16.3 The Business Continuity and Disaster Recovery Plan should confirm the requirements including, but not limited to, disaster recovery plans, data integrity and security during Business Continuity and Disaster Recovery Events across all systems, timescales and points of contact for the Help to Buy Agent and Homes England for notification, incident management and escalation.
- 16.4 The Business Continuity and Disaster Recovery Plan should contain a business impact analysis detailing the impact of a Business Continuity and Disaster Recovery Event on the business processes and operations supporting the delivery of the Services.
- 16.5 The Help to Buy Agent shall for the duration of this Agreement ensure that any computer system, database or any other system in which any Data is held (together, Relevant Systems) will be covered by the Business Continuity and Disaster Recovery Plan (including but without limitation off site storage and data backup arrangements) in accordance with current best practice business standards, and in any case of a standard sufficient to allow Homes England access to any Relevant System as soon as reasonably practicable following the occurrence of any event interrupting the business of the Help to Buy Agent.
- 16.6 The Help to Buy Agent should comply with relevant international standards regarding business continuity (currently ISO22301). It shall make the Business Continuity and Disaster Recovery Plan available along with an associated testing schedule of business continuity related activities to Homes England upon request, and will retain the responsibility to implement improvements required by Homes England.
- 16.7 The Help to Buy Agent shall test the Business Continuity and Disaster Recovery Plan on a regular basis, and in any event at least once every twelve (12) months. The Help to Buy Agent shall give Homes England at least twenty (20) Working Days' notice of each test and allow Homes England to participate in those tests.
- 16.8 The Help to Buy Agent shall, within twenty (20) Working Days of the conclusion of each test, provide to Homes England a report in writing setting out:
- a) The outcome of the test;
 - b) any failures in the Business Continuity and Disaster Recovery Plan revealed by the test; and
 - c) the Help to Buy Agent's proposal for remedying any such failures
- 16.9 Following each test, the Help to Buy Agent shall take all measures reasonably requested by Homes England (including requests for the retesting of the Business Continuity and Disaster Recovery Plan within 90 days of the request for the retest) to remedy any failures in the Business Continuity and Disaster Recovery Plan. Such remedial activity shall be completed by the Help to Buy Agent by the date reasonably required by Homes England.

16.10 The Help to Buy Agent shall provide Homes England with an Incident Report within twenty (20) Working Days of each and every Business Continuity and Disaster Recovery Event.

17 **Agency**

17.1 Neither the Help to Buy Agent nor its personnel shall in any circumstances hold itself or themselves out as being the servant or agent of Homes England otherwise than in circumstances expressly permitted by this Agreement.

17.2 Neither the Help to Buy Agent nor its personnel shall in any circumstances hold itself or themselves out as being authorised to enter into any contract on behalf of Homes England or in any other way to bind Homes England to the performance, variation, release or discharge of any obligation otherwise than in circumstances expressly permitted by this Agreement.

18 **Assignment and sub-contracting**

18.1 The Help to Buy Agent shall not be entitled to assign this Agreement, without the prior written consent of Homes England (such consent not to be unreasonably withheld or delayed in the case of a Group Company) and shall promptly give written notice of any assignment to Homes England.

18.2 The Help to Buy Agent shall only be permitted to employ subcontractors for the execution of any of the Help to Buy Agent's obligations hereunder with Homes England's prior consent (which shall not be unreasonably withheld or delayed in the case of a Group Company) and may only employ such subcontractors as are capable of providing services effectively on terms which enable the Help to Buy Agent to comply with the provisions of this Agreement. The Help to Buy Agent shall not be relieved of any of its obligations under this Agreement by any permitted subcontracting and shall at all times remain primarily liable for the acts and omissions of such subcontractors. If so requested, the Help to Buy Agent will promptly supply Homes England with a copy of any subcontracts.

19 **Human rights**

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

20 **Conflicts**

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

21 Notices

21.1 Any notice to be given hereunder shall be in writing and shall be sufficiently served if delivered by hand and receipted for by the recipient, sent by facsimile, electronic mail or sent by the Recorded Delivery Service addressed in the case of either party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses or to any fax numbers as either party may from time to time notify to the other in writing **provided that** such other address is within England and Wales.

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

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

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

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

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

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

22 Waiver

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

23 Concurrent remedies

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

24 Entire agreement

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

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

25 **Severance**

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

26 **No partnership etc.**

Nothing in this Agreement shall be construed as establishing or implying any partnership or joint venture between the parties hereto and save as expressly provided nothing in this Agreement shall be deemed to make the Help to Buy Agent the agent of Homes England or authorise the Help to Buy Agent:

26.1 to incur any expenses on behalf of Homes England;

26.2 to enter into any engagement or make any representation or warranty on behalf of Homes England; or

26.3 to commit or bind Homes England in any way whatsoever,
without in each case obtaining Homes England's prior written consent.

27 **Announcement**

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

28 **Survival of this contract**

28.1 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.

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

29 **Good faith and third parties**

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

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

30 **Law**

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

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

31 **Data protection**

31.1 This clause 31 applies where the Help to Buy Agent is Processing Personal Data on behalf of Homes England and shall be of no effect where the Help to Buy Agent is acting as a Data Controller (including as Joint Controllers) under Data Protection Legislation, and for the avoidance of doubt nothing in this clause 31 shall operate so as to prevent or prohibit the Help to Buy Agent in complying with its own obligations as a Data Controller under the Data Protection Legislation to the extent such obligations arise in respect of the Personal Data, the parties hereby acknowledging that in their respective roles as Data Controllers, each party is independently required to comply with any lawful request to exercise a data subject right under the Data Protection Legislation.

31.2 Homes England and the Help to Buy Agent acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Data Controller and the Help to Buy Agent is the Data Processor. The only processing that the Help to Buy Agent is authorised undertake on behalf of Homes England is detailed in Schedule 9 and may not be determined by the Help to Buy Agent.

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

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

31.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

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

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

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

31.5 The Help to Buy Agent undertakes that to the extent that the Help to Buy Agent and/or any of its employees receives, has access to and/or is required to process Personal Data on

behalf of Homes England (**Homes England's Personal Data**) for the purpose of providing the Services, it will at all times comply with the provisions of the Data Protection Legislation.

31.6 The Help to Buy Agent shall not perform its obligations under this Contract in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation. The Help to Buy Agent shall notify Homes England immediately if it considers that any of Homes England's instructions infringe the Data Protection Legislation.

31.7 For the purposes of this Contract, where the Help to Buy Agent is Processing Homes England's Personal Data on behalf of Homes England, it shall:

31.7.1 at all material times have in place and maintain Protective Measures which are appropriate to protect against a Data Loss Event which Homes England may reasonably reject (but failure to reject shall not amount to approval by Homes England of the adequacy of the Protective Measures) having taken into account the:

- i nature of the data to be protected;
- ii harm that might result from a Data Loss Event;
- iii state of technological development; and
- iv cost of implementing any measures

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

31.7.3 only process Personal Data in accordance with Schedule 9 unless the Help to Buy Agent is required to do otherwise by any Applicable Law or any Regulatory Body. Where the Help to Buy Agent is relying on such requirements as the basis for processing Personal Data, the Help to Buy Agent shall promptly notify Homes England of this before performing the Processing unless such requirements prohibit the Help to Buy Agent from so notifying Homes England;

31.7.4 not engage a Sub-processor without:

- (a) prior written authorisation from Homes England and ensuring compliance with any conditions attached to that consent;
- (b) including obligations which give effect to the terms of this clause 31, in a written agreement with any Sub-processor engaged by the Help to Buy Agent to provide the Services to Homes England;
- (c) Provide Homes England with such information regarding the Sub-processor as Homes England may reasonably require.

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

- 31.7.5 allow Homes England (and or its designated auditors) to audit the Help to Buy Agent's compliance with the requirements of this clause 31 on reasonable notice and/or, at Homes England's request, provide Homes England with evidence of the Help to Buy Agent's compliance with the obligations within this clause 31.
- 31.8 The Help to Buy Agent undertakes not to disclose or transfer any of Homes England's Personal Data to any third party without the prior written consent of Homes England save that the Help to Buy Agent shall be entitled to disclose Homes England's Personal Data to Help to Buy Agent Personnel, any Equity Loan Providers, any government or regulatory body which is entitled by law to access such information and any third party that has entered into a Data Protection Declaration to whom such disclosure is reasonably necessary in order for the Help to Buy Agent to carry out the Services, or to the extent required under a court order subject always to compliance with clause 31.9.
- 31.9 In respect of the Help to Buy Agent Personnel, the Help to Buy Agent shall:
- 31.9.1 take reasonable steps to ensure the reliability and integrity of any Help to Buy Agent Personnel who have access to the Personal Data;
- 31.9.2 ensure that all Help to Buy Agent Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, have provided a confidentiality undertaking to the Help to Buy Agent or Sub-processor in relation to the same and comply with the obligations set out in this clause 31;
- 31.9.3 ensure that none of Help to Buy Agent Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Homes England or as otherwise permitted by this Contract;
- 31.9.4 ensure that the Help to Buy Agent Personnel have undertaken adequate training in the law relating to the use, care, protection and handling of Personal Data and are aware of their obligations and those of the Help to Buy Agent under the Data Protection Legislation and this Contract;
- 31.9.5 ensure that the Help to Buy Agent Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 9)
- 31.10 The Help to Buy Agent shall:
- 31.10.1 provide a written description of the technical and organisational methods employed by the Help to Buy Agent for processing Personal Data (within the timescales required by Homes England); and
- 31.10.2 not Process Personal Data outside the United Kingdom without the prior written consent of Homes England and, where Homes England consents to a transfer, to ensure:
- (a) the Help to Buy Agent has provided appropriate safeguards in relation to the transfer as determined by Homes England;
- (b) the Data Subject has enforceable rights and effective legal remedies in relation to such Personal Data;

- (c) the Help to Buy Agent complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Homes England in meeting its obligations); and
- (d) it complies with any reasonable instructions notified to it by Homes England in relation to the Processing of the Personal Data.

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

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

31.11.2 notify Homes England as soon as reasonably practicable without undue delay, and in any event within 24 hours if it:

- (a) receives:
 - i a Data Subject Request (or purported Data Subject Request);
 - ii a request to rectify, block or erase any Personal Data;
 - iii any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - iv any other Complaint, communication or request relating to Homes England's obligations under the Data Protection Legislation;
 - v a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Law,

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

31.12 Taking into account the nature of the processing, the Help to Buy Agent shall provide Homes England with full assistance in relation to either the Help to Buy Agent's or Homes England's obligations under Data Protection Legislation and any Complaint, communication or request made pursuant to clause 31.10 (and in so far as possible within the timescales reasonably required by Homes England) including by promptly providing Homes England:

31.12.1 with full details and copies of the Complaint, communication or request;

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

- 31.12.3 at its request, with any Personal Data it holds in relation to a Data Subject;
- 31.12.4 with such assistance as requested by Homes England:
- (a) following any Data Loss Event;
 - (b) with respect to any request from the Information Commissioner's Office, or any consultation by Homes England with the Information Commissioner's Office.
- 31.13 If the Help to Buy Agent becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to Homes England's Personal Data, or any other Data Loss Event, the Help to Buy Agent shall:
- 31.13.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 31.13.2 notify Homes England of the suspected incident and the findings of the Help to Buy Agent's initial investigation without undue delay after becoming aware of that event, and in any event within 24 hours of becoming so aware. The Help to Buy Agent shall take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England save as permitted by 31.13.4 or as required by law PROVIDED THAT the Help to Buy Agent shall not make a notification to the Information Commissioner or any affected Data Subjects
 - 31.13.3 fully co-operate with Homes England in the course of any investigation undertaken by Homes England and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and /or notification to any affected Data Subjects; and
 - 31.13.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 31.14 The Help to Buy Agent shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Help to Buy Agent employs fewer than 250 staff, unless Homes England determines that the processing:
- 31.14.1 is not occasional;
 - 31.14.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 31.14.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 31.15 The Help to Buy Agent 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 Help to Buy Agent's destruction of and/or damage to or unlawful Processing of any of Homes England's Personal Data processed by the Help to Buy Agent, Help to Buy Agent Personnel or a Sub-processor, or any breach of or other failure to

comply with the obligations in the Data Protection Legislation and/or this clause 31 by the Help to Buy Agent, Help to Buy Agent Personnel or a Sub-processor.

- 31.16 The Help to Buy Agent shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Help to Buy Agent's Processing of Homes England's Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly and in any event within the timescales set out in this Contract.
- 31.17 The Help to Buy Agent undertakes to act upon the written instructions from Homes England in relation to the secure deletion or return of Homes England's Personal Data at the termination or expiry of this Contract or such time that the Help to Buy Agent no longer requires access to Homes England's Personal Data for the purposes of performing its obligations under this Contract, in so far as the Help to Buy Agent is able to take into account its own data retention requirements and, unless the Help to Buy Agent is required by Law to retain the Personal Data.
- 31.18 Homes England may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 31.19 The Help to Buy Agent and Homes England agree to take account of any guidance issued by the Information Commissioner's Office. Homes England may on not less than thirty (30) Working Days' notice to the Help to Buy Agent amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

32 Co-operation

- 32.1 Homes England and the Help to Buy Agent shall act as stated in this Agreement and in a spirit of mutual trust and co-operation.
- 32.2 Without prejudice to any other term of this Agreement, the Help to Buy Agent shall co-operate with the Outgoing Provider so as:
- 32.2.1 to maintain the continuity of and quality of the Services in accordance with this Agreement; and
- 32.2.2 to achieve to the extent reasonably possible a smooth transfer of the Services to the Help to Buy Agent,

provided that nothing in this clause shall oblige the Help to Buy Agent to breach any Applicable Laws.

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

33 Insurance

- 33.1 The Help to Buy Agent shall take out and maintain policies of insurance as are set out in Schedule 5 and shall otherwise comply with the provisions of this clause 33.

- 33.2 The Help to Buy Agent agrees to maintain such insurance at all times until twelve (12) years after expiry of the Term (or, if later, twelve (12) years after the date upon which the Help to Buy Agent completes the provision of Services pursuant to an instruction from Homes England), **provided that** such insurance continues to be available at commercially reasonable rates and upon commercially reasonable terms which it would not be imprudent for the Help to Buy Agent to accept having regard (inter alia) to the premium charged, the terms proposed and the duties undertaken by the Help to Buy Agent in relation to any task or works in respect of which the Help to Buy Agent is instructed pursuant hereto.
- 33.3 The Help to Buy Agent shall, if and when required by Homes England, produce to it a copy of the relevant insurance policies taken out pursuant to clause 33.1 together with documentary proof that such insurance is being maintained.
- 33.4 If the Help to Buy Agent becomes in default of its obligations to insure or continue to insure as set out in this clause 33, the Help to Buy Agent shall pay or allow to Homes England on demand any sum of money reasonably expended by Homes England to effect insurance against any risk or amount in respect of which the default shall have occurred and Homes England may deduct such sum (or part thereof) from any sums due or to become due to the Help to Buy Agent under this Agreement.
- 33.5 The Help to Buy Agent warrants to Homes England that prior to the execution of this Agreement it has (if required by the terms of its insurance) made full disclosure to its insurers of the existence and contents of this Agreement, and as may otherwise be required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and they have not advised the Help to Buy Agent that the cover required under this Agreement is, or may be, declined.
- 33.6 Any insurance required to be taken out by the Help to Buy Agent under this Agreement shall not include any condition which may adversely affect the rights of Homes England to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930. The Help to Buy Agent shall not compromise, settle or waive any claim which it may have under any insurance policy taken out in accordance with this Agreement, in respect of any liability which the Help to Buy Agent may incur under this Agreement, which may in any way prejudice the ability of Homes England to recover the full amount of any claim Homes England may be lawfully entitled to.
- 33.7 For the avoidance of doubt, it is agreed that nothing in this clause 33 shall relieve the Help to Buy Agent from any of his obligations and liabilities under the Agreement.

34 **Staffing Security**

- 34.1 The Help to Buy Agent shall develop and implement its own Staff Vetting Procedures, details of which shall be made available to Homes England within two (2) Working Days of receipt of a request. The Help to Buy Agent shall comply with all Applicable Laws and Applicable Standard in formulating its Staff Vetting Procedures and shall have regard to any reasonable comments made by Homes England.
- 34.2 The Help to Buy Agent shall comply with the Staff Vetting Procedures in respect of all Help to Buy Agent Personnel employed or engaged in the provision of the Services. The Help to Buy Agent confirms that all Help to Buy Agent Personnel employed or engaged by the Help

to Buy Agent at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 34.3 The Help to Buy Agent shall provide training on a continuing basis for all Help to Buy Agent Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.

35 **Warranties**

The Help to Buy Agent warrants, represents and undertakes for the duration of the Term that:

- 35.1 all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Staff Vetting Procedures and the Security Policy;
- 35.2 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Help to Buy Agent's obligations under this Agreement;
- 35.3 in performing its obligations under this Agreement, all software used by or on behalf of the Help to Buy Agent will:
- 35.3.1 be currently supported versions of that software; and
 - 35.3.2 perform in all material respects in accordance with its specification;
- 35.4 as at the Commencement Date all statements and representations in the Help to Buy Agent's written response to the ITT are to the best of its knowledge, information and belief, true and accurate and that it will advise Homes England of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- 35.5 the Help to Buy Agent System and assets used in the performance of the Services:
- 35.5.1 will be free of all encumbrances and defects; and
 - 35.5.2 will be Date Compliant;
- 35.6 it shall at all times comply with Applicable Laws in carrying out its obligations under this Agreement.

36 **Security Requirements**

- 36.1 The Help to Buy Agent shall comply, and shall procure the compliance of the Help to Buy Agent Personnel, with the Security Policy and the Security Plan and the Help to Buy Agent shall ensure that the Security Plan produced by the Help to Buy Agent fully complies with the Security Policy.
- 36.2 Homes England shall notify the Help to Buy Agent of any changes or proposed changes to the Security Policy.

37 Malicious Software

- 37.1 The Help to Buy Agent shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 37.2 Notwithstanding clause 37.1, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Homes England Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 37.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 37.2 shall be borne by the parties as follows:
- 37.3.1 by the Help to Buy Agent where the Malicious Software originates from the Help to Buy Agent's software or Homes England Data (whilst Homes England Data was under the control of the Help to Buy Agent); and
- 37.3.2 by Homes England if the Malicious Software originates from Homes England's software or Homes England Data (whilst Homes England Data was under the control of Homes England).

38 Anti-Bribery

- 38.1 The Help to Buy Agent shall:
- 38.1.1 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**);
- 38.1.2 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;
- 38.1.3 comply with Homes England's Ethical, Anti-bribery and Anti-corruption Policies a copy of which is available here: <http://www.homesandcommunities.co.uk/ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**);
- 38.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and clause 38.1.3, and will enforce them where appropriate;
- 38.1.5 immediately report to Homes England's Head of Risk and Assurance Services any request or demand for any undue financial or other advantage of any kind received by the Help to Buy Agent in connection with the performance of this agreement;
- 38.1.6 if required by Homes England, produce a written certificate to it signed by an officer of the Help to Buy Agent, confirming compliance with this clause 38 by the Help to Buy Agent and all persons associated with it under clause 38.2. The

Help to Buy Agent shall provide such supporting evidence of compliance as Homes England may reasonably request.

38.2 The Help to Buy Agent shall ensure that any person associated with the Help to Buy Agent who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Help to Buy Agent in this clause 38 (**Relevant Terms**). The Help to Buy Agent 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.

38.3 Breach of this clause 38 shall be deemed a material breach.

38.4 For the purpose of this clause 38, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 38 a person associated with the Help to Buy Agent includes but is not limited to any subcontractor of the Help to Buy Agent.

39 **Equalities**

39.1 The Help to Buy Agent will comply in all material respects with all Applicable Laws relating to equality and relevant employment matters.

39.2 The Help to Buy Agent confirms that it has, and is in full compliance with, a policy covering equal opportunities designed to ensure that discrimination prohibited by the Equality Act 2010 is avoided at all times and will provide a copy of that policy and evidence of the actual implementation of that policy upon request by Homes England.

39.3 The Help to Buy Agent 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.

40 **Changes and Special Changes**

40.1 In this Agreement:

40.1.1 changes to this Agreement that are necessitated by the transition from Specification A to Specification B shall be made in accordance with the procedure set out in paragraph 2 of Schedule 12, with any related changes to the Fees being determined in accordance with paragraphs 4.1.1 and 4.1.2 of Schedule 10;

40.1.2 other Special Changes shall be made in accordance with the procedure set out in Schedule 12 and not the procedure set out in Schedule 15; and

40.1.3 all other changes for which no express provision to the contrary is made shall be made in accordance with the procedure set out in Schedule 15 only.

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

EXECUTED as a **DEED** by affixing the)
common seal of)
THE SWAYTHLING HOUSING SOCIETY)
LIMITED)
in the presence of:)

Authorised signatory

Authorised signatory

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

Authorised Signatory

Schedule 1

Part 1 - Specification A

1 Summary

- 1.1 The Help to Buy Agent shall deliver the Services within the Geographic Service Area on behalf of Homes England.
- 1.2 The Services are categorised into five core services (the Core Services), details of which are set out below. The service requirements and obligations incumbent on the Help to Buy Agent in relation to the administration of each Core Service are set out in this Specification.
- 1.3 Homes England reserves the right to make such amendments to part or all of this Specification during the contract term as it may deem necessary to meet its objectives, acting reasonably.
- 1.4 In this Specification any reference to Investment Management System (IMS) includes such other systems as shall replace or supplement IMS from time to time.
- 1.5 In this Specification any reference to systems and processes include new, replacement or amended systems and process specified from time to time by Homes England.
- 1.6 In this Specification any reference to legislation includes references to legislation as updated and enacted from time to time.

SERVICE REQUIREMENTS

1 CORE SERVICE 1 - Website and signposting

- 1.1 The Help to Buy Agent is required to develop, host, operate and maintain a dedicated website as set out below.
- 1.2 The required website shall hold information generated by Homes England on all AHO Products and Equity Loan Products offered by Homes England in the Geographic Service Area.
- 1.3 All branding and content text shall be provided by Homes England.
- 1.4 The Help to Buy Agent must update website content at the request of Homes England within three (3) Working Days of receipt of a written request to do so.
- 1.5 No product information other than that provided by Homes England should appear on Help to Buy Agent websites.
- 1.6 Homes England shall provide a privacy notice for the Help to Buy Agent to display and shall update this from time to time.
- 1.7 The website must also provide access to a searchable database of new build developments for both Equity Loan and AHO products.
- 1.8 The website must also provide access to a searchable database for Resale properties.

- 1.9 The website must provide the facility for users to search by geographical location, scheme and housing provider.
- 1.10 The website must provide access to an online application form with all fields prescribed by Homes England and processing facilities for AHO Products. Homes England may stipulate that particular wording be included on the form and/or the format of the form itself.
- 1.11 The website must provide access to an online property information form with all fields prescribed by Homes England.
- 1.12 The website must include a tracking code for Google Analytics, which Homes England shall provide to analyse site visits and user behaviour. Homes England may share the monthly analytics report.
- 1.13 Without prejudice to the generality of para 1.3 of this Schedule 1A, the Help to Buy Agent acknowledges that Homes England intends to design and host its own Help to Buy website (“the New Website”), to which Help to Buy Agents will have access. The date of launch of the New Website is not yet known but the parties acknowledge that Homes England’s aspiration is to launch the New Website between April 2020 and June 2020. Homes England will give the Help to Buy Agent as much notice as reasonably practicable of the Launch Date, and in any event no less than one Month’s notice in writing.
- 1.14 The requirement for the Help to Buy Agent to host a Help to Buy Agent website will cease on the date the New Website is launched (“Launch Date”), meaning that with effect from the Launch Date:
- 1.14.1 the Help to Buy Agent must close down its own Help to Buy Agent website save for a landing page redirecting users to the New Website;
- 1.14.2 the Help to Buy Agent must signpost all enquiries from customers and stakeholders to the New Website;
- 1.14.3 to the extent that the Service Requirements set out in this Schedule 1A impose obligations on the Help to Buy Agent in respect of, or make reference to, the development, hosting, operation and maintenance of a website by the Help to Buy Agent, they shall be varied mutatis mutandis to remove such obligations and/or references but shall otherwise remain in full force and effect.
- 1.15 Any KPI or Performance Indicator (or part thereof) in this Agreement that relates to the development, hosting, operation and maintenance of a website by the Help to Buy Agent shall cease to have effect after the Launch Date. Homes England may, in its absolute discretion, substitute replacement KPIs or Performance Indicators therefor, and shall give the Help to Buy Agent not less than one calendar month’s notice in writing of its intention to do so.

2 CORE SERVICE 2 – Customer Guidance and Signposting

Service Requirements

- 2.1 The Help to Buy Agent shall provide on their website information and guidance relating to home ownership options in the Geographic Service Area, including AHO Products and Equity Loan Products offered or supported by Homes England.

Information Provision

- 2.2 The Help to Buy Agent is responsible for publishing information provided by Homes England about all relevant AHO Products, Help to Buy Equity Loan Products and related government services available to support home ownership in the Geographic Service Area.
- 2.3 The Help to Buy Agent shall respond to enquiries received electronically, in writing or by telephone by providing accurate information and guidance on relevant products and partner services and/or signposting enquirers to further sources of information and assistance, in line with the KPI notified by Homes England from time to time.
- 2.4 The Help to Buy Agent shall provide information on home ownership options available in the Geographic Service Area from Grant Recipients and Help to Buy Equity Loan Providers.
- 2.5 The Help to Buy Agent shall be responsible for maintaining and ensuring the effective operation of a dedicated telephone enquiry line to be operated as a minimum between Monday - Friday, 9am - 6pm, (except public holidays) in accordance with the requirements of Homes England.
- 2.6 The Help to Buy Agent shall be responsible for ensuring that the telephone enquiry line is accessible to diverse groups, including making use of available assistive technology to support customers with specific needs such as language, hearing impairment etc.
- 2.7 The Help to Buy Agent shall monitor the quality of their customer contact handling in accordance with KPI 8 (% Customer Interactions that meet Homes England's Quality Principles (call/email/letter)) as described in Schedule 2.
- 2.8 Homes England may undertake Mystery Shopping at any time during the period of the contract. The Mystery Shopping criteria will be specified from time to time by Homes England. The Help to Buy Agent shall provide a response to feedback from Mystery Shopping within a maximum of twenty eight (28) days of receipt from Homes England.
- 2.9 The Help to Buy Agent shall ensure that electronic and printable documentation is available on their website to enquirers, Qualifying Applicants, Help to Buy Equity Loan Provider and Grant Recipients is in the current format prescribed by Homes England.
- 2.10 The Help to Buy Agent shall process applications for AHO Products and Equity Loan Products offered or supported by Homes England in accordance with this Specification using the Standard Documents.
- 2.11 Where potential purchasers make direct approaches to a Grant Recipient or Help to Buy Equity Loan Provider in respect of Equity Loan Products or AHO Products, the Grant Recipient or Help to Buy Equity Loan Provider will be responsible for providing applicants with the relevant Standard Documents, and for directing applicants to contact the relevant Help to Buy Agent or assisting them to make an application (AHO Products) or submit a Property Information Form (Equity Loan Products) to the Help to Buy Agent.
- 2.12 Any literature distributed by or on behalf of the Help to Buy Agent in relation to Equity Loan and AHO Products must be in Homes England's prescribed form, as notified to the Help to Buy Agent from time to time.

2.13 Any requests received by the Help to Buy Agent from a Grant Recipient or a Help to Buy Equity Loan Provider to approve any scheme specific literature or marketing shall be referred to Homes England's Marketing and Communications team.

3 CORE SERVICE 3 – AHO Products

Service Requirements

3.1 The Help to Buy Agent shall support the effective administration of AHO Products in the Geographic Service Area by advertising properties on the Help to Buy Agent website and hosting an application form which Grant Recipients can access.

Information Provision

3.2 The Help to Buy Agent shall be responsible for making available information about the types of grant funded AHO Schemes available in the Geographic Service Area. Homes England will provide to Help to Buy Agents, on a quarterly basis, a list of grant funded AHO Scheme allocations.

3.3 In the case of direct approaches from potential purchasers, the Grant Recipient will be responsible for providing applicants with the relevant Standard Documents and directing them to complete the Help to Buy Agents application form. Application forms are to be submitted (online) or returned by post (in exceptional circumstances) to the Help to Buy Agent by the applicant for registration and assessment against the eligibility criteria and such other checks as may be appropriate.

3.4 The Help to Buy Agent shall ensure that its website is enabled to allow Grant Recipients to upload and maintain details of available AHO properties and shall liaise with Grant Recipients in respect of this. In the event Homes England advises that any of the documentation to be provided by the Help to Buy Agent to applicants, or Grant Recipients is to be provided in a revised form, the Help to Buy Agent shall ensure, from the date the new form of document takes effect, that only the new formats are provided to applicants or Grant Recipients in accordance with the requirements of this Specification, and the Help to Buy Agent shall use reasonable endeavours to ensure that Grant Recipients shall provide only the new form of documentation to applicants.

3.5 Where required by Homes England, the Help to Buy Agent shall display on its website a privacy notice provided by Homes England and notified to the Help to Buy Agent to be used for this purpose.

Enquiries from applicants

3.6 Enquiries about AHO Schemes may be made in several ways:

3.6.1 direct to the Help to Buy Agent through the Help to Buy Agent Website or the Help to Buy Agent's dedicated phone line;

3.6.2 via a Grant Recipient;

3.6.3 via a Local Authority;

3.6.4 via any website or medium commissioned by or on behalf of Homes England in order to promote individual or multiple AHO schemes.

- 3.7 In all cases enquirers to Grant Recipients and/or the Help to Buy Agent should be initially assessed by the Help to Buy Agent to ensure they meet the initial eligibility criteria set by Homes England, MHCLG and/or other stakeholders from time to time.
- 3.8 Enquirers from all sources that meet the initial eligibility criteria shall be directed to the Help to Buy Agent's online application form and Standard Documents or, in exceptional cases, provided with hard copies of these documents. The Help to Buy Agent shall provide data to evidence online application numbers on a monthly basis.
- 3.9 The Help to Buy Agent shall ensure that applicants and Grant Recipients are provided with the relevant electronic documentation and access to online application forms (or provided with hard copies if required) within four (4) Working Days of a request to supply such documents.
- 3.10 The Help to Buy Agent shall undertake an ongoing programme of continuous assurance and monitoring of its Service performance. The Help to Buy Agent shall retain responsibility for any improvement and remediation activities required by Homes England.

Applications

- 3.11 The Help to Buy Agent shall assess the application in accordance with Homes England's Customer Due Diligence Requirements.
- 3.12 The Help to Buy Agent shall undertake a headline eligibility assessment of applicants in accordance with the guidance in the Affordable Housing Capital Funding Guide.
- 3.13 The Help to Buy Agent shall register the applicant on a database and inform the applicant of their status (accepted as a Qualifying Applicant, rejected or on-hold (i.e. awaiting further information)) electronically (or in hard copy if requested) within four (4) Working Days of receipt of an application.
- 3.14 When confirming an applicant's eligibility status, the Help to Buy Agent shall advise each and every Qualifying Applicant to seek independent financial advice.
- 3.15 The Help to Buy Agent shall provide contact details for a panel of independent mortgage advisors on its website and also include appropriate caveats to make it clear that applicants are aware that they are free to consult and take advice from any independent mortgage advisor of their choice to confirm actual affordability.
- 3.16 No Qualifying Applicants can be allocated a property under any of the AHO schemes unless they have submitted an application form online (or in hard copy in exceptional circumstances). Applicants must have registered their details with the Help to Buy Agent and have been notified of the outcome of their eligibility and sustainability assessment conducted under paragraph 4.12. The Help to Buy Agent shall include on its Help to Buy Agent website consistent customer information regarding Resales.
- 3.17 In addition to their obligations in relation to AHO schemes generally, the Help to Buy Agent must:
- 3.17.1 have the ability to allow Grant Recipients to market individual properties available as Resales on the Help to Buy Agent's Website;

- 3.17.2 provide applicants with full contact details for Grant Recipients offering current Resale properties.

4 CORE SERVICE 4 – Products (Equity Loan)

Service Requirements

- 4.1 The Help to Buy Agent is required to support the effective administration of Equity Loan Products. The Help to Buy Agent shall assess the application in accordance with Homes England's Customer Due Diligence Requirements. This should be done by following the Core Transaction Process, the key points of which are:
- 4.1.1 undertaking applicant eligibility and sustainability assessments;
 - 4.1.2 administer the Equity Loan Scheme in line with the Core Transaction Process;
 - 4.1.3 support Help to Buy Equity Loan Providers with process queries;
 - 4.1.4 administer the relevant pages within IMS for all Help to Buy Equity Loan Providers;
 - 4.1.5 ensure IMS is updated at each process stage with accurate information and in a timely matter and where relevant in accordance with the timescales set out in this Specification;
 - 4.1.6 administer the claim and cash management process within IMS on behalf of non-IMS Contracted Developers as required by the Core Transaction Process;
 - 4.1.7 on receipt (within five (5) days) update IMS with the actual completion date and/or AP1 date from the relevant Equity Loan document and AP1 for each completed Eligible Unit of completion;
 - 4.1.8 if the Equity Loan and AP1 are not received within five (5) days then the specified post sales documents process shall be followed;
 - 4.1.9 once the HM Land Registry Title Document is received the Agent shall complete the relevant sections of IMS and upload the documents stipulated in the post sales documents process to the Mortgage Administrators Secure File Transmittal Portal (SFTP) or equivalent.

Information Provision

- 4.2 Save in exceptional circumstances where paper based literature is required, Help to Buy Agents shall facilitate access to the information only via the Help to Buy Agent's website.
- 4.3 Homes England shall provide all standard text and documentation for publishing on the Help to Buy Agent website from time to time, including a Privacy Notice.
- 4.4 The Help to Buy Agent is not permitted to create any further marketing or information materials other than those provided by Homes England.

- 4.5 It is acknowledged that the Help to Buy Equity Loan Provider is responsible for scheme specific marketing in line with the funding administration agreement it has entered into with Homes England.
- 4.6 Homes England shall provide three (3) days' advance notice of any changes to their required branding and published information.
- 4.7 Where Homes England has provided new literature and or process documentation or made any changes to the same it shall also issue full instructions to Help to Buy Agents regarding the cut-off date and process between existing and new requirements.

Enquiry Handling

- 4.8 Enquiries about the Help to Buy Equity Loan scheme and or individual sale status may be received via:
- 4.8.1 the Help to Buy Agent through the Help to Buy Agent's dedicated phone line;
 - 4.8.2 the Help to Buy website;
 - 4.8.3 post;
 - 4.8.4 email.
- 4.9 All enquiries must be processed and all personal data handled in a way that considers all Applicable Laws and in accordance with this Agreement including relevant Data Protection Legislation.
- 4.10 The Help to Buy Agent shall advise each Qualifying Applicant in writing to consult an independent mortgage advisor. (Where appropriate the Help to Buy Agent may refer applicants to a nominated panel of independent mortgage advisors) and that any money paid to a Help to Buy Equity Loan Provider in order to reserve a particular property is paid at the Qualifying Applicant's risk (save where such property is withdrawn from such reservation at the discretion of the Help to Buy Equity Loan Provider);
- 4.11 **Selection of a Property**
- 4.11.1 Once an applicant has selected a property they intend to purchase, the applicant shall provide the Help to Buy Agent with a duly completed Property Information Form together with a copy of the Help to Buy Equity Loan Provider's standard reservation form duly completed in respect of the relevant applicant and the property.
- 4.12 **Assessment**
- 4.12.1 Upon receipt of a completed Property Information Form (in electronic or hard copy) the Help to Buy Agent will validate the application and perform an eligibility assessment on behalf of the Help to Buy Equity Loan Provider in accordance Homes England's published criteria for product.
 - 4.12.2 The Help to Buy Agent eligibility assessment shall include use of Homes England's sustainability calculator (which can currently be found at <https://www.gov.uk/government/publications/homes-england-help-to-buy-equity->

[loan-calculator-and-guidance](#)) or such other calculator as Homes England shall direct). To protect Homes England investment applicants must be able to demonstrate to the Help to Buy Agent that they can sustain home ownership in the longer term (which may include for the avoidance of doubt persons subject to immigration control).

- 4.12.3 In relation to Help to Buy Equity Loan purchases, the Help to Buy Agent shall utilise the Standard Documents in the time and manner prescribed by Homes England from initial enquiries to post completion work on each transaction.

4.13 Authority to Proceed

- 4.13.1 Using the information contained in the Property Information Form, the Help to Buy Agent shall complete and issue an Authority to Proceed to the Qualifying Applicant and the Help to Buy Equity Loan Provider within four (4) Working Days of receipt of the completed Property Information Form. As part of this exercise the Help to Buy Agent shall ensure that:

- (a) the amount filled in the 'Requisite Amount of Cash Savings to be invested by the Buyer' section of the Authority to Proceed (the **Cash Contribution**) is a minimum of 5% of the Full Purchase Price; and
- (b) the amount filled in the 'Mortgage Level' section of the Authority to Proceed (the **Mortgage Level**) is a minimum of 25% of the Full Purchase Price.

- 4.13.2 On issuing the Authority to Proceed in accordance with Paragraph 4.13.1, the Help to Buy Agent shall confirm to the Qualifying Applicant and the Help to Buy Equity Loan Provider that the Authority to Proceed will only remain valid authorisation for the transfer of the relevant property for a period of three (3) months from the date of issue and only where the Full Purchase Price detailed in the Authority to Proceed is supported by a Valid Valuation.

- 4.13.3 Subject to the provisions of Paragraph 4.13.4, the Help to Buy Agent shall:

- (a) (using the information contained in the PIF as applicable) complete: the Qualifying Applicant's details, the Homes England Contribution, the Initial Market Value, the Initial Proportion, the Review Date (as all are defined in the Standard Documents), paragraph 3.2 of each Help to Buy Equity Loan and the details in the First Schedule of each Help to Buy Equity Loan as applicable (or such other sections of each Help to Buy Equity Loan as Homes England may reasonably require); and
- (b) issue the completed Solicitors Information Pack to the Qualifying Applicant's conveyancer (whose details shall be confirmed by the Qualifying Applicant in the Property Information Form) at the same time as issuing the Authority to Proceed to the Qualifying Applicant and the Help to Buy Equity Loan Provider pursuant to Paragraph 4.13.

- 4.13.4 In the event that exchange of contracts for the purchase of the relevant property does not occur within three (3) months of the date of the issue of the Authority to Proceed and the Help to Buy Equity Loan Provider and the Qualifying

Applicant intend to proceed to exchange of contracts within a further month, the Qualifying Applicant or the Qualifying Applicant's conveyancer may apply to the Help to Buy Agent for the Authority to Proceed to be extended and **provided the Help to Buy Agent is satisfied that the details in the Authority to Proceed remain correct and are supported by a Valid Valuation, the Help to Buy Agent may extend the validity of the Authority to Proceed for a further month. Provided always that the Help to Buy Agent is satisfied that the requirements of this Paragraph 4.13.4 have been met, this process may be repeated up to a maximum of three times in total in relation a any Authority to Proceed.**

- 4.13.5 In the event that exchange of contracts for the purchase of the relevant property does not occur within three (3) months (or any extended period confirmed by the Help to Buy Agent pursuant to Paragraph 4.13.4) of the date of the issue of the Authority to Proceed, the Authority to Proceed shall cease to have effect and the Qualifying Applicant's conveyancer shall provide notification of the same to the Help to Buy Agent. In the event the relevant Qualifying Applicant wishes to proceed with the purchase of the property following the expiry of an Authority to Proceed, the Help to Buy Agent shall refer the case to Homes England for further consideration.

4.14 Exchange and completion

- 4.14.1 Following issue of the Authority to Proceed, the Qualifying Applicant and the Help to Buy Equity Loan Provider shall proceed with the conveyancing process in order to achieve exchange and completion of the transfer of the property.
- 4.14.2 In the event the Qualifying Applicant's Mortgage Offer is not equal to the Mortgage Level in the Authority to Proceed, the Qualifying Applicant shall notify the Help to Buy Agent of the terms of such Mortgage Offer and provide such supporting evidence as the Help to Buy Agent shall reasonably require in order to demonstrate why the Mortgage Offer does not equal the Mortgage Level. The Qualifying Applicant shall also confirm whether the actual cash investment in the property differs from the Cash Contribution in the Authority to Proceed.
- 4.14.3 The Help to Buy Agent (acting reasonably) shall review the Qualifying Applicant's Mortgage Offer and supporting information (where required) together with the Qualifying Applicant's financial circumstances in order to determine whether a Revised Authority to Proceed may be issued to reflect the details of the Qualifying Applicant's Mortgage Offer **provided that** a Revised Authority to Proceed may not be issued unless:
- (a) the Help to Buy Agent is satisfied that:
 - i the Qualifying Applicant has used reasonable efforts to obtain a mortgage at the Mortgage Level;
 - ii the reasons for the lower Mortgage Offer do not render the Qualifying Applicant ineligible for a Help to Buy Equity Loan; and
 - iii the applicant's Cash Contribution is reasonable in the circumstances.

- (b) the sum of the Mortgage Offer (taking into account any guidance issued by Homes England) combined with the applicant's Cash Contribution results in the Contribution Percentage increasing by no more than 10% **provided always** that the Contribution Percentage shall not in any case exceed 20%; or
- (c) (where Paragraphs (a) and (b) above do not apply) where Homes England confirms in writing that a Revised Authority to Proceed may be issued in respect of the relevant Qualifying Applicant.

4.14.4 In the event that:

- (a) the Help to Buy Agent is satisfied that a Revised Authority to Proceed may be issued pursuant to Paragraph 4.14.3;
- (b) the Help to Buy Agent receives notification that the sum of the Qualifying Applicant's Mortgage Offer exceeds that Qualifying Applicant's Mortgage Level and the Help to Buy Agent is reasonably satisfied that the relevant Qualifying Applicant will be in a position to manage the level of repayments they would be required to make under the proposed mortgage;
- (c) the Help to Buy Agent receives notification that the Qualifying Applicant's actual cash investment in the property exceeds from the Cash Contribution in the Authority to Proceed; or
- (d) the Help to Buy Agent receives notification that the Qualifying Applicant's cash investment in the property will be less than the Cash Contribution in the Authority to Proceed and the Help to Buy Agent is satisfied that the reduction in the Applicant's Contribution is reasonable in the circumstances,

the Help to Buy Agent shall issue a Revised Authority to Proceed and a revised Help to Buy Equity Loan with the Homes England Contribution and Contribution Percentage adjusted accordingly.

4.14.5 The provisions of Paragraphs 4.13.4 and 4.13.5 above shall equally apply to any Revised Authority to Proceed issued pursuant to Paragraph 4.14.3 or 4.14.4.

4.14.6 Within four (4) Working Days of receipt of the Qualifying Applicant's Mortgage Offer and/or notification in any change to the applicant's Cash Contribution the Help to Buy Agent shall either issue both a Revised Authority to Proceed and Help to Buy Equity Loan in accordance with Paragraph 4.14.4 or shall confirm to the Qualifying Applicant that a Revised Authority to Proceed will not be issued and the Help to Buy Agent's reasons for not doing so.

4.14.7 Where the Help to Buy Agent receives notification from either the Help to Buy Equity Loan Provider, the Qualifying Applicant or the Qualifying Applicant's conveyancer that the mortgage valuation differs from the Full Purchase Price the Help to Buy Agent shall seek confirmation from Homes England that the sale of the property to the relevant Qualifying Applicant may proceed and,

where such confirmation is provided on terms that require either the Full Purchase Price or the Homes England Contribution (as applicable) to be adjusted, the Help to Buy Agent shall issue a Revised Authority to Proceed and a revised Help to Buy Equity Loan with the Homes England Contribution and Contribution Percentage (as applicable) adjusted accordingly.

- 4.14.8 In the event the Help to Buy Agent receives any requests for consent not covered by this Specification from either the Help to Buy Equity Loan Provider, the Qualifying Applicant or the Qualifying Applicant's conveyancer, the Help to Buy Agent shall refer the party making the request to Homes England save where Homes England has issued specific guidance to the Help to Buy Agent in relation to the type of requested consent in which case the consent should be dealt with in accordance with such guidance.
- 4.14.9 The Help to Buy Agent shall procure that the Qualifying Applicant's conveyancer provides a completed Solicitor's Form 1 addressed to both the Help to Buy Agent and Homes England not less than five (5) Working Days prior to the proposed date for exchange. Within one (1) Working Day of receipt of the completed Solicitor's Form 1, the Help to Buy Agent shall enter the required details into IMS, including but not limited to the Qualifying Applicant's details and eligibility status.
- 4.14.10 In the event of any changes to the proposed dates for exchange and completion, the Qualifying Applicant's conveyancer will be required to provide confirmation of such changes to the Help to Buy Agent. Within two (2) Working Days of receipt of notification from the Qualifying Applicant's conveyancer of either the proposed dates for exchange and completion or any changes to such dates, the Help to Buy Agent shall confirm the relevant dates to Homes England via IMS.
- 4.14.11 Within three (3) Working Days of receipt of the Solicitor's Form 1 the Help to Buy Agent shall issue an Authority to Exchange to the Qualifying Applicant's conveyancer copied to the Help to Buy Equity Loan Provider and Homes England.
- 4.14.12 Within two (2) Working Days of exchange (in accordance with Solicitor's Form 1), the Qualifying Applicant's conveyancer will be required to supply (or procure the supply of) a Confirmation of Exchange to the Help to Buy Agent together with written confirmation of:
- (e) the date of exchange; and
 - (f) the proposed (or anticipated) completion date.
- 4.14.13 Within one (1) Working Day of receipt of the Confirmation of Exchange pursuant to Paragraph 4.14.12, the Help to Buy Agent shall update the relevant sections of IMS in order to confirm the date of the issue of the Authority to Exchange and the Qualifying Applicant's eligibility status.
- 4.14.14 The Help to Buy Agent shall procure that the Qualifying Applicant's conveyancer provides a Solicitor's Form 2 addressed to both the Help to Buy Agent and Homes England not less than five (5) Working Days prior to the

proposed date for completion (as notified pursuant to Paragraph 4.14.13) and the Help to Buy Agent shall notify Homes England within two (2) Working Days of receipt of the Solicitors Form 2.

- 4.14.15 The Help to Buy Agent shall within two (2) Working Days of receipt of the Solicitor's Form 2 (where such confirmation can be given) provide the Confirmation to the Help to Buy Equity Loan Provider (and/or its nominated solicitor).
- 4.14.16 In the event the Help to Buy Agent does not receive a Solicitor's Form 1 and/or a Solicitor's Form 2 in accordance with Paragraphs 4.14.9 or 4.14.14, it shall promptly notify the Qualifying Applicant's conveyancer and the Help to Buy Equity Loan Provider that it has not received the required documentation and where the Solicitor's Form 1 is not received by the proposed date for exchange or where the Solicitor's Form 2 is not received by the date falling two (2) Working Days prior to the date of completion, the Help to Buy Agent shall notify Homes England within one (1) Working Day of such failure.
- 4.14.17 It is the Help to Buy Agent's responsibility to ensure that the Solicitor's Form 1 and the Solicitor's Form 2 are properly completed, and are supplied with the correct supporting documentation (as referred to therein). The Help to Buy Agent shall not accept any amendments to Solicitor's Form 1 or to the Solicitor's Form 2 without the prior approval of Homes England or in accordance with written guidance from Homes England.
- 4.14.18 In the event the Help to Buy Agent receives notification that either exchange or completion of a property has taken place which is either:
- (a) not in accordance with the terms of the relevant Authority to Proceed or takes place following the expiry of the relevant Authority to Proceed;
 - (b) not supported by a Valid Valuation; or
 - (c) not supported by the Help to Buy Agent having received a Solicitor's Form 2 in accordance with Paragraph 4.14.14, the Help to Buy Agent shall notify Homes England of the exchange or completion (as appropriate) within two (2) Working Days of receiving such notification.
- 4.14.19 Homes England will use reasonable endeavours to ensure that the Help to Buy Equity Loan Provider will inform the Help to Buy Agent within four (4) Working Days where an applicant withdraws from a purchase prior to completion. Homes England shall also procure that where possible the Help to Buy Equity Loan Provider shall inform the Help to Buy Agent of the Qualifying Applicant's reasons for such refusal or withdrawal.

4.15 **Post completion requirements**

- 4.15.1 The Help to Buy Agent must be informed, within five (5) Working Days when a Qualifying Applicant completes their purchase. This information is also required by Homes England as part of the Performance Report.

- 4.15.2 In accordance with the Solicitor's Form 2, the Qualifying Applicant's solicitor undertakes to:
- (a) Provide certified copies of the completed Help to Buy Equity Loan (as applicable) together with a copy of the completed AP1 form (in order to evidence that the application to HM Land Registry has been progressed in accordance with the undertakings in the Solicitors Form 2) within five (5) Working Days of completion of the sale of the property; and
 - (b) Register the Help to Buy Equity Loan at HM Land Registry and send to Homes England/ Help to Buy Agent official copies of the title to the property confirming that the Help to Buy Equity Loan has been registered as soon as practicable but in any event no later than ten (10) Working Days following receipt from HM Land Registry.
- 4.15.3 In the event the relevant Qualifying Applicant's solicitor does not comply with any part of the Solicitors Form 2 within the relevant time period the Help to Buy Agent shall write to the Qualifying Applicant's solicitor within five (5) Working Days of the end of the relevant time period stating that the Qualifying Applicant's solicitor must carry out the required action. In the event such non-compliance relates to the incorrect filling in of information in the Help to Buy Equity Loan, the Help to Buy Agent shall populate a Deed of Rectification with the correct information and submit the Deed of Rectification (within the five (5) Working Days referred to above) to the Qualifying Applicant's solicitor for execution by the Qualifying Applicant. The Help to Buy Agent shall thereafter send such a letter every 10 Working Days until the Qualifying Applicant's solicitor complies with the obligation.
- 4.15.4 In the event the relevant Qualifying Applicant's solicitor does not comply with the terms of the Solicitor's Form 2 following two (2) letters from the Help to Buy Agent in accordance with Paragraph 4.15.3, the Help to Buy Agent shall notify Homes England who shall (at its absolute discretion) take action to enforce the terms of the Solicitor's Form 2. In the event Homes England takes action to enforce any the Solicitor's Form 2, the Help to Buy Agent shall provide such assistance as Homes England shall reasonably require.
- 4.15.5 Within four (4) weeks of the completion date, the Help to Buy Agent shall send:
- (a) a Welcome Letter to the relevant Qualifying Applicant confirming the role and contact details of the Mortgage Administrator; and
 - (b) the Mortgage Administrator Key Document Pack to the Mortgage Administrator.
- 4.15.6 The Help to Buy Agent shall compile and maintain a file of all information and documentation sent to and received from a Qualifying Applicant, the Help to Buy Equity Loan Provider, the Qualifying Applicant's solicitor and the Mortgage Administrator (in such form as Homes England reasonably requires) in relation to an individual Qualifying Applicant (including but not limited to the information referred to in Paragraph 4.15.2); and shall retain a copy of all information handed over for a period of twelve (12) years following completion of the Equity Loan.

4.16 Variations to the conveyancing process

- 4.16.1 From time to time Homes England may wish to make reasonable changes to the administrative process for the sale of Equity Loan Products and will advise the Help to Buy Agent of such changes in writing together with confirmation of the date such changes are to take effect (the Effective Date).
- 4.16.2 Provided such changes do not materially increase the cost to the Help to Buy Agent of compliance with this Specification, the Help to Buy Agent shall implement such changes from the Effective Date and for the avoidance of doubt the Help to Buy Agent's obligation to comply with this Specification in accordance with paragraph 4.1 shall include an obligation to comply with the Specification as amended or varied by the changes proposed under this Paragraph 4.16.
- 4.16.3 In the event the Help to Buy Agent can demonstrate that the proposed changes will materially increase its costs in complying with this Specification, the parties shall meet in order to discuss in good faith how the changes may be implemented.
- 4.16.4 This Paragraph 4.16 shall not apply to any changes to either Homes England's standard documentation or policies which are expressly permitted by the terms of this Agreement or to any changes required as a result of a change in any Applicable Laws or Applicable Standards.

5 CORE SERVICE 5 – Service Administration

Service Requirements

- 5.1 The Help to Buy Agent is required to maintain consistent and effective administration of Help to Buy Agent Services in the Geographic Service Area. This is in order to provide a high quality service to Homes England and its customers which shall include providing reporting returns to Homes England, maintaining stakeholder relationships, complying with the Benchmarking Standards with particular reference to the obligation to respond to and assist with any requests from any relevant Ombudsman, operating a managed complaints procedure, adhering to Homes England's branding requirements and cooperating with other Help to Buy Agents and the Mortgage Administrator.

Complaints Procedure

- 5.2 The Help to Buy Agent shall operate a complaints procedure that meets the requirements of Homes England. This procedure must be made available to Homes England for review and Homes England may require the Help to Buy Agent to amend it from time to time in accordance with Homes England's requirements. Any Complaints from Grant Recipients, Help to Buy Equity Loan Providers and Qualifying Applicants and others concerning the Help to Buy Agent's performance and compliance with the Specification should be dealt with through the Help to Buy Agent's complaints procedure.
- 5.3 All Complaints must be recorded by the Help to Buy Agent in a log, with brief details of the Complaint, date and ultimate manner of resolution in a manner that meets Homes England's requirements. This must be made available to Homes England upon request

and as part of the Performance Report in line with Homes England's complaints recording and reporting standards.

Information requirements

- 5.4 In addition to the performance monitoring, the Help to Buy Agent shall be responsible for completing such monitoring returns for Homes England as Homes England may require on a monthly basis (or such time period as Homes England may require). This should detail the breakdown of Qualifying Applicants and their status in the process together with such information on the AHO schemes and/or Equity Loan Products as Homes England may reasonably require.
- 5.5 The Help to Buy Agent may also be required by Homes England to provide information to Homes England on an ad hoc basis to enable Homes England to respond to for example, requests from third parties such as MHCLG, local authorities and press enquiries. Any enquiries of this nature received directly by the Help to Buy Agent shall immediately be referred to Homes England.

Register

- 5.6 At least once in every six (6) month period the Help to Buy Agent shall write to all Qualifying Applicants whose details have been held on the register for a period in excess of six (6) months to remind them of their rights under Data Protection Legislation, including the right to request that their names be removed from the register. Where Qualifying Applicants indicate that they wish their details to be amended or deleted Help to Buy Agent shall undertake this promptly on receipt of this notification.
- 5.7 Management of the database shall be carried out in compliance with all Applicable Laws, regulations and International Organisation for Standardisation quality standards.
- 5.8 The Help to Buy Agent may use the information provided on application forms and held on the register for the sole purposes of:
- 5.8.1 providing information, and information regarding the availability of homes provided under the AHO schemes and/or using Equity Loan Products in the customers area of choice
 - 5.8.2 processing a Qualifying Applicant's purchase of an Eligible Dwelling. Written permission must be obtained from Qualifying Applicants or any other customer before using their personal details for any other purpose unless otherwise instructed by Homes England.
 - 5.8.3 Qualifying Applicant and any other customer details shall be removed from the database within four (4) Working Days upon receipt of a request from such individual.

5.9 Branding Requirements

Homes England shall provide to the Help to Buy Agent Help to Buy brand guidelines, logos, content and guidance on marketing compliance. The Help to Buy Agent must ensure that it uses all reasonable endeavours to ensure that any Grant Recipient or Help to Buy Equity Loan Provider marketing either AHO Products or Equity Loan Products

complies with brand and marketing requirements. Homes England shall provide and (where reasonably practicable) provide three (3) days advance notice of any changes to their required branding and/or logos.

5.10 **Co-operation**

In performing the Services the Help to Buy Agent must use all reasonable endeavours to co-operate and, where relevant, collaborate with Homes England, other Help to Buy Agents, the Mortgage Administrator, Help to Buy Equity Loan Providers, Grant Recipients and any other third parties directed by Homes England and undertake such actions or service improvements (including the implementation of any Service Improvement Plan required pursuant to Clause 5.4) which in the reasonable opinion of Homes England may enhance the administration of the Services.

Part 2 - Specification B

- 1 The Help to Buy Agent will deliver the Services as set out in Specification A, save as varied in accordance with the paragraphs below.
- 2 Homes England is currently undertaking a digital transformation of its business, including Equity Loan Products and AHO products. This transformation is still in its early discovery stage and it is anticipated that transformation will require changes to Homes England systems and processes commensurate with the post-transformation delivery of the Services specified in Specification A.
- 3 At the point at which this Specification B is brought into force, Specification B will be updated to impose on the Help to Buy Agent such obligations as are commensurate and appropriate post-implementation of the digital transformation including, and without limitation, provisions relating to data protection varying clause 31 to the extent deemed necessary by Homes England. Homes England will give the Help to Buy Agent as much notice as reasonably practicable of the proposed changes.
- 4 New Key Performance Indicators and Performance Indicators will be introduced by Homes England to reflect the changes to terminology, processes and systems following the digital transformation and the Service Credits regime will be updated to reflect these. The changes are not intended to impose more onerous obligations on the Help to Buy Agent than were applicable under Specification A, but rather to maintain equally high standards in the post-transformation environment.

Schedule 2

Performance Standard - Key Performance Indicators (KPI) & Performance Indicators (PI)

This Schedule sets out the KPIs and PIs that will be measured to ensure good performance by the Agent under this Agreement and the mechanism by which service failure will be managed during the Term.

1 Definitions in this Schedule

The words and expressions in this Schedule shall, unless specifically stated or the context otherwise requires, have the same meanings as are given to them in clause 1.1 of this Agreement.

Actual Service Volume means the volume of transactions or contacts received by the Help to Buy Agent for handling in line with the Specification;

Annual Service Credit Cap means S. 43

At Risk Amount means the total amount of money that is at risk of being deducted from the Fees as Service Credits related to each KPI shown both annually and monthly in Appendix 3;

Contract Review Meeting means the regular monthly meetings between the Help to Buy Agent and Homes England to manage and review the Help to Buy Agent's performance under this Agreement as further described in Paragraph 3.6 of Part 2 of this Schedule 2;

Corrective Action Report means the Help to Buy Agent's report of the remedial action taken in respect of a Minor KPI Failure or PI failure;

Critical Service Failure means any of the following events:

- (a) the performance of the Services by the Help to Buy Agent falls below the KPI Service Threshold in respect of the same KPI for any month for three months (which need not be three consecutive months) in any rolling 12 month period;
- (b) the Help to Buy Agent reaches the Monthly Service Credits Cap in any month for six months (which need not be six consecutive months) in any rolling 12 month period;
- (c) the Annual Service Credit Cap is reached in any 12 month rolling period; or
- (d) there is a Rectification Plan Failure;

Homes England Quality Principles means the quality assurance principles described in Appendix 5 to this Schedule 2;

Key Performance Indicator or "KPI" means the key performance indicators identified as KPIs in Appendix 2 to this Schedule (Performance Levels) which term shall for the avoidance of doubt not include Performance Indicators (PIs);

KPI Failure means a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

KPI Service Threshold means shall be as measured set out in the "Threshold and Target" boxes in Appendices 1 and 2 against the relevant Key Performance Indicator;

Management Information (MI) means the information that the Help to Buy Agent is required to set out in the Performance Monitoring Report and/or the Balanced Scorecard Report as described in Part 2 of this Schedule 2 together with any other management information reasonably required by Homes England;

Material KPI Failure means any KPI Failure except a Minor KPI Failure;

Material PI Failure is a Default as described in clause 6.3.1 of this Agreement and is as a result of:

- (a) a failure by the Help to Buy Agent to meet the PI Service Threshold in respect of two or more of the Performance Indicators that are to be reported in that Service Period;
- (b) the performance of the Services by the Help to Buy Agent falling below the PI Service Threshold in respect of the same PI for three months (which need not be consecutive months) in a 12 month rolling period;

Measurement Period means the period over which the KPIs or PIs are measured as set out in the relevant "Target threshold and period" column in each respective KPI and PI;

Minor KPI Failure shall be as set out against the relevant Key Performance Indicator

Monthly Performance Report has the meaning given in Clause 4.3 of Part 2 of this Schedule 2;

Monthly Service Credits Cap means seventy S. 43

Performance Failure means a KPI failure or a PI failure;

Performance Indicators or "PI" means the performance indicators set out in Appendix 2 of Schedule 2 which term shall for the avoidance of doubt not include Key Performance Indicators (KPIs);

PI Failure means a failure to meet the Target Performance Level in respect of a Performance Indicator;

PI Service Threshold means the percentage target and measurement periods set out in the "Target" and "Threshold Period" columns in each respective PI;

Rectification Plan means a plan proposed by the Help to Buy Agent to address the impact of, and prevent the reoccurrence of a Material KPI Failure in substantially the form set out in Schedule 14;

Rectification Plan Failure means:

- (a) the Help to Buy Agent failing to submit or resubmit a draft Rectification Plan to Homes England within the timescales specified; or
- (b) Homes England (acting reasonably) rejecting three drafts of the same Rectification Plan submitted by the Help to Buy Agent; or
- (c) the Help to Buy Agent failing to rectify a Material KPI Failure within the timescales set out in the Rectification Plan;

Repeat KPI Failure has the meaning given in clause 4 of Part 1 of this Schedule 2;

Service Credits means Service Credits payable by the Help to Buy Agent to Homes England in respect of one (1) or more KPI Failure;

Service Period means a Month; and

Strategic Senior Management Review Meetings means the regular meetings between the Help to Buy Agent and Homes England to manage and review the Help to Buy Agent's performance under this Agreement as further described in Paragraph 3.7 of Part 2 of this Schedule 2;

Target Performance Level means the target level of performance for a Key Performance, or Performance Indicator which is required by Homes England, as set out in relation to each KPI or PI.

Part 1 - Performance Levels

1 Principles

The objectives of the KPIs, the PIs and the Service Credits are to:

- 1.1 ensure that the Services delivered are of a consistently high quality to meet the requirements of Homes England under this Agreement;
- 1.2 provide a mechanism whereby reputational damage and financial loss to Homes England due to the Help to Buy Agent's failure is recorded;
- 1.3 incentivise the Help to Buy Agent to meet the KPIs and PIs identified within Appendix 2 to this schedule and remedy Performance Failure within a reasonably appropriate time; and
- 1.4 provide a mechanism that will allow for termination and remedy in the event of a Critical Service Failure.

2 This Schedule 2 sets out the mechanism by which Performance Failures will be managed.

2.1 Performance will be measured through the use of KPIs and PIs and the provision of Management Information. KPIs shall be subject to the Service Credits in the event of a KPI Failure. PIs are designed to monitor a wider scope of the Help to Buy Agent's performance and although persistent failure will lead to Help to Buy Agent being required to take steps to rectify the failure and could result in a Warning Notice, they shall not trigger any Service Credits.

2.2 Appendix 1 and 2 sets out the Key Performance Indicators and Performance Indicators which shall be used to measure the performance of the Services carried out by the Help to Buy Agent.

2.3 The Help to Buy Agent shall monitor its performance against each Key Performance Indicator and Performance Indicator and shall send Homes England a Monthly Performance Report detailing the level of services delivered against each KPI and PI for that month and cumulative for the year to date.

2.4 Service Credits shall accrue for any KPI Failure and shall be calculated by reference to the At Risk Amount and the Monthly Service Credit Cap. The Service Credits shall be deducted from the Fees in accordance with the worked example in Appendix 3.

2.5 Failure to achieve a Target Performance Level (whether KPI or PI) shall result in the Help to Buy Agent having to produce either (a) in relation to a Minor KPI Failure or a PI Failure, a Corrective Action Report as part of the Monthly Performance Report or, (b) if there has been a Material KPI Failure, a Rectification Plan. For the avoidance of doubt the Help to Buy Agent cannot charge Homes England any fee for producing a Corrective Action Report or a Rectification Plan.

2.6 For a period of three months following any of the following:

- 2.6.1 2 January 2020;

- 2.6.2 the agreement of any new Service Level Proposal for a new KPI or PI;
- 2.6.3 the date of implementation of any new Service; or
- 2.6.4 the Specification Transition Date,

a baseline performance will be measured (in the case of the implementation of a new Service in order to establish the correct level for any relevant new or revised KPI or PI) and Service Credits will not apply.

3 **Service Credits**

- 3.1 If the level of performance of the Help to Buy Agent during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator then no Service Credits deductions shall be made in respect of that Key Performance Indicator.
- 3.2 If the level of performance of the Help to Buy Agent during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator then Service Credits shall accrue and deductions will be made from the Fees. Each KPI is weighted by reference to the At Risk Amount, which is detailed in Appendix 3 to this Schedule 2.
- 3.3 Service Credit deductions will be made within any one Measurement Period and deducted from the Fees for the relevant Service Period on the basis of the weightings and calculations within appendices 1, 2 and 3. The amount in Service Credits deducted increases by the fixed increment shown against the relevant KPI in appendix 1 for each category (Minor, Serious, Severe) dependent upon the recorded level of performance by the Help to Buy Agent.
- 3.4 The liability of the Help to Buy Agent in respect of Service Credits shall be subject to the Monthly and Annual Service Credit Cap. For the avoidance of doubt, the operation of the various Service Credit Caps shall not affect the continued monitoring of performance. Service Credits are a reduction of the Fees payable in respect of the relevant Services to reflect the performance failure and the reduced values of the Services actually received and are stated exclusive of VAT.
- 3.5 A further category of failure is a Critical Service Failure which constitutes Material Default giving rise to Homes England being entitled to terminate this agreement in relation to that part of the Service or to the Agreement as a whole.
- 3.6 A worked example of the weighting and modelling of the Service Credit values associated with the individual KPIs is provided within Appendix 3.

4 **Repeat KPI Failures**

- 4.1 Subject to Paragraph 4.3, where a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".
- 4.2 For a Repeat KPI Failure, the monthly At Risk Amount shall be doubled, subject to the applicable of the Service Credit Cap. The doubling only occurs once in a sequence of consecutive KPI Failures. If there are three consecutive Repeat KPI Failures, the At Risk Amount shall not be trebled but will remain at the level that applied to the second

consecutive failure. The At Risk Amount only returns to its original level when the Help to Buy Agent achieves the Target Performance Level during a subsequent Service Period. Monitoring of performance levels will in any case continue to apply and Repeat KPI Failures will be taken into account for the purposes of assessing whether a Critical Service Failure has occurred.

- 4.3 A Repeat Failure KPI deduction shall not be made when the causes identified within a Rectification Plan have been addressed and rectified and the repeat failure is as a result of a different identified cause.

Part 2 - Performance Monitoring and Performance Review

1 The Help to Buy Agent shall provide all reasonable assistance to enable Homes England to monitor the Help to Buy Agent's performance of its obligations under this Agreement.

2 In addition to Performance Monitoring, the Help to Buy Agent shall promptly respond to any request from Homes England for appropriate information to respond to Ministers, press enquiries, Freedom of Information requests, or litigation matters or such other requests which is reasonably available to the Help to Buy Agent and could reasonably be considered to facilitate the monitoring of the Help to Buy Agent's performance in compliance with this Agreement.

3 Within ten Working Days of the end of each Service Period, the Help to Buy Agent shall provide:

3.1 a Monthly Performance Report to Homes England's Authorised Representative which assesses compliance with the Specification, performance against each of the Key Performance Indicators and Performance Indicators as more particularly described in Paragraph 3.3 (the "**Monthly Performance Report**"); and

3.2 a report to Homes England's Head of Equity Loan Administration which summarises the Help to Buy Agent's performance over the relevant Service Period as more particularly described in Paragraph 3.5 (the "**Balanced Scorecard Report**").

3.3 The Monthly Performance Report

3.3.1 The Monthly Performance Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

- (a) Key Performance Indicators (KPIs), agreed Management Information for each Key Performance Indicator, Performance Indicator and any required supporting Management Information, the actual performance achieved over the Service Period, and that achieved over the previous rolling 12 month period including performance against the Target Performance Level specified for each KPI and PI in Appendix 2 to this Schedule;
- (b) a summary of all Performance Failures that occurred during the Service Period;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Threshold;
- (d) Corrective Action Reports for Minor KPI Failures;
- (e) which Performance Failures remain outstanding and progress in resolving them;

- (f) for any Material KPI Failures occurring or Material PI Failures during the Service Period, the cause of the relevant KPI Failure or PI Failure and the proposed action to be taken subject to Homes England's approval under a Rectification Plan to remedy the performance and reduce the likelihood of future recurrence;
- (g) the status of any outstanding previous approved Rectification Plan processes including a summary of the Help to Buy Agent's progress in implementing that Rectification Plan;
- (h) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (i) relevant particulars of any other aspects of the Help to Buy Agent's performance which fail to meet the requirements of this Agreement including the details of any further significant issues surrounding performance of the services and ways in which such issues have been addressed;
- (j) details of Service Improvement initiatives delivered against any Service Improvement Plan during the Service Period and those due for delivery in the next period; and
- (k) such other details as Homes England may reasonably require from time to time.

3.4 **Information in respect of previous Service Periods**

- 3.4.1 A rolling total of the number of Performance Failures that have occurred over the past 12 Service Periods.
- 3.4.2 The amount of Service Credits that have been incurred by the Help to Buy Agent over the past 12 Service Periods.

3.5 **Balanced Scorecard Report**

- 3.5.1 The Balanced Scorecard Report shall be presented in the form of a dashboard in the template in Appendix 5 and, as a minimum, shall contain a high-level summary of the Help to Buy Agent's performance over the relevant Service Period, including details as required which may include the following:
 - (a) financial indicators/performance relating to Open Book data requirements;
 - (b) summary of the Target Performance Levels achieved (KPI, PIs and MI);
 - (c) strategic performance measures and behavioural indicators as detailed in the Benchmarking Standards
 - (d) performance of Sub-contractors;
 - (e) Management Information relating to staffing to include but not limited to:
 - i Number of training days (including induction) per frontline FTE

- ii. Attrition/Absenteeism/Sickness data
- iii. New starters/probationers
- iv. Number of staff on performance improvement/capability plans
- v. Number of apprentices
- (f) Summary of progress against any internal audit plan provided by Homes England to the Help to Buy Agent from time to time; and
- (g) Summary of progress against any risk and issues log provided by Homes England to the Help to Buy Agent from time to time.

3.5.2 The Performance Report and the Balanced Scorecard Report shall be signed off by the Help to Buy Agent's Director of Commercial Development as being correct to the best of their knowledge and belief prior to sending to Homes England's Authorised Representative.

3.6 **Contract Review Meetings**

3.6.1 The Contract Review Meetings shall (unless otherwise agreed):

- (a) take place monthly within ten (10) Working Days of every Monthly Performance Report and Balanced Scorecard Report being issued to Homes England Authorised Representative by the Help to Buy Agent (or such other date as the Parties may agree);
- (b) take place at such location and time (within normal business hours) as Homes England shall reasonably require (unless otherwise agreed in advance); and
- (c) be attended by the Help to Buy Agent Representatives and Homes England Representatives.

3.7 **Strategic Senior Management Review Meetings**

In addition to the Contract Review Meetings, Homes England and the Help to Buy Agent shall hold Strategic Senior Management Review Meetings which shall (unless otherwise agreed);

3.7.1 Take place every six months within ten (10) Working Days of the final monthly Contract Review Meeting held in that Quarter.

3.7.2 The purpose of the Strategic Review Meetings is to provide a forum for the following areas::

- (a) To provide strategic direction between both parties and ensure overall success of the relationship pursuant to the terms of this Agreement.
- (b) To provide senior level guidance, leadership and strategy for the overall delivery of the Services;

- (c) To ensure this agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by Homes England and the commercial benefit derived by the Help to Buy Agent;
- (d) To monitor decisions on policy changes and significant service adjustments;
- (e) To have overall responsibility for the scrutiny and audit of the delivery of all Services associated with the contract;

3.7.3 The meetings shall be attended by the Chief Financial Officers of Homes England and the Help to Buy Agent

4 **Performance Records**

4.1 The Help to Buy Agent shall keep appropriate data and records in relation to the performance of the Services in such format as Homes England shall require for the duration of the Agreement and provide prompt access to such records (together where required to the supporting systems) on an Open Book basis to Homes England upon Homes England's reasonable request. The records and data of the Help to Buy Agent shall be available for inspection by Homes England, its Internal Audit and Risk Officers and/or its nominee at any reasonable time and Homes England and/or its nominee may make copies of any such records and documents without incurring additional charges from the Help to Buy Agent.

4.2 In addition to the requirement in Paragraph 4.1, the Help to Buy Agent shall provide to Homes England such supporting documentation and data as Homes England may reasonably require in order to verify the level of the performance of the Help to Buy Agent and the calculations of the amount of Service Credits for any specified period.

4.3 The Help to Buy Agent shall ensure that the Monthly Performance Report, the Balanced Scorecard Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by Homes England are available to Homes England online and are capable of being downloaded and/or printed.

Schedule 7
Security Policy¹

¹ The Security Policy may be subject to further revision prior to contract award.

INFORMATION SECURITY POLICY

3RD PARTIES

Document Information	
Document owner	Information Security Officer
Issue date	July 2019
Review date	July 2020
Version	1.5
UDRN	ISMS 034
Approved by: (Date)	BISG (April 2016)

Version History			
Version	Date	Summary of Changes	Editor
1.0	November 2008	New policy for new organisation following transition from English Partnerships	s. 40(2)
1.1	October 2010	Minor policy revisions to reference to Security Policy Framework	s. 40(2)
1.2	October 2011	Requirement for completed 3rd party questionnaire	s. 40(2)
1.3	23/03/16	Minor amendments to document structure. Standalone policy rather than being part of handbook.	s. 40(2)
1.4	January 2018	Rebranded for Homes England and Reviewed	s. 40(2)
1.5	July 2019	DPO request that the Data Protection Act 2018 reference is updated	s. 40(2)

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

IT IS THE POLICY OF HOMES ENGLAND THAT 3rd PARTIES, WHO ARE GRANTED ACCESS TO HOMES ENGLAND INFORMATION ASSETS, IN ANY FORM, WILL:

1. Protect information provided or made available to them by Homes England, from unauthorised access;
2. Ensure the confidentiality of information provided, or made available to them, unless such documents or other materials, data or other information are public knowledge at the time when they are so provided;
3. Ensure the continued integrity of information provided or made available to them; (Safeguarding the accuracy and completeness of information by protecting against unauthorised modification)
4. Adhere to Regulatory and Legislative requirements will be met, including, but not limited to: Data Protection Act 2018 and the General Data Protection Regulation, Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000,
5. Ensure that all of its employees who have access to Homes England information assets will have signed a confidentiality document in an agreed format, and are made aware of the requirements of this policy;
6. Report all breaches or weaknesses of information security, actual or suspected, to Homes England's Information Security Officer (ISO) for investigation. Where required, the ISO will escalate these internally, and where appropriate, to other relevant third parties;
7. Be aware that monitoring tools will be utilised to monitor all network activity on a regular basis, and independent third parties will be engaged to carry out ethical hacking attacks on a regular basis to ensure the effectiveness of Homes England's security implementation against attack
8. Ensure that any access to Homes England's information systems is protected with a strong password, and that user access credentials will be held securely, and will not be shared, or disclosed to unauthorised persons
9. Notify the Homes England Service Desk (01908 353604) in a timely manner, where an employee, or other user, with access to Homes England IT systems, leaves the organisation, or no longer requires system access, so that such access can be revoked in a timely manner

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

Agreement	
Name	
Organisation	
Date	

Schedule 8

Data Protection Declaration

DATA PROTECTION DECLARATION

TO: *[Insert details of HTBA]*

FROM: *[insert details of data recipient]*

We hereby acknowledge that as part of our provision of affordable home ownership schemes funded by Homes England, we will be handling personal data.

Processing of personal data in the UK is subject to the obligations set in the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), hereafter referred to as the Data Protection Legislation.

We confirm that we will treat such personal data in accordance with our obligations as data controllers as defined by the Data Protection Legislation as amended or re-enacted from time to time.

In processing any such data, we undertake to act in accordance with the principles of the Data Protection Legislation at all times and will only disclose such data to the extent necessary and only in accordance with the Data Protection Legislation.

Signed for and on behalf of:

Schedule 9

Processing, Personal Data and Data Subjects

- 1 The contact details of Homes England's Data Protection Officer are [S. 40\(2\), DPO@homesengland.gov.uk](mailto:S. 40(2), DPO@homesengland.gov.uk), telephone [S. 40\(2\)](tel:S. 40(2)).
- 2 The contact details of the Help to Buy Agent's Data Protection Officer are [S. 40\(2\); Head of Legal and Compliance, DD: S. 40\(2\) @radian.co.uk](mailto:S. 40(2); Head of Legal and Compliance, DD: S. 40(2) @radian.co.uk);
- 3 The Help to Buy Agent shall comply with any further written instructions with respect to processing by Homes England.
- 4 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The parties acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Controller and the Help to Buy Agent is the Processor, in accordance with Clause 31 of this Agreement.
Subject matter of the processing	All processing undertaken (if any) in connection with the provision of the Services.
Duration of the processing	The Term
Nature and purposes of the processing	Any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means, for purposes arising in connection with the provision of the Services.
Type of Personal Data	Names, addresses, dates of birth, gender, ethnicity, faith, NI numbers, telephone numbers, email addresses, pay, employment status, images, and any other personal data processed in connection with the provision of the Services.
Categories of Data Subject	Applicants for Help to Buy Equity Loans, Applicants for Affordable Home Ownership Schemes, Grant Recipients, Contracted Developers Solicitors for the applicants, Help to Buy Equity Loan Providers, Mortgage Administrator, the legal and other professional advisers of all the above persons; persons who enquire about Help to Buy Equity Loans or Affordable Home Ownership Schemes but do not become applicants, staff (including volunteers, agents, and temporary workers) of Homes England,

	members of the public
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	In accordance with clause 31.17 of this Agreement.

Schedule 11

Geographic Service Areas

Help to Buy Agent Lot Areas

Lot 3 (South of England (excluding London))

Somerset West and Taunton
South Somerset
Sedgemoor
Dorset
West Devon
Torridge
Teignbridge
South Hams
North Devon
Mid Devon
Exeter
East Devon
Bournemouth, Christchurch and
Poole
Torbay
Plymouth
Isles of Scilly
Cornwall
Mendip
West Oxfordshire
Vale of White Horse
South Oxfordshire
Oxford
Cherwell
Winchester
Test Valley
Rushmoor
New Forest
Havant
Hart
Gosport
Fareham
Eastleigh
East Hampshire
Basingstoke and Deane
Tewkesbury

Stroud
Gloucester
Forest of Dean
Cotswold
Cheltenham
Isle of Wight
Southampton
Portsmouth
Wokingham
Windsor and Maidenhead
Slough
Reading
West Berkshire
Bracknell Forest
Wiltshire
Swindon
South Gloucestershire
North Somerset
Bristol
Bath and North East Somerset
Welwyn Hatfield
St. Albans
Worthing
Mid Sussex
Horsham
Crawley
Chichester
Arun
Adur
Woking
Waverley
Tandridge
Surrey Heath
Spelthorne
Runnymede
Reigate and Banstead
Mole Valley
Guildford
Epsom and Ewell
Elmbridge
East Suffolk
West Suffolk
Mid Suffolk
Ipswich
Babergh
South Norfolk
Norwich

North Norfolk
Kings Lynn and West Norfolk
Great Yarmouth
Broadland
Breckland
Tunbridge Wells
Tonbridge and Malling
Thanet
Swale
Shepway
Sevenoaks
Maidstone
Gravesham
Dover
Dartford
Canterbury
Ashford
Watford
Three Rivers
Stevenage
North Hertfordshire
Hertsmere
East Hertfordshire
Dacorum
Broxbourne
Uttlesford
Tendring
Rochford
Maldon
Harlow
Epping Forest
Colchester
Chelmsford
Castle Point
Brentwood
Braintree
Basildon
Wealden
Rother
Lewes
Hastings
Eastbourne
South Cambridgeshire
Huntingdonshire
Fenland
East Cambridgeshire
Cambridge

Wycombe
South Buckinghamshire
Chiltern
Aylesbury Vale
Brighton and Hove
Milton Keynes
Medway Towns
Thurrock
Southend-on-Sea
Central Bedfordshire
Bedford
Luton
Peterborough

Schedule 12
Special Changes

Special Changes Procedure

Part 1

1 Purpose of this Schedule

The purpose of this Schedule is to set out how Homes England and the Help to Buy Agent will co-operate to implement changes, modifications or amendments to this Agreement which arise from:

- 1.1 the adoption of Specification B in substitution for Specification A;
- 1.2 the inclusion of additional Geographic Service areas by Homes England to the Help to Buy Agent;
- 1.3 modifications in Homes England and/or Her Majesty's Government policy and/or legislation which require modification to either or both Specification A or Specification B;
- 1.4 the abandonment of the Help to Buy programme and the adoption by Her Majesty's government and/or Homes England of an alternative programme to assist the purchasers of homes (whether market sales, affordable home ownership sales).

2 Adoption of Schedule 1B

- 2.1 Homes England and the Help to Buy Agent acknowledge that it is currently their intention that Specification B will replace Specification A.
- 2.2 Subject to paragraph 2.4 (below) Homes England may at any time serve three (3) months' written notice on the Help to Buy Agent which shall set out that at the expiry of the same written notice the Help to Buy Agent shall provide the Services in accordance with Schedule 1B (the **Schedule 1B Notice**).
- 2.3 On the expiry of the Schedule 1B Notice the following shall apply the Help to Buy Agent shall provide the Services in accordance with schedule 1B and Schedule 1A shall cease to apply and reference in this Agreement to Services shall be construed accordingly;
- 2.4 The parties may agree in writing to lengthen or shorten the written notice referred to in paragraph 2.2 (above).

3 Inclusion of additional Geographic Service Areas

- 3.1 The parties acknowledge:
 - 3.1.1 that Homes England contemplated how to ensure the provision of Help to Buy continues if a provider of the Help to Buy agency services became insolvent or otherwise had their agreement with Homes England terminated and/or they were suspended from delivering agency services in particular Geographical Service Areas;

- 3.1.2 that Homes England indicated in the procurement of the Help to Buy Agent that if the circumstances in paragraph 3.1.1 arose in relation to another Help to Buy Agent Agreement in relation to a Geographic Service Area not covered by this Agreement that Homes England has the right to require the Help to Buy Agent to provide the Services to any or all of the affected Geographic Service Areas.
- 3.2 Homes England may from time to time give written notice to the Help to Buy Agent of its intention to award the Help to Buy Agent additional Geographic Service Areas (**Additional Areas**) in which the Help to Buy Agent will become responsible for delivering the Services (the **Additional Areas Notice**).
- 3.3 Following service of an Additional Areas Notice Homes England shall promptly provide to the Help to Buy Agent:
- 3.3.1 the historic and anticipated volume of Help to Buy activity in each Additional Area;
- 3.3.2 information (if known) about whether the Transfer Regulations might apply to persons employed by other or previous Help to Buy agency provider;
- 3.3.3 the date on which Homes England would require the Help to Buy Agent to start providing the Services in each of the Additional Areas;
- 3.3.4 such other information as the Help to Buy Agent might reasonably require in order to propose a change to the Fee and to make preparations to deliver the Services to each of the Additional Areas.
- 3.4 In proposing a change to the fees payable under this Agreement (**Fee Adjustment**) the Help to Buy Agent shall:
- 3.4.1 co-operate on with Homes England and provide information and the breakdown of the Fee Adjustment on an Open Book basis;
- 3.4.2 ensure that any proposal to change the ongoing regular Fees payable under this Agreement contained in the Fee Adjustment are based on the Standard Fee and not the Transaction Fee;
- 3.4.3 include details of any additional one-off costs which are likely to be incurred in relation to the Additional Areas are itemised with an explanation (**Exceptional Fee Element**);
- 3.4.4 The Exceptional Fee Element shall:
- (a) not include any profit element;
- (b) only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Standard Fees or Transaction Fees in the Additional Areas.
- 3.5 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Fee Adjustment (with an appropriate breakdown) to Homes England within four (4) weeks of Homes England providing the Help to Buy Agent with the information listed in clause 3.3 of this Schedule 12.

- 3.6 Unless the parties agree otherwise Homes England shall within four (4) weeks review the proposed Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 3.7 Homes England may accept or reject the Help to Buy Agent's proposed Fee Adjustment or request that the Help to Buy Agent modify the same.
- 3.8 If Homes England agrees to the proposed Fee Adjustment then from the date it specifies in a written notice served on the Help to Buy Agent:
- 3.8.1 the Geographic Service Areas shall be modified to include such Additional Areas as Homes England as specified;
 - 3.8.2 the agreed revised Standard Fees shall take into account the impact of any additional Transaction Fees which arise from the provision of the Services to the Additional Areas added to the Geographic Service Areas;
 - 3.8.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 3.9 Homes England is only required to pay any Exceptional Fee Element:
- 3.9.1 It has been approved by Homes England and included as a modification under paragraph 3.8.3; and
 - 3.9.2 It has been incurred by the Help to Buy Agent.

4 **Modifications to any Equity Loan Products or AHO Products**

- 4.1 The parties acknowledge the Homes England Equity Loan Products and AHO Products may be subject to policy and legislative changes from time to time and these may require a change to the specification for the delivery of the Services and/or the wider terms of this Agreement.
- 4.2 Homes England may from time to time give written notice to the Help to Buy Agent of its opinion that a proposed or actual policy and/or legislative change means that either the specification for the Services and/or the wider terms of this Agreement require alteration (**Contract Change Notice**).
- 4.3 Following service of the Contract Change Notice Homes England shall promptly provide to the Help to Buy Agent a description of its proposed to Contract Change (**a Contract Change**).
- 4.4 In response to the Contract Change Notice, the Help to Buy Agent shall propose to Homes England a change to the fees payable under this Agreement (**Change Fee Adjustment**) and it shall:
- 4.4.1 co-operate on with Homes England and provide information and the breakdown of the **Change Fee Adjustment** on an Open Book basis;

- 4.4.2 ensure that the Change Fee Adjustment is based on the Standard Fee (and not the Transaction Fee) with any proposed changes to that based on additional services or a reduction in its activities and/or Services which will arise as a consequence of the proposed implementation of the Specification Change;
- 4.4.3 include details of any additional one-off costs which are likely to be incurred in relation to the Change Specification are itemised with an explanation (**Exceptional Fee Element**);
- 4.4.4 the Exceptional Fee Element shall:
 - (a) not include any profit element;
 - (b) shall only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Transaction Fees or Standard Fees.
- 4.5 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Change Fee Adjustment (with an appropriate breakdown) to Homes England within eight (8) weeks of the service of the relevant Contract Change Notice.
- 4.6 Unless the parties agree otherwise Homes England shall within eight (8) weeks review the proposed Change Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 4.7 Homes England may also require the Help to Buy Agent to provide evidence of comparable benchmarking data which evidences (to the Home England's reasonable satisfaction) that any element of the Change Fee Adjustment is comparable or better value for money than open market costings.
- 4.8 Homes England may accept or reject the Help to Buy Agent's proposed Change Fee Adjustment or request that the Help to Buy Agent modify the same.
- 4.9 If Homes England agrees to the proposed Change Fee Adjustment then from the date it specifies in a written notice served on the Help to Buy Agent:
 - 4.9.1 Schedule 1 shall be modified to include the changes Homes England agreed to in relation to the relevant Change Specification;
 - 4.9.2 the Fees shall be modified to incorporate the relevant Change Fee Adjustment (as agreed by Homes England);
 - 4.9.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 4.10 Homes England is only required to pay any Exceptional Fee Element:
 - 4.10.1 It has been approved by Homes England and included as a modification under paragraph 4.7.3; and
 - 4.10.2 It has been incurred by the Help to Buy Agent.

5 Adoption of an alternative scheme

- 1.1 The parties acknowledge that Homes England contemplated that during the Term of this Agreement:
- 5.1.1 that the Help to Buy programme could be terminated and/or reduced in scope; and
 - 5.1.2 the possibility that HM government may in the future introduce support for individuals concerning the purchase of homes (whether purchased on market and/or affordable homeownership terms) (an **Alternative Scheme**);
 - 5.1.3 the substantive services provided by the Help to Buy Agents in an Alternative Scheme must be similar in nature to the Services (whether as specified in Schedules 1A, 1B or as adopted as a change under this Agreement).
- 5.2 Homes England may from time to time give written notice to the Help to Buy Agent of its opinion that a proposed or actual HM Government policy and/or legislative change means that the Help to Buy programme may be reduced and/or an Alternative Scheme may be introduced (**Alternative Scheme Notice**).
- 5.3 Following service of the Alternative Scheme Notice Homes England shall promptly provide to the Help to Buy Agent a description of a new specification in relation to providing services similar to any or all of the Services (**Alternative Services**) proposed.
- 5.4 In response to the Alternative Scheme Notice, the Help to Buy Agent must propose a change to the Fee (**Alternative Fee Adjustment**) and it shall:
- 5.4.1 co-operate on with Homes England and provide information and the breakdown of the Alternative Fee Adjustment on an Open Book basis;
 - 5.4.2 ensure that the Alternative Fee Adjustment is based on the Standard Fee (and not the Transaction Fee) with changes to that based on any additional services or a reduction in its activities and/or Services which will arise as a consequence of the proposed implementation of the Alternative Services;
 - 5.4.3 that any additional one-off costs which are likely to be incurred in relation to the Change Specification are itemised with an explanation (**Exceptional Fee Element**).
- 5.5 The Exceptional Fee Element shall:
- 5.5.1 not include any profit element;
 - 5.5.2 shall only relate to additional costs which will be incurred by the Help to Buy Agent and which will not be recovered through the payment of future Standard Fees or Transaction Fees.
- 5.6 Unless the parties agree otherwise the Help to Buy Agent shall provide a written statement of its proposed Alternative Fee Adjustment (with an appropriate breakdown) to Homes England within eight (8) weeks of the service of the relevant Alternative Change Notice.

- 5.7 Unless the parties agree otherwise Homes England shall within eight (8) weeks review the proposed Alternative Fee Adjustment and it may seek additional information and/or evidence from the Help to Buy Agent to support the proposed Alternative Fee Adjustment and in such circumstances the Help to Buy Agent shall act in good faith and promptly respond to Homes England's requests.
- 5.8 Homes England may also require the Help to Buy Agent to provide evidence of comparable benchmarking data which evidences (to Home England's reasonable satisfaction) that any element of the Alternative Fee Adjustment is comparable or better value for money than open market costings.
- 5.9 Homes England may accept or reject the Help to Buy Agent's proposed Alternative Fee Adjustment or request that the Help to Buy Agent modify the same.
- 5.10 If Homes England agrees to the proposed Alternative Fee Adjustment then from the date Homes England specifies in a written notice served on the Help to Buy Agent:
- 5.10.1 Schedule 1 shall be modified to include the changes Homes England agreed to in relation to the relevant Alternative Services;
 - 5.10.2 the Fees shall be modified to incorporate the relevant Alternative Fee Adjustment (as agreed by Homes England);
 - 5.10.3 the Fees shall be modified to include the payment of any Exceptional Fee Element approved by Homes England with a breakdown of cost by category.
- 5.11 Homes England is only required to pay any Exceptional Fee Element:
- 5.11.1 It has been approved by Homes England and included as a modification under paragraph 5.10.3; and
 - 5.11.2 these have been incurred by the Help to Buy Agent.

Schedule 13

Exit Plan

Any Exit Plan prepared by the Help to Buy Agent in accordance with clause 13 shall include the following details:

- 1 Full account history of live cases including all account details, contacts and email addresses on file.

For the avoidance of doubt, during any Handover Period the requirements of this Agreement shall continue to apply and the Help to Buy Agent shall:

- 1 continue to provide Performance Reports;
- 2 attend additional weekly meetings with Homes England and any New Provider;
- 3 work with the New Provider on data format for transfers;
- 4 retain staffing numbers until the Agreement ends with an agreed minimum number of operational staff;
- 5 meet the data requirements specified by Homes England or the New Provider based on data items it holds at that time; and
- 6 (where applicable) hand over the Website for Homes England to manage.

Schedule 15

Change Control Procedure

1 DEFINITIONS

In this Schedule the following abbreviations, words and phrases shall have the following meanings, unless the context requires otherwise:

Change Control Form means the template change control form to be used by the parties when requesting a change to this Agreement or the Services a copy of which is attached at paragraph 3 of this Schedule.

2 CHANGE CONTROL PROCEDURE

2.1 Either party may raise change control requests ("CCRs") in writing relating to any changes required to the Services or otherwise to this Agreement. The CCRs shall be raised by the Authorised Representative of the party concerned who has the authority to raise such CCRs. The CCRs raised shall be subject to the Change Control Procedure set out below:

2.2 **CCRs raised by Homes England:**

2.2.1 The Help to Buy Agent shall enter each CCR into a log which shall be maintained by the Help to Buy Agent and each CCR shall be given a reference number and show the current status of each CCR. The status of each CCR shall be maintained in the log as:

- (a) awaiting estimation or confirmation of estimate;
- (b) awaiting approval;
- (c) approved; or
- (d) rejected.

2.2.2 The Help to Buy Agent's Authorised Representative shall be responsible for reviewing and responding to the CCR. The Help to Buy Agent's Authorised Representative shall then:

- (a) propose a solution for the CCR;
- (b) outline the benefits of the CCR if applicable;
- (c) set out an estimate of the costs of completing and implementing the CCR;
- (d) advise Homes England of the likely financial, technical and time scale impact of any requested or recommended change; and
- (e) capture this information on a Change Control Form.

- 2.2.3 The Help to Buy Agent shall use reasonable endeavours to complete this Change Control Form within three (3) Business Days of receiving the CCR from Homes England. However, if due to the complexity of the change required, the Help to Buy Agent reasonably believes that the estimate of the costs of the CCR will take more than five (5) days to complete, then the Help to Buy Agent shall inform Homes England of this and shall be allowed an extension to the three (3) Business Day period and shall complete the Change Control Form as soon as is reasonably practicable. Where an extension applies, the Help to Buy Agent shall also provide an estimate of the cost for arriving at the cost estimation of the CCR and shall obtain Homes England's consent to the estimate before commencing work on the Change Control Form.
- 2.2.4 Homes England shall use all reasonable endeavours to review the information on the Change Control Form within five (5) Business Days and to reach a decision on whether they will accept or reject the change and, if the change would result in a reduction in the volume and/or scope of the Services, determine a commensurate reduction to the Standard Fee and/or Transaction Fee. If it accepts the change it shall sign the Change Control Form indicating its acceptance and authorising the work to commence. If it rejects the change it shall inform the Help to Buy Agent in writing. If this rejection relates to a CCR that has involved an extension of time for estimation due to its complexity then Homes England shall be liable to pay the Help to Buy Agent for the costs involved in arriving at the estimates.
- 2.2.5 When a CCR has been accepted and approved by Homes England, the Help to Buy Agent shall use reasonable endeavours to complete and implement the change in the timescale estimated on the Change Control Form.

2.3 CCRs raised by the Help to Buy Agent:

- 2.3.1 The Help to Buy Agent shall raise a CCR and log it as set out in paragraph 2.2.1 of this Schedule and then complete a Change Control Form as set out in paragraph 2.2.2 of this Schedule for review by Homes England. The procedure in paragraphs 2.2.4 and 2.2.5 shall then be followed except that if Homes England rejects the CCR, then it shall not be liable for any costs in arriving at the estimates for completing and implementing the CCR.
- 2.3.2 The Help to Buy Agent shall charge and invoice for work carried out on all CCRs (whether raised by Homes England or by the Help to Buy Agent) in accordance with the charge out rates.

2.4 where the change made has the effect of reducing the scope of the service, the Standard Fee and Transaction Fee can be reduced.

2.5

3 CHANGE CONTROL FORM

The template for the Change Control Form is attached below:

CHANGE CONTROL FORM - CHANGE REQUEST

ENSURE **ALL** SECTIONS (*EXCEPT SUMMARY*) OF PART 1 ARE COMPLETED WHEN SUBMITTING CC

PART 1: Change Request Description			
CHANGE CONTROL REF			
Homes England			
Priority			
Change Control Title			
Raised by:	Job Title:	Contact No:	Date of Request:

Brief Description of Change Required:
Detailed Requirements:
Exclusions:
Reason for Change:
Proposed Solution:
Impact if Change NOT done:
Benefits:
Date Required by:

SUMMARY					
Department	Name	Effort	Chg out Rate	Cost £	IA Rec'd
			TOTAL		

HOMES ENGLAND ACCEPTANCE OF COST	
Date	
Comments	
Name of Signatory	
Signature	

Appendix 1

Template Incident Report

Incident Report

Incident report to be submitted to Homes England within twenty (20) Working Days of each and every Business Continuity and Disaster Recovery Event.

Please provide the following details:

Incident Title	
Name of person submitting this report	
Key contact / Incident Owner (if different to the above)	
Date and time Incident occurred	
Date and time Incident resolved	
Description of Incident	
Impact of Incident (please consider the services impacted and numbers of customer affected)	
Corrective actions taken (please list all)	
Preventative actions taken (please list all)	
Future Mitigation – Preventing Reoccurrence	

Actions and / or improvements still to be undertaken and if so please provide target dates for completion (please list all)	Action	Status	Owner	Due Date
Supporting information if required				
Incident Timeline	Date	Time	Event	

THIS DEED of AGREEMENT of VARIATION is dated the 7th day of April 2021 and is

made **BETWEEN:**

- 1) **Homes and Communities Agency** trading as Homes England of One Friargate, Coventry, CV1 2GN (“Homes England”); and
- 2) **The Swaythling Housing Society Limited** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 10237R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire SO50 6AD (the “Help to Buy Agent”) each known as a “**Party**” to and collectively as “**Parties**”.

WHEREAS

- A) The Parties have entered into an agreement dated 23 December 2019 (the “**Agreement**”) for the appointment of a Help to Buy Agent to provide the Services as defined in the Specification and the Agreement.
- B) The Parties have agreed to vary the Agreement pursuant to Clause 3.2 of the Agreement to extend the Term of the Agreement until 31 March 2023 and further to make provision for the commencement of the application of Service Credits pursuant to Schedule 2 Part 1 of the Agreement.
- C) All other provisions of the Agreement remain unchanged and have full force and effect unless the Agreement is subject to a variation in accordance with the terms of the Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. In the Definitions section the following definitions shall be inserted:
 - 1.2.1: “ Extension Period(s)” means one or more periods of not less than 6 months beyond the expiry of the Initial Term; and
 - 1.2.2 “Term”: shall mean the Initial Term and any Extension Period(s) pursuant to clause 3.2 and shall not extend beyond 30 September 2024.
2. Clause 3.2 shall be deleted and the following paragraph 3.2 shall be inserted:
 - 3.2 Subject to clause 3.3 upon giving reasonable notice to the Help to Buy Agent prior to the expiry of the Initial Term, Homes England may extend the Term beyond the Initial Term for one or more Extension Period(s) provided that the Term shall not expire after 30 September 2024.

3. Clause 3.3 shall be deleted and the following paragraph 3.3 shall be inserted:
 - 3.3 The reasonable period of notice referred to in clause 3.2 shall be at the discretion of Homes England. Notwithstanding the generality of this clause 3.2 Homes England shall aspire to provide the Help to Buy Agent with not less than 3 months' notice of an Extension Period provided that any shorter notice period shall be valid and in accordance with clause 3.1.

4. The following clause 3.4 shall be inserted:
 - 3.4 For the avoidance of doubt, unless terminated earlier in accordance with the terms of this Agreement, the Agreement shall expire at:
 - 3.4.1 the end of the Initial Term; or
 - 3.4.2 the expiry of the Extension Period(s) provided that further notice of extension has not been served pursuant to clause 3.2 and in any event the Term shall not expire after 30 September 2024.

5. Paragraph 2.6.2 of Schedule 2 Part 1 shall be deleted and the following paragraph 2.6 shall be inserted:
 - 2.6 For the period beginning on the Commencement Date and ending on 31 March 2021, a baseline performance for the KPIs and the PIs shall be measured for each Measurement Period and Service Credits shall not apply.

6. The following paragraph 2.7 of Schedule 2 Part 1 shall be inserted:
 - 2.7 From 1 April 2021 the baseline performance for the KPIs and the PIs measured pursuant to paragraph 2.6 of this Schedule 2 shall be the Target Performance Level.

7. The following paragraph 2.8 of Schedule 2 Part 1 shall be inserted:
 - 2.8 From the period 1 April 2021 until the end of the Term or earlier termination of the Agreement the provisions of this Schedule 2 shall apply and Service Credits (where so arising) shall be calculated in accordance with paragraph 3 of this Schedule 2.

8. The following paragraph 2.9 of Schedule 2 Part 1 shall be inserted:
 - 2.9 From the three months following any of the following:
 - 2.9.1 the agreement of any new Service Level Proposal for a new KPI or PI;
 - 2.9.2 the date of implementation of any new Service; or
 - 2.9.3 the Specification Transition Date,a baseline performance will be measured (in the case of the implementation of a new Service in order to establish the correct level for any relevant new or revised KPI or PI) and Service Credits will not apply.

9. The Parties shall agree that the increase in Fees arising pursuant to Schedule 10 paragraph 4.1.3 shall be calculated on or within 90 days of 1 April 2021 and shall be notified to the Help to Buy Agent in writing.
10. All other provisions of the Agreement remain without change and in full force and effect unless varied in accordance with the terms of the Agreement.

IN WITNESS whereof the Parties have executed this Deed of Agreement of Variation on the date first before written

EXECUTED as a DEED by HOMES AND COMMUNITIES AGENCY

Authorised Signature ... **s. 40(2)** C41299

EXECUTED AS A DEED by the HELP TO BUY AGENT

by the Signature of a Director and the Company Secretary

Or of two Directors of the Company:

s. 40(2)

Sign:

Name ... **s. 40(2)**

Director



Homes
England

The Swaythling Housing Society Ltd
Collins House
Bishopstoke Road
Eastleigh
Hampshire
SO50 6AD

16 December 2020

FAO s. 40(2) Director of Optimisation and Business Improvement

Dear Sirs

RE: APPOINTMENT OF HELP TO BUY AGENT SERVICE AGREEMENT LOT 3
(the "Agreement")
NOTICE OF VARIATION of the AGREEMENT
Pursuant to Clause 3.2 of the Agreement

On 23 December 2019, The Swaythling Housing Society Ltd entered into the Agreement under which it was appointed by Homes England to act as a Help to Buy Agent. The Initial Term of the Agreement expires on 31 March 2021.

We write to give you notice of our intention to extend the Agreement, as set out below.

1. In accordance with Clause 3.2 of the Agreement, Homes England intends to extend the Agreement beyond the Initial Term for a period of 24 months until 31 March 2023. This means the Term shall expire on 31 March 2023.
2. The increase in Fees arising pursuant to Schedule 10 paragraph 4.1.3 shall be calculated on or within 90 days of 1 April 2021 and shall be notified to you in writing.

All other terms remain without variation.

Please sign and date the attached acknowledgment form and return with this letter to me. An electronic signature is acceptable, and you may return the form to me by e mail in accordance with Clauses 21.1 and 21.2.4 of the Agreement. Upon receiving your acknowledgment to the above extension, we shall prepare a Deed of Agreement putting the extension into effect.

Homes England
Windsor House, 50 Victoria Street, Westminster, London SW1 H0TL

0300 1234 500

OFFICIAL

Yours faithfully

s. 40(2)

s. 40(2)

s. 40(2)

Authorised Representative For and on behalf of Homes England

We acknowledge receipt of the notice of the extension of the Agreement as set out in the letter dated 16 December 2020.

SIGNED by The Swaythling Housing Society Ltd

.....

Authorised Signatory

s. 40(2)

Authorised Signatory

The Swaythling Housing Society Ltd
Collins House
Bishopstoke Road
Eastleigh
Hampshire
SO50 6AD

11 June 2021

FAO **s. 40(2)** Director of Optimisation and Business Improvement

Dear Sirs

RE: APPOINTMENT OF HELP TO BUY AGENT SERVICE AGREEMENT LOT 3
(the "Agreement")
NOTICE OF VARIATION of the AGREEMENT Pursuant to Clause 3.2 of the Agreement

Letter Agreement

On 23 December 2019, The Help to Buy Agent entered into the Agreement under which it was appointed by Homes England to act as a Help to Buy Agent. On 28 August 2020 the Parties entered into an agreement by letter (the "Transaction Fee Payment Date Letter") to amend the definition of "Transaction Fee Payment Date" in Schedule 10 of the Agreement. The Transaction Fee Payment Date Letter expiry date was stated to be 31 March 2021.

The Parties have agreed to extend the expiry date of the Transaction Fee Payment Date Letter for a further period of up to six months. The revised expiry date of the Transaction Fee Payment Date Letter shall be no later than 30 September 2021.

Further, there is an error in the Agreement in Schedule 10 definition of "Transaction Fee Payment Date" sub paragraph (b) in that there is the word "of" in the second line of sub paragraph (b). The Parties agree that the word "of" shall be deleted as not being a required word in sub paragraph (b).

All other terms remain without variation.

Please sign and date the attached acknowledgment form and return with this letter to me. An electronic signature is acceptable, and you may return the form to me by e mail in accordance with Clauses 21.1 and 21.2.4 of the Agreement. We shall then execute the signatory page and return an electronic version to you for your records.

Yours faithfully

s. 40(2)

s. 40(2)

s. 40(2)

Authorised Representative on behalf of Homes England

We agree to the variation of the Agreement as set out in the letter dated 11 June 2021 and the variation shall be effective from 1 April 2021.

IN WITNESS whereof the parties have executed this Letter Agreement by electronic signatures this 11th day of August 2021.

Signed by Homes and Communities Agency t/a Homes England

s. 40(2)

C46490

s. 40(2)

s. 40(2)

Authorised Signatory

SIGNED by Help to Buy Agent

s. 40(2)

s. 40(2) - CFO

Authorised Signatory

Authorised Signatory

THIS DEED of AGREEMENT of VARIATION is dated the 7th day of April 2021 and is

made **BETWEEN:**

- 1) **Homes and Communities Agency** trading as Homes England of One Friargate, Coventry, CV1 2GN (“Homes England”); and
- 2) **The Swaythling Housing Society Limited** a society registered under the Co-operative and Community Benefit Societies Act 2014 with registered society number 10237R whose registered office is at Collins House, Bishopstoke Road, Eastleigh, Hampshire SO50 6AD (the “Help to Buy Agent”) each known as a “**Party**” to and collectively as “**Parties**”.

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s. 40(2)

Sign:

Name s. 40(2)

Company Secretary