

dated

201[]

Homes and Communities Agency

and

[]

Help to Buy Equity Loan Funding Administration Agreement

Homes England – Help to Buy Equity Loan Funding Administration Agreement in relation to:

Programme: Help to Buy: Equity Loan

Dated 20[]

Parties:

- (1) **Homes and Communities Agency** (trading as Homes England) a body corporate under Section 1 of the Housing and Regeneration Act 2008 of Arpley House, 110 Birchwood Boulevard, Birchwood, Warrington WA3 7QH (including any statutory successor) (**Homes England**); and
- (2) [] (company number: [details]) of [address] (**Developer**).

1. Recitals

- 1.1 Homes England is empowered under Section 19 of the Housing and Regeneration Act 2008 to provide financial assistance to any person by way of a loan.
- 1.2 Homes England has agreed pursuant to the Help to Buy Initiative to make funds available for the purpose of providing equity loans secured by a mortgage to Eligible Purchasers in order to enable such Eligible Purchasers to purchase Eligible Dwellings for their own occupation.
- 1.3 The Developer has registered with Homes England in order to promote and facilitate access to the Help to Buy Initiative product amongst potential Eligible Purchasers in relation to its Eligible Dwellings.

2. General

- 2.1 ***THE STANDARD TERMS AND CONDITIONS (AS DEFINED BELOW) ARE INCORPORATED INTO AND FORM PART OF THIS AGREEMENT. THE DEVELOPER MUST READ THE STANDARD TERMS AND CONDITIONS PRIOR TO SIGNING THIS AGREEMENT.***
- 2.2 It is a condition of Homes England's provision of funding that the Contribution Percentage will be secured on the title of the Eligible Dwelling purchased by an Eligible Purchaser by way of an Equity Mortgage in favour of Homes England.
- 2.3 It is a further condition of the Help to Buy Initiative that any Eligible Purchaser wishing to participate in the scheme irrevocably agrees (as part of their application) to the Agency Contribution being paid directly to the Developer (via the Developer's Solicitor) upon completion of the sale of the relevant Eligible Dwelling to the Eligible Purchaser.
- 2.4 The parties have entered into this Agreement in order to document the terms relating to the administration and receipt of the Equity Loan Funding and to enable the Developer and Homes England to agree forecasts for future potential sales (subject always to purchaser led demand) in order to effectively manage the Help to Buy Initiative.
- 2.5 The schedules and Appendix 1 to this Agreement are incorporated into and form part of this Agreement.
- 2.6 **"Standard Terms and Conditions"** means the standard terms and conditions for use with the Homes England Help to Buy Equity Loan Funding Agreement set out at Appendix 1.
- 2.7 The definitions and principles of interpretation set out in the Standard Terms and Conditions shall apply in this Agreement (including the schedules to this Agreement), together with the Project specific definitions set out in **Schedule 1 Part 1 ("Project specific definitions")**.

3. **Provision of Funding**

- 3.1 Homes England has agreed to make Equity Loan Funding available to Eligible Purchasers on a unit-by-unit basis in part payment of their purchase of an Eligible Dwelling and to pay such Equity Loan Funding to the Developer (with the agreement of the Eligible Purchaser) subject to and in accordance with the terms and conditions of this Agreement.
- 3.2 The Developer agrees to comply with the terms and conditions subject to which Equity Loan Funding is made available and all the obligations to be observed or otherwise complied with by it under this Agreement, including for the avoidance of doubt, the Standard Terms and Conditions.

4. **Payment**

4.1 Initial conditions precedent

- 4.1.1 Homes England's obligations under this Agreement are subject to Homes England having received all the documents and other evidence listed in **Part 1, Schedule 2**, each in form and substance satisfactory to Homes England.
- 4.1.2 Homes England shall notify the Developer promptly upon being satisfied of the Developer's compliance of clause 4.1.1.

4.2 Conditions precedent to each call for Equity Loan Funding

- 4.2.1 Homes England's obligations under this Agreement to make available any Equity Loan Funding are subject to the conditions precedent more particularly specified in **Part 2, Schedule 2**, each being in a form and substance satisfactory to Homes England at the time when the Developer calls on Homes England for the transfer of Equity Loan Funding pursuant to **Condition 7.13 of the Standard Terms and Conditions**.
- 4.3 The conditions precedent required by Homes England pursuant to this Clause 4 are for the sole benefit of Homes England and may only be waived or otherwise deferred by Homes England in writing at its entire discretion.
- 4.4 Homes England's obligation to pay Equity Loan Funding in accordance with the terms of this Agreement shall only arise:
- 4.4.1 where an Eligible Purchaser purchases an Eligible Dwelling in accordance with the conditions of the Help to Buy Initiative; and
- 4.4.2 where the required amount of Equity Loan Funding for any such purchase does not result in the aggregate sum of the Agency Contributions paid or payable (at the direction of the relevant Eligible Purchaser) to the Developer pursuant to this Agreement exceeding the Equity Loan Funding Projected Capacity in each Area unless such payment is specifically authorised in writing in advance by Homes England.

- 4.5 Homes England shall, subject as herein provided, pay the Equity Loan Funding to the Developer (as described in Clause 3.1) in accordance with the terms of **Condition 4 of the Standard Terms and Conditions**.

5. **Repayment**

- 5.1 The Developer shall return the relevant Equity Loan Funding together with any accrued interest and all other amounts accrued or outstanding under the Agreement in accordance with **Condition 7.18 of the Standard Terms and Conditions**.

5.2 The Developer shall also repay the Equity Loan Funding together with any accrued interest and all other amounts accrued or outstanding under the Agreement in accordance with **Condition 12 of the Standard Terms and Conditions**.

6. **Reporting**

6.1 The Developer shall provide Homes England with the Annual Forecast in accordance with **Condition 13 of the Standard Terms and Conditions**.

6.2 The Developer shall provide Homes England with the notifications referred to in **Condition 13 of the Standard Terms and Conditions**.

7. **Representations and Warranties**

The Developer makes the representations and warranties set out in Schedule 5.

8. **Fees and Expenses**

Each party will be responsible for its own reasonable legal and valuation costs, fees and expenses in connection with the negotiation, preparation, and execution of this Agreement and all documents ancillary to it.

SCHEDULE 1

PROJECT SPECIFIC DEFINITIONS

The definitions and principles of interpretation set out in the Standard Terms and Conditions shall apply in this Agreement (including the schedules to this Agreement), together with the following Project specific definitions:

First Longstop Date shall mean First Year 7 Longstop Date or the First Year 8 Longstop Date (as applicable);

First Year 7 Longstop Date means 31 December 2019 or such other date as may be agreed between the parties (which shall not in any event be later than the Second Year 7 Longstop Date);

First Year 8 Longstop Date means 31 December 2020 or such other date as may be agreed between the parties (which shall not in any event be later than the Second Year 8 Longstop Date);

Forecast Details means for each Area for each of Year 7 and Year 8 (as applicable);

- (a) the Equity Loan Funding Projected Capacity;
- (b) the Forecast Numbers; and
- (c) the Sales and Marketing forecasts;

as set out in Schedule 3 or as subsequently detailed on IMS as the same may be amended from time to time by the parties in accordance with Condition 8;

Second Longstop Date shall mean the Second Year 7 Longstop Date or the Second Year 8 Longstop Date (as applicable);

Second Year 7 Longstop Date means 31 March 2020 or such other date as may be agreed between the parties;

Second Year 8 Longstop Date means 31 March 2021 or such other date as may be agreed between the parties;

Year shall mean Year 7 or Year 8 (as applicable);

Year 7 means the period from 1 April 2019 to 31 March 2020.

Year 8 means the period from 1 April 2020 to 31 March 2021.

SCHEDULE 2

CONDITIONS PRECEDENT

PART 1

1. Initial conditions precedent

1.1 Developer Documents

1.1.1 Counterparts of this Agreement duly executed by all parties other than Homes England.

1.1.2 In relation to the Developer's solicitors, a certificate from the Developer's Solicitor:

(a) confirming their:

- i. Bank Name;
- ii. Bank Branch and Address;
- iii. Bank account name;
- iv. Bank account number;
- v. Bank sort code;

(b) that they have verified the identity of the Developer in accordance with the Money Laundering Regulations 2017 (as amended or re-enacted);

1.2 Other

1.2.1 Compliance by the Developer with Homes England's Know your customer requirements.

1.2.2 Homes England has received (in form and substance acceptable to it) an undertaking from the Developer's Solicitor confirming that the Equity Loan Funding will be held as stakeholder to Homes England's order and not released until they are in a position to confirm the following in relation to each Eligible Unit:

- (a) that the Conditions Precedent set out at paragraphs 2.1.1, 2.1.4 and 2.1.6(d) are satisfied;
- (b) that they have received confirmation in writing from the Developer that the requirements of the Conditions Precedent set out at paragraphs 2.1.2 and 2.1.3 have been satisfied;
- (c) that they have received confirmation in writing from the Nominated Help to Buy Agent that the requirements of the Conditions Precedent set out at paragraphs 2.1.6(a), (b) and (c) have been satisfied; and
- (d) in relation to the Conditions Precedent set out at paragraph 2.1.6(e), that:
 - (i) This is satisfied; or
 - (ii) Inline with the provisions of Condition 3.6 they have received an undertaking in their favour (from the legal advisor acting for the Eligible

Purchaser and its Approved Lender) that the Solicitor's Form 2 has been duly provided to the Nominated Help to Buy Agent :

PART 2

2. Conditions precedent to each call for Equity Loan Funding pursuant to Condition 7.13 to the Standard Terms and Conditions

2.1 The obligation of Homes England to make available any Equity Loan Funding is subject to the following conditions precedent:

2.1.1 (in the case of a request to transfer Equity Loan Funding only) a valid request has been made in accordance with Condition 7.13;

2.1.2 no Developer Default has occurred and no dispute resolution procedure is being undertaken pursuant to this Agreement;

2.1.3 Confirmation by the Developer that:

(a) they are in compliance with the Advertising Requirements;

(b) no complaints have been raised by the FCA in relation to the Developer's compliance with the Advertising Requirements;

(c) the dwelling for sale is an Eligible Dwelling

2.1.4 that the Developer holds a Secure Legal Interest in the Eligible Dwelling

2.1.5 Homes England has received such evidence as Homes England may require that all matters represented and warranted by the Developer under the Agreement true and correct as if made at the time of the call for Equity Loan Funding and would be true and correct immediately after the making of any such payment Equity Loan Funding;

2.1.6 Confirmation from the Developer that in respect of each Eligible Dwelling all of the following applies:

(a) the relevant Authority to Proceed has been received and that such Authority to Proceed will be current and valid at the date of exchange;

(b) receipt by the Nominated 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 (subject to Condition 3.6);

(c) receipt by the Nominated 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 Nominated Help to Buy Agent to the Developer in writing;

(d) contracts have been exchanged for the disposal of the Eligible Dwelling to the Eligible Purchaser in accordance with the relevant Authority to Exchange and the Eligible Purchaser and all relevant parties have unconditionally executed and irrevocably released the lease/transfer related to that disposal; and

(e) execution by the Eligible Purchaser of the Equity Mortgage and a prior charge to an Approved Lender (subject to Condition 3.6).

SCHEDULE 3
FORECAST DETAILS

[Insert]

UNREVIEWED DRAFT

SCHEDULE 4

PART 1

AREAS – OUTSIDE LONDON

| East and South East | | | |
|----------------------------|-----------------------------|-----------------------|-----------------------|
| Adur | Dover | Medway Towns | Suffolk Coastal |
| Arun | East Cambridgeshire | Mid Suffolk | Surrey Heath |
| Ashford | East Hertfordshire | Mid Sussex | Swale |
| Aylesbury Vale | Eastbourne | Mole Valley | Tandridge |
| Babergh | Elmbridge | North Hertfordshire | Tendring |
| Basildon | Epping Forest | North Norfolk | Thanet |
| Braintree | Epsom and Ewell | Norwich | Three Rivers |
| Breckland | Fenland | Peterborough | Thurrock |
| Brentwood | Forest Heath | Reigate and Banstead | Tonbridge and Malling |
| Brighton and Hove | Gravesham | Rochford | Tunbridge Wells |
| Broadland | Great Yarmouth | Rother | Uttlesford |
| Broxbourne | Guildford | Runnymede | Watford |
| Cambridge | Harlow | Sevenoaks | Waveney |
| Canterbury | Hastings | Shepway | Waverley |
| Castle Point | Hertsmere | South Buckinghamshire | Wealden |
| Chelmsford | Horsham | South Cambridgeshire | Welwyn Hatfield |
| Chichester | Huntingdonshire | South Norfolk | Woking |
| Chiltern | Ipswich | Southend-on-Sea | Worthing |
| Colchester | Kings Lynn and West Norfolk | Spelthorne | Wycombe |
| Crawley | Lewes | St. Albans | |
| Dacorum | Maidstone | St. Edmundsbury | |
| Dartford | Maldon | Stevenage | |

| Midlands | | | |
|----------------------|-----------------------|---------------------------|-------------------------|
| Amber Valley | East Northamptonshire | Newcastle-under-Lyme | South Northamptonshire |
| Ashfield | East Staffordshire | North Kesteven | South Staffordshire |
| Bedford | Erewash | North Warwickshire | Stafford |
| Birmingham | Gedling | North West Leicestershire | Staffordshire Moorlands |
| Blaby | Harborough | Northampton | Stoke-on-Trent |
| Boston | Herefordshire | Nottingham | Stratford-on-Avon |
| Bromsgrove | High Peak | Nuneaton and Bedworth | Tamworth |
| Broxtowe | Hinckley and Bosworth | Oadby and Wigston | Telford and Wrekin |
| Cannock Chase | Kettering | Redditch | Walsall |
| Central Bedfordshire | Leicester | Rugby | Warwick |
| Charnwood | Lichfield | Rushcliffe | Wellingborough |
| Corby | Lincoln | Rutland | West Lindsey |
| Coventry | Luton | Sandwell | Wolverhampton |
| Daventry | Malvern Hills | Shropshire | Worcester |
| Derby | Mansfield | Solihull | Wychavon |
| Derbyshire Dales | Melton | South Derbyshire | Wyre Forest |
| Dudley | Milton Keynes | South Holland | |
| East Lindsey | Newark and Sherwood | South Kesteven | |

| North East, Yorkshire and The Humber | | | |
|--------------------------------------|--------------------------|-------------------------|------------------|
| Barnsley | Middlesbrough | North East Derbyshire | Selby |
| Bassetlaw | Newcastle upon Tyne | North East Lincolnshire | Sheffield |
| Bolsover | East Riding of Yorkshire | North Lincolnshire | South Tyneside |
| Bradford | Gateshead | North Tyneside | Stockton-on-Tees |
| Calderdale | Hambleton | Northumberland | Sunderland |
| Chesterfield | Harrogate | Redcar and Cleveland | Wakefield |
| County Durham | Hartlepool | Richmondshire | York |
| Craven | Kingston Upon Hull | Rotherham | |
| Darlington | Kirklees | Ryedale | |
| Doncaster | Leeds | Scarborough | |

| North West | | | |
|---------------------------|------------|----------------|-----------------|
| Allerdale | Chorley | Oldham | St. Helens |
| Barrow-in-Furness | Copeland | Pendle | Stockport |
| Blackburn with Darwen | Eden | Preston | Tameside |
| Blackpool | Fylde | Ribble Valley | Trafford |
| Bolton | Halton | Rochdale | Warrington |
| Burnley | Hyndburn | Rossendale | West Lancashire |
| Bury | Knowsley | Salford | Wigan |
| Carlisle | Lancaster | Sefton | Wirral |
| Cheshire East | Liverpool | South Lakeland | Wyre |
| Cheshire West and Chester | Manchester | South Ribble | |

| South and South West | | | |
|------------------------------|-----------------|-----------------------|------------------------|
| Basingstoke and Deane | Forest of Dean | Portsmouth | Tewkesbury |
| Bath and North East Somerset | Gloucester | Purbeck | Torbay |
| Bournemouth | Gosport | Reading | Torridge |
| Bracknell Forest | Hart | Rushmoor | Vale of White Horse |
| Bristol | Havant | Sedgemoor | West Berkshire |
| Cheltenham | Isle of Wight | Slough | West Devon |
| Cherwell | Isles of Scilly | South Gloucestershire | West Dorset |
| Christchurch | Mendip | South Hams | West Oxfordshire |
| Cornwall | Mid Devon | South Oxfordshire | West Somerset |
| Cotswold | New Forest | South Somerset | Weymouth and Portland |
| East Devon | North Devon | Southampton | Wiltshire |
| East Dorset | North Dorset | Stroud | Winchester |
| East Hampshire | North Somerset | Swindon | Windsor and Maidenhead |
| Eastleigh | Oxford | Taunton Deane | Wokingham |
| Exeter | Plymouth | Teignbridge | |
| Fareham | Poole | Test Valley | |

PART 2
AREAS - LONDON

| London | | |
|----------------------|------------------------|----------------------|
| Barking and Dagenham | Hackney | Lewisham |
| Barnet | Hammersmith and Fulham | Merton |
| Bexley | Haringey | Newham |
| Brent | Harrow | Redbridge |
| Bromley | Havering | Richmond upon Thames |
| Camden | Hillingdon | Southwark |
| City of London | Hounslow | Sutton |
| Croydon | Islington | Tower Hamlets |
| Ealing | Kensington and Chelsea | Waltham Forest |
| Enfield | Kingston upon Thames | Wandsworth |
| Greenwich | Lambeth | Westminster |

SCHEDULE 5

WARRANTIES

1. Due incorporation and vires

1.1 It:

1.1.1 is duly incorporated under the law of England and Wales and has the corporate power to own its assets and to carry on the business which it conducts or proposes to conduct;

1.1.2 has the power to enter into and to exercise its rights and perform its obligations under this Agreement;

1.1.3 has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement;

1.1.4 is not subject and will not prior to any payment of Equity Loan Funding become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect on the ability of the Developer to perform its obligations under this Agreement.

2. Enforcement and validity of obligations

2.1 The Developer's obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

2.2 The execution, delivery and performance by the Developer of this Agreement do not:

2.2.1 insofar as it is aware contravene any applicable law or Directive or any judgement, order or decree of any court having jurisdiction over it;

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

2.2.3 contravene or conflict with its constitution.

2.3 So far as the Developer is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets in a manner which has affected or could affect its ability to perform its obligations under this Agreement.

2.4 There will not be in existence any other agreements or documents replacing or relating to this Agreement which would materially affect its interpretation or application.

2.5 All consents required by the Developer in connection with the execution delivery issue validity or enforceability of this Agreement have been obtained and have not been withdrawn.

3. No litigation

To the best of the Developer's knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Developer, pending or threatened against the Developer or any of its assets which will or might have a Material Adverse Effect on the ability of the Developer to perform its obligations under this Agreement.

4. **Information Provided to Homes England**

- 4.1 All information supplied by or on behalf of the Developer to Homes England or its agents or employees in connection with the Developer's proposal in respect of the provision of Help to Buy by the Developer or in the course of the subsequent negotiations was at the time of submission and as far as the Developer was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects;
- 4.2 The Developer has informed Homes England of any material change in such information referred to in paragraphs 4.1 and/or 4.4 that has occurred since the date of submission of which the Developer is aware (or ought to be aware) having made all reasonable and proper enquiries which would render the information referred to in paragraphs 4.1 and/or 4.4 untrue, incomplete or inaccurate in any material respect; and
- 4.3 The Developer is not aware of any material facts or circumstances which have not been disclosed to Homes England and which might, if disclosed would materially and adversely affect the decision of anyone considering whether or not to contract with the Developer.
- 4.4 All information submitted to Homes England during the course of this Agreement (whether via IMS or otherwise) is as far as the Developer is aware (or ought to be aware) having made all reasonable and proper enquiries complete and accurate in all respects.

5. **Developer Defaults**

- 5.1 To the best of the Developer's knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Developer, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets or revenues and without limitation no insolvency event has occurred in relation to the Developer.
- 5.2 In entering into this Agreement the Developer has not committed any Prohibited Act.
- 5.3 Without prejudice to paragraphs 5.1 and 5.2 above, no Developer Default has occurred or is continuing.

6. **Third party rights and intervening events**

- 6.1 No person having any charge or other form of security over the property or any other assets of the Developer has enforced or given notice of its intention to enforce such security.
- 6.2 The Developer is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.

7. **Land Ownership**

In relation to each Eligible Dwelling identified by the Developer for the future receipt of Help to Buy Equity Loan Funding, the Developer has (or will prior to any drawdown of Equity Loan Funding in respect of that Eligible Dwelling) a Secure Legal Interest in such unit;

8. **Consumer Code for Home Builders**

The Developer has adopted and complied with (and shall continue to adopt and comply with) the Consumer Code for Home Builders in respect of each Eligible Dwelling.

SCHEDULE 6

Processing, Personal Data and Data Subjects

1. The Developer shall comply with any further written instructions from Homes England with respect to Processing.
2. Any such further instructions shall be incorporated into this Schedule

| Description | Details |
|---|---|
| Subject matter of the processing | All processing undertaken (if any) in connection with the Agreement. |
| Duration of the Processing | The term of the Agreement |
| 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 Agreement). |
| Type of Personal Data | Names, addresses, dates of birth, NI numbers, telephone numbers, email addresses, pay, images and biometric data, and any other personal data processed in connection with the Agreement. |
| Categories of Data Subject | Applicants for Help to Buy and persons the Developer has entered into, or proposes to enter into, legal arrangements with, staff (including volunteers, agents, and temporary workers), suppliers, students/pupils, members of the public. |
| Plan for destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <p>All copies of the following forms upon the achievement of purchaser legal completion for each plot sold under the Help to Buy:</p> <ul style="list-style-type: none"> • Property Information Form (PIF) • Authority to Proceed (ATP) • Authority to Exchange (ATE) • Confirmation to Provider (CTP) <p>Any other correspondence or information, in hard or electronic copy relating to the Help to Buy assistance provided by Homes England for the purchase of Eligible Dwelling.</p> |

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

Signatures

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

.....
Name:
Authorised Signatory

Executed as a Deed by)
[DEVELOPER])
in the presence of:)

.....
Name:
Director

witness signature
name
address
.....
occupation

APPENDIX 1

STANDARD TERMS AND CONDITIONS FOR USE WITH HOMES ENGLAND'S HELP TO BUY EQUITY LOAN FUNDING ADMINISTRATION AGREEMENT

WITH THE HOMES ENGLAND HELP TO BUY EQUITY LOAN FUNDING ADMINISTRATION AGREEMENT

Agreed Terms

1. Definitions and interpretation

1.1 Definitions

In these Standard Terms and Conditions the following words and expressions have the following meanings:

Additional Area means an Area in relation to which there is no identified Equity Loan Funding Projected Capacity;

Advertising Requirements means:

- (a) such form of wording together with warnings examples and APR illustrations as Homes England may from time to time provide to the Developer for the purposes of inclusion within any advertisement relating to the Help to Buy; and
- (b) all other requirements of the Consumer Credit (Advertisements) Regulations 2004 and 2010 so far as the same are applicable to this Agreement

Agency Contribution means Homes England's contribution in value per Eligible Dwelling (as specified in the relevant Authority to Proceed or as subsequently agreed with the Local Help to Buy Agent) which shall be:

- (a) for Non-London Area Dwellings between 20% (twenty per cent) and 10% (ten per cent) of the Market Value of the Eligible Dwelling; and
- (b) for London Area Dwellings between 40% (forty per cent) and 10% (ten per cent) of the Market Value of the Eligible Dwelling;

Agency Data means:-

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Developer by or on behalf of Homes England; or
 - (ii) which the Developer 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

Agency Representative means the individual notified to the Developer by Homes England at the commencement of this Agreement or such other individual as Homes England may notify to the Developer from time to time;

Agreement means the Help to Buy Equity Loan Funding Administration Agreement (including its schedules, Annexures and Appendices (if any)) and incorporating these Standard Terms and Conditions;

Annual Forecast means the annual sales and delivery forecast for the following financial year submitted by the Developer to Homes England via IMS or by such other means and in such other form as Homes England shall notify the Developer of from time to time;

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) aware of the terms of Help to Buy and has confirmed that it will provide prior loans to Eligible Purchasers participating in Help to Buy

Area means either one of the five geographical areas detailed in Schedule 4 Part 1 or the London Area;

Authority to Exchange means a notice served by the Nominated Help to Buy Agent on the Eligible Purchaser's conveyancer in the form set out in the Solicitor's Pack or such other form as Homes England may from time to time reasonably require providing Homes England's consent to exchange contracts on the Eligible Dwelling;

Authority to Proceed means a notice served by the Nominated Help to Buy Agent on the Eligible Purchaser's conveyancer and the Developer in the form set out in the Solicitor's Pack or such other form as Homes England may from time to time reasonably require;

Business Day means any day other than a Saturday, Sunday or a statutory Bank Holiday in England or any day between 24 December and 3 January (inclusive);

Conditions Precedent means the conditions precedent (including where relevant dates for satisfaction of the same) set out in Schedule 2;

Confidential Information means in respect of Homes England all information relating to Homes England or the existence or terms of this Agreement or any Equity Mortgage in respect of which the Developer becomes aware in its capacity as a party to this Agreement or which is received by the Developer in relation to this Agreement or any Equity Mortgage from either Homes England or any of its advisors or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its advisors in whatever form in either case (including information given orally and any document electronic file or other means of recording or representing information which includes derives or is copied from such information) and in the case of the Developer means such specific information as the Developer shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

Consents means and includes any necessary approval, authorisation, consent, exemption, licence, permit permission

or registration by or from any governmental or other authority the local planning authority landlords funder adjoining landowners or any other person required to undertake the works and deliver the Dwellings;

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

$$\frac{\text{Agency Contribution}}{\text{Full Purchase Price}} \times 100$$

PROVIDED THAT in no case shall the Contribution Percentage:

- (a) exceed 20% (twenty per cent) or be less than 10% (ten per cent) for Non-London Area Dwellings; and
- (b) Exceed 40% (forty per cent) or be less than 10% (ten per cent) for London Area Dwellings;

Crown Estate means the statutory corporation constituted under the Crown Estate Act 1961.

Developer Area Default means a Developer Default confirmed by Homes England to constitute a Developer Area Default pursuant to Condition 12.1;

Developer Default means:

- (a) the Developer or where applicable any subcontractor, employee, officer or agent commits a Prohibited Act (in respect of which the Waiver Condition has not been satisfied) or breaches the provisions of Condition 30;
- (b) an Insolvency Event occurs in respect of the Developer and/or the Developer ceases trading;
- (c) the Developer experiences a change in its financial or commercial circumstances which in the opinion of Homes England would have a Material Adverse Effect;
- (d) Homes England becomes aware of any breach of the Warranties or inaccuracy in any representation made by the Developer in respect of this Agreement;
- (e) the Developer fails to comply with the Advertising Requirements;
- (f) the Developer commits a breach of this Agreement which, in the reasonable opinion of Homes England, will have (either alone or in aggregate with any previous breaches) a Material Adverse Effect;
- (g) any enforcement action is taken or other right is enforced by the Regulator in relation to the Developer;
- (h) any senior employee, executive, board member or partner (as applicable) of the Developer is convicted of dishonesty;
- (i) any disposal of an Eligible Dwelling to an Eligible Purchaser where a Solicitor Form 1 has not been provided before exchange of contracts and/or a Solicitor Form 2 has not been provided in advance of completion, in both cases signed by and on behalf of the relevant Eligible Purchaser's conveyancer;
- (j) the Eligible Dwellings in an Area have not been completed to the Required Standards; or
- (k) Homes England becomes aware of any changes in any of the information provided at any time by or on behalf of the

Developer to Homes England in respect of any Area with Homes England acting in its absolute discretion considers to have a Material Adverse Effect.

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

Developer's Solicitor means a solicitor whose details have been provided to Homes England and the Nominated Help to Buy Agent in writing from time to time as being the sole solicitor who is appointed by the Developer for all the Areas under this Agreement and who is capable of holding the Agency Contribution to order within its interest bearing client account;

Dispute Resolution Procedure means the procedure set out in Condition 18;

Dwelling means any unit identified by the Developer as potentially eligible for funding in accordance with the terms of this Agreement;

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

EIR Exception means any applicable exemption to EIR;

Eligible Dwelling means a Dwelling which immediately prior to the call for a transfer of Equity Loan Funding by Homes England to the Developer pursuant to Condition 7.13:

- (a) is fit for beneficial occupation as a residential dwelling in accordance with the requirements of the NHBC or equivalent requirements;
- (b) has the benefit of an NHBC guarantee or similar warranty by a reputable insurance company accepted by at least 75% of Qualifying Lenders providing first charge mortgage finance under the Help to Buy Initiative Provided That:
 - (i) such warranty includes protection of Eligible Purchaser's deposits between exchange and completion; or
 - (ii) the Developer's Solicitor have provided Homes England with an undertaking not to release the Eligible Purchaser's deposits between exchange and completion;
- (c) complies with all relevant statutory and/or planning requirements, including current building regulations in force at the date of Practical Completion;
- (d) has a Market Value below the Maximum Limit;
- (e) has reached Practical Completion on or before the First Longstop Date for the relevant Year;
- (f) (in the case of any House which does not qualify as an Exempt Leasehold House) will be disposed of on the basis of a freehold transfer to the Eligible Purchaser;
- (g) is not provided as affordable housing in satisfaction of a Planning Agreement or other Planning Permission; and
- (h) does not have the benefit of grant or public subsidy (other than the Equity Loan Funding; any Kickstart Funding; Get Britain Building Funding, Builder's

Finance Fund or any alternative funding or scheme confirmed by Homes England as being subject to this exception)

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;
- (b) who has been approved as eligible by the Nominated 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 Developer (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 legal completion of the purchase of the Eligible Dwelling) possess an interest in any other dwelling.

Eligible Purchaser's Certificate of Title means a certificate of title substantially in the form set out in the Solicitor's Pack;

Equity Loan Funding means the amount payable by Homes England (pursuant to its powers set out in Section 19 of the Housing and Regeneration Act 2008) on a unit-by-unit basis, which shall be set as the equivalent of the Agency Contribution in respect of each Eligible Dwelling, and which shall in aggregate be up to but not exceed the Equity Loan Funding Projected Capacity per Area (subject always to the terms of this Agreement);

Equity Loan Funding Projected Capacity has the meaning set out in the Forecast Details, as may be amended from time to time in accordance with the terms of this Agreement;

Equity Mortgage means the equity mortgage in the form supplied with this Agreement or such other form as Homes England may from time to time reasonably require;

Exempt Leasehold House means a House which the Developer's Solicitor confirms in writing to Homes England will at the point of disposal satisfy one or more of the following criteria:

- (a) any House constructed or adapted on land where the Developer does not own the freehold title to the land and they obtained a long leasehold legal title to the land on or before the 21 December 2017;
- (b) any House constructed on land disposed of by either the Crown Estate, the National Trust or any other public body specified in writing by Homes England (at its discretion) on a leasehold basis; or
- (c) (subject to specific prior approval in writing by Homes England) any House constructed directly above another structure, such as a communal car park or other underground structure, which would prohibit the independent structural redevelopment of the House.

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

FA 2004 means the Finance Act 2004;

FCA means the Financial Conduct Authority or any successor body taking over its regulatory functions;

First Equity Loan Funding Date means the first date upon which the Agency Contribution is paid to the Developer (at the direction of the Eligible Purchaser) under this Agreement in respect of an Eligible Dwelling;

First Longstop Date means as defined in Schedule 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 FOIA;

Forecast Details means as defined in Schedule 1;

Forecast Number means the number of sales of Eligible Dwellings in each Area forecasted by the Developer as anticipated to be achieved prior to the relevant Second Longstop Date for that Year as set out in the Forecast Details;

Full Purchase Price means the full purchase price of any Eligible Dwelling which would be payable to the Developer by any purchaser but for the operation of this Agreement (such price being equal in the case of a disposal to an Eligible Purchaser to the Reduced Purchase Price plus the Agency Contribution) and which may not exceed the Maximum Limit;

Get Britain Building Funding means the government funding programme of the same name described in the prospectus issued by Homes England in November 2011 (Round 1) and on 21 June 2012 (Round 2);

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor (engaged in the same type of undertaking as that of the Developer or any of its subcontractors) under the same or similar circumstances;

Group Company means any company which is:

- (a) a subsidiary or holding company of the Developer; or
- (b) a subsidiary of the Developer's holding company;

and the references to the terms "subsidiary" and "holding company" shall have the meanings defined in Section 1159 of the Companies Act 2006;

Help to Buy and **Help to Buy Initiative** means the government home ownership initiative of the same name as described in the Help to Buy Participation Guidance initially published by Homes England on 25 March 2013 and as updated by Homes England from time to time;

House means any building designed or adapted as a single dwelling provided that in circumstances where the building is not structurally detached:

- (a) such building is not divided horizontally into flats or maisonettes; and
- (b) (where a building is divided vertically) notwithstanding that the building as a whole is not a house.

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

Incentives means any inducement or incentive provided to Eligible Purchasers of Eligible Dwellings over and above the standard specification for such dwellings (including without

limitation any subsidies services cash-backs white goods additional fixtures fittings or enhanced specifications);

Information:

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

Insolvency Event means the occurrence of any of the following in relation to the Developer;

- (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;
- (b) the value of its assets is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium is declared in respect of any indebtedness;
- (d) any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) other than a solvent liquidation or reorganisation on terms previously approved by Homes England (such approval not to be unreasonably withheld or delayed);
 - (ii) a composition, compromise, assignment or arrangement with any of its creditor;
 - (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, administrator, compulsory manager or other similar officer in respect of the Developer;
 - (iv) enforcement of any Security over any assets of the Developer; or
 - (v) any analogous procedure or step is taken in any jurisdiction,

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

- (e) any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Developer;

Intellectual Property Rights shall include without limitation all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and

object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;

Kickstart Funding means the government funding programme described in the 'Kickstart Housing Delivery' prospectus issued in May 2009 and the subsequent Round 2 prospectus issued in September 2009;

Know your customer requirements means the know your customer requirements specified by Homes England to the Developer from time to time.

Legislation means:

- (a) any Act of Parliament;
- (b) any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative; and
- (d) any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;

in each case in the United Kingdom;

Local Help to Buy Agent means an agent appointed by Homes England pursuant to any Help to Buy Agent's competition carried out by Homes England;

London Area means the geographical area detailed in Schedule 4 Part 2;

London Area Dwelling means an Eligible Dwelling situated within the London Area;

Losses means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses) and charges whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands suffered or incurred by Homes England including interest at 2% (two per cent) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Losses are incurred until the date upon which Homes England receives full reimbursement of its Losses;

Market Value means the best price reasonably obtainable in the open market for each Eligible Dwelling (disregarding the existence of this Agreement and the availability of the Equity Mortgage) as confirmed by the valuation report obtained by the Qualifying Lender (or as stated in the mortgage offer where the valuation report is not available) in relation to an individual purchase of an Eligible Dwelling;

Material Adverse Effect means any present or future event or circumstances which could, in the reasonable opinion of Homes England:

- (a) materially impair the ability of the Developer to perform and comply with its obligations under this Agreement;
- (b) have a material adverse effect on the business, assets or financial condition of the Developer; or
- (c) have a material adverse effect on the validity or enforceability of, or the effectiveness of any rights or remedies of Homes England under this Agreement or any Equity Mortgage;

Maximum Limit means the amount set by Homes England from time to time and which at the date hereof is £600,000 (six hundred thousand pounds);

National Trust means The National Trust for Places of Historic Interest or Natural Beauty' a registered charity under number 205846, incorporated and deriving its powers from the National Trust Acts 1907;

NHBC means the National House Builders' Council;

Nominated Help to Buy Agent means such Local Help to Buy Agent as Homes England shall from time to time notify the Developer in writing will be a Nominated Help to Buy Agent for the purposes of this Agreement provided always that Homes England may itself fulfil the role of Nominated Help to Buy Agent where none has been appointed;

Non London Area Dwelling means an Eligible Dwelling which is in an Area which is not the London Area;

Open Book means the declaration of all price components including profit margins, central office overheads, site overheads, preliminaries, contingencies and the cost of all materials, goods, equipment, work and services with all and any books of accounts, correspondence, agreements, orders, invoices, receipts and other documents available for inspection;

Permitted Incentives means Incentives to a value equal to those which would be made available to any purchaser of the relevant Eligible Dwelling whether or not they are an Eligible Purchaser participating in the Help to Buy Initiative PROVIDED THAT:

- (a) the value of such Incentives shall not be such that the existence or absence thereof would affect the Market Value of the Eligible Dwellings;
- (b) the value of such Incentives shall not in any event exceed 5% (five per cent) of the Full Purchase Price of the Eligible Dwelling; and
- (c) such Incentives comply with the requirements of the UK Finance and which for the avoidance of doubt shall be disclosed on the UK Finance Lenders' disclosure of incentives form;

Planning Agreement means an agreement in respect of and affecting any Dwelling made pursuant to Section 106 of the Town and Country Planning Act 1990 and/or Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or Section 38 and/or 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 or an agreement with any competent authority or body relating to other services;

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

Post Sales Agent means the agent (or agents) appointed by Homes England pursuant to any Post Sales Agent's competition launched by Homes England provided always that Homes England may itself fulfil the role of the Post Sales Agent where none has been appointed;

Practical Completion means the Dwelling has been completed in accordance with the terms of the relevant building contract and is fit for beneficial occupation as a residential dwelling in accordance with NHBC or equivalent

requirements current at the date of inspection, subject only to the existence of minor defects and/or minor omissions at the time of inspection which are capable of being made good or carried out without materially interfering with the beneficial use and enjoyment of the Dwelling and which would be reasonable to include in a snagging list;

Prescribed Rate means 2% (two per cent) above the base lending rate of the Royal Bank of Scotland plc from time to time;

Prohibited Act means:

- (a) offering, giving or agreeing to give to any servant of Homes England any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement;
- (b) entering into this Agreement or any other agreement with Homes England relative to this Agreement in connection with which commission has been paid or has been agreed to be paid by the Developer or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to Homes England;
- (c) committing any offence:
 - (i) under Legislation creating offences in respect of fraudulent acts;
 - (ii) at common law in respect of fraudulent acts in relation to this Agreement; or
 - (iii) under the Bribery Act 2010 and/or Prevention of Corruption Acts 1889-1916; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England;

Property Information Form means a notice served by the Eligible Purchaser on the Nominated Help to Buy Agent providing details of the Eligible Dwelling in such form as Homes England may prescribe from time to time;

Qualifying Lender means an institution authorised by the Financial Conduct Authority pursuant to the Financial Services and Markets Act 2000 to "enter into a regulated mortgage contract as lender" and "Qualifying Lenders" shall be construed accordingly;

Reduced Purchase Price means the amount payable by an Eligible Purchaser in cash terms (excluding any mortgage fees of the relevant Qualifying Lender) for the purchase of an Eligible Dwelling after deducting the Agency Contribution from the Full Purchase Price;

Regulations means the regulations from time to time issued by Homes England in respect of the Help to Buy;

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/RFI shall have the meaning set out in FOIA or any request for information under EIR which may relate to any Dwelling and/or Site, this Agreement any Equity Mortgage or any activities or business of Homes England;

Required Standards means the requirements of this Agreement, Good Industry Practice, all Consents and Legislation;

Requisite Contract Terms means the provisions to be included in the contract for the sale of any Eligible Dwelling to an Eligible Purchaser as set out in the Solicitor's Pack or as the same may from time to time reasonably be required to be amended by Homes England with the approval of the Developer (such approval not to be unreasonably withheld or delayed);

Sales and Marketing Forecasts means in respect of each Area the respective forecasts for Eligible Dwellings being actively marketed and sold as detailed in the Allocations Details. References to "Sales Forecasts" and "Marketing Forecasts" shall be construed accordingly;

Second Longstop Date means as defined in Schedule 1;

Secure Legal Interest means the Developer has in respect of the Eligible Dwelling:

- (a) freehold title registered with title absolute;
- (b) leasehold title (where the lease has at least 120 years unexpired duration) registered with title absolute; or
- (c) freehold title registered with possessory title or good leasehold title (where the lease has at least 120 years unexpired duration) and defective title indemnity insurance in favour of the Developer (and for the benefit of any Eligible Purchaser and their mortgagees) with a limit of indemnity to at least the equivalent of the Market Value of the total number of Eligible Dwellings available on that Site.

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

Senior Officer means the employee of the Developer holding the title "Finance Director" or such other person with equivalent seniority notified in writing to Homes England by the Developer;

Significant Event means an event which could reasonably be considered to prejudice the reputation of Homes England or the Help to Buy Initiative;

Site means the overall development site upon which the Dwelling is located;

Solicitor's Form 1 means an undertaking duly completed in favour of Homes England by a conveyancer acting on behalf of the Eligible Purchaser and its Approved Lender

substantially in the form set out in the Solicitor's Pack or such other form as Homes England may from time to time reasonably require;

Solicitor's Form 2 means an unqualified Eligible Purchaser's Certificate of Title and undertaking duly completed in favour of Homes England by a conveyancer acting on behalf of the Eligible Purchaser and its Approved Lender substantially in the form set out in the Solicitor's Pack or such other form as Homes England may from time to time reasonably require;

Solicitor's Pack means the pack of documentation for Eligible Purchasers and their legal representatives supplied with this Agreement or such other form as Homes England may from time to time reasonably require;

Standard Literature means the explanatory and other documentation from time to time supplied by Homes England or the Nominated Help to Buy Agent for provision to the Eligible Purchaser, the Approved Lender and the Eligible Purchaser's conveyancers;

Transaction Confirmation means a notice served by the Local Help to Buy Agent on the Developer's Solicitor in accordance with Condition 7 in such form as Homes England may prescribe from time to time;

UK Finance means UK Finance of 5th Floor, 1 Angel Court, London EC2R 7HJ or any successor body

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

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

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

where acting independently means not acting with the authority or knowledge of any one or more of the directors of the Developer or relevant subcontractor;

Warranties means the warranties set out in Schedule 5;

Warranty means any one of the Warranties;

Year means as defined in Schedule 1;

1.2 Interpretation

- 1.2.1 The masculine includes the feminine and vice versa.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any Condition, sub-condition, paragraph, schedule, appendix or section heading is, except where it is expressly stated to the contrary, a reference to such Condition, sub-condition, paragraph, schedule, appendix or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document shall include (except where expressly stated otherwise) any variation, amendment or supplement to such document to the extent that such variation, amendment or supplement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a person includes firms, partnerships and corporations and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A time of day shall be a reference to London time.
- 1.2.9 A party means a party to this Agreement.
- 1.2.10 The words includes or including are to be construed without limitation.
- 1.2.11 A deliberate act or omission of any person shall exclude acts or omissions which were within the contemplation of the parties or which were otherwise provided for in this Agreement.
- 1.2.12 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by such person as may be specified by Homes England by notice in writing to the Developer.
- 1.2.13 An obligation to do anything includes an obligation to procure its being done.
- 1.2.14 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.15 When there are two or more persons affected by the obligations under this Agreement such obligations are to bind each such person jointly and severally.
- 1.2.16 Save where a contrary intention is shown, or where an express discretion is given by this Agreement, Homes England shall act reasonably in exercising its rights hereunder.
- 1.2.17 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.18 No review comment or approval by Homes England under the provisions of this Agreement shall operate to exclude or limit the Developer's obligations or liabilities under this Agreement save where Homes England have confirmed the said review comment or approval in writing.
- 1.2.19 The Developer shall be responsible as against Homes England for the acts or omissions of any of its (or any Group Company's) subcontractors, officers, employees and agents as if they were the acts or omissions of the Developer.
- 1.2.20 Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of Homes England shall, unless otherwise expressly stated in this Agreement or agreed in writing by Homes England, relieve the Developer of any of its obligations under this Agreement or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge nor confer impose or imply any liability or responsibility on or on behalf of Homes England in respect of or in connection with the matter to or in relation to which such approval consent examination acknowledgement was given or review made.
- 2. Commencement and duration**
- 2.1 Subject always to Condition 4 this Agreement shall commence on the date hereof and Homes England's obligation to pay any Equity Loan Funding and the Developer's obligation to market and dispose of Eligible Dwellings to Eligible Purchasers in order to access Equity Loan Funding shall continue (subject to earlier termination) until the Second Year 8 Longstop Date provided that Homes England's obligation to pay Equity Loan Funding pursuant to Condition 7.13 in respect of any Eligible Dwelling shall continue provided:
- 2.1.1 the date of legal completion of any such sale of an Eligible Dwelling takes place on or before the Second Year 8 Longstop Date; and
- 2.1.2 such sale is otherwise in accordance with the terms of the Agreement.
- 3. Equity Loan Funding – Agreed Conditions**
- 3.1 On the disposal of an Eligible Dwelling to an Eligible Purchaser under the Help to Buy Initiative and upon the

Eligible Purchaser entering into the Equity Mortgage so as to covenant (inter alia) to pay the Contribution Percentage in substitution for paying the Agency Contribution:

- 3.1.1 the Agency Contribution will be deducted from the Full Purchase Price; and
- 3.1.2 the Developer agrees to sell (or procure the sale of) the Eligible Dwelling to the Eligible Purchaser for the Full Purchase Price which shall be treated as satisfied by payment of the Reduced Purchase Price and the entering into of the Equity Mortgage by the Eligible Purchaser.
- 3.2 The Developer acknowledges and agrees that the Equity Loan Funding is made available by Homes England solely for the purpose of assisting Eligible Purchasers to purchase Eligible Dwellings on equity mortgage terms pursuant to the Help to Buy initiative. The parties have entered into this Agreement:
 - 3.2.1 to enable the payment of such Equity Loan Funding which is properly due and payable to Eligible Purchasers directly to the Developer on a per unit basis;
 - 3.2.2 enable the parties to agree and monitor forecasts for the availability of the Developer's Eligible Dwellings for purchase under the Help to Buy Initiative; and
 - 3.2.3 to assist Homes England with the monitoring and projections of spend.
- 3.3 Not used.
- 3.4 Not used.
- 3.5 Not used.
- 3.6 In the absence of the Developer or its solicitor being placed on notice to the contrary the Developer shall not be responsible for verifying the due completion of the Equity Mortgage and the relevant Condition Precedent shall be treated as satisfied if the Developer obtains an undertaking in favour of its solicitor (from the legal advisor acting for the Eligible Purchaser and its Approved Lender) that the Solicitor's Form 2 has been duly provided to the Nominated Help to Buy Agent PROVIDED THAT (if required by Homes England) the Developer shall use all reasonable endeavours procure that the undertaking which has been received by its solicitor is enforced and complied with.
- 3.7 The parties hereby agree that the Forecast Details for each Year represent the Developer's estimate of the potential demand for the Help to Buy Initiative from potential purchasers in relation to their Eligible Dwellings and that, subject to any changes agreed pursuant to Condition 8, the Developer shall use reasonable endeavours to promote and market the Help to Buy Initiative in order to achieve the Forecast Number of Sales for each Area by the relevant Second Longstop Date in each Year.

4. Payment and repayment

4.1 Calculation of Contributions

Subject to Condition 4.4 Homes England shall contribute by way of a loan to an Eligible Purchaser no less than 10% (ten per cent) but no more than 20% (twenty per cent) of the Market Value of the Eligible Dwelling for a Non London Area Dwelling and no less than 10% (ten per cent) but no more than 40% (forty per cent) for a London Area Dwelling depending on the outcome of the eligibility and financial assessment of the Eligible Purchaser by the Nominated Help to Buy Agent.

4.2 Pricing and Progress

4.2.1 The Developer shall dispose of all Eligible Dwellings at no more than Market Value. In determining as estimated Market Value for the purposes of marketing the Eligible Dwellings the Developer shall act in good faith and shall not make any distinction between dwellings being disposed of to Eligible Purchasers and dwellings being disposed of to other buyers.

4.2.2 In the case of the disposal of any Eligible Dwelling to an Eligible Purchaser the Developer shall procure:

- (a) that the Full Purchase Price is no more than the Market Value for that Eligible Dwelling;
- (b) that no Incentives are provided or allowed other than Permitted Incentives; and
- (c) that (unless required by the relevant Qualifying Lender) the Eligible Purchaser is not required to pay a deposit upon exchange of contracts which exceeds 5% (five per cent) of the Full Purchase Price and/or a reservation fee in excess of £500 (and (subject to the requirements of the relevant Qualifying Lender) where appropriate the Developer shall in consultation with the Nominated Help to Buy Agent limit the deposit to such lesser amount as is reasonably affordable by the Eligible Purchaser having regard to the amount of cash savings available to that Eligible Purchaser on a case by case basis).

4.3 Continuation of obligation to make Contributions

Notwithstanding any Developer Default, the parties acknowledge and agree that Homes England's obligation to pay the Agency Contribution shall continue to apply in relation to any Eligible Purchaser who has exchanged contracts, provided that the sale of the Eligible Dwelling to such Eligible Purchaser completes prior to the Second Year 8 Longstop Date and otherwise in accordance with the terms of this Agreement.

4.4 No obligation to pay Equity Loan Funding

Subject to Condition 4.3, Homes England shall have no obligation to make any payment of Equity Loan Funding to the Developer and shall be entitled to terminate this Agreement in whole or part or exercise any other available remedy in accordance with Condition 12 upon the occurrence of a Developer Default.

4.5 Repayment of Equity Loan Funding

Homes England reserves the right (which right the Developer expressly acknowledges and agrees) to recover the Equity Loan Funding or any part thereof on demand together with any accrued interest in accordance with Clause 5 of the Agreement

4.6 Non-compliant contracts with purchaser

The Developer hereby agrees that in the event it enters into any contract with an Eligible Purchaser for the purchase of a Dwelling using the Help to Buy Initiative and the Developer is not eligible to receive Equity Loan Funding in relation to such transaction (whether as a result of a Developer Default or otherwise) then the Developer shall unconditionally release the Eligible Purchaser from such contract and return to them any deposit and/or reservation fee paid by that Eligible Purchaser.

5. Warranties and Covenants

5.1 As at the date of the Agreement, on each day the Developer calls for a payment of Equity Loan Funding pursuant to Condition 7.13 (by reference to the facts and circumstances then existing) the Developer makes the representations and warranties set out in terms of the Warranties to Homes England.

5.2 Each of the Warranties shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.

5.3 All warranties (including the Warranties), representations, undertakings, indemnities and other obligations made, given or undertaken by the Developer in this Agreement are cumulative and none shall be given a limited construction by reference to any other.

5.4 The Developer shall indemnify and keep indemnified Homes England from and against any liabilities and Losses incurred by Homes England as a result of any breach of any of the Warranties.

5.5 Homes England will take all reasonable steps to mitigate any Losses incurred by it as a result of any breach of any of the Warranties.

6. Developer Obligations

6.1 Marketing

6.1.1 Prior to undertaking any marketing in respect of Help to Buy, the Developer shall ensure it is in a position to comply with the Advertising Requirements in respect of the Equity Mortgage;

6.1.2 The Developer shall procure that:

- (a) all potential purchasers of Eligible Dwellings (who are introduced to it or who introduce themselves) are provided with the Standard Literature;
- (b) no representations about Help to Buy or its suitability for Eligible Purchasers are made or permitted to be made by or on its behalf save as set out in the Standard Literature; and

(c) in no circumstances shall the Developer itself approve or determine the eligibility of any potential purchaser for Help to Buy nor restrict any Eligible Purchaser's ability to consult an independent financial and/or legal advisor.

6.1.3 The Developer shall procure that any advertisement issued by or on its behalf which makes reference to Help to Buy or the assistance available from Homes England shall comply with the Advertising Requirements;

6.1.4 The Developer shall procure that it takes its own legal advice in relation to complying with the Advertising Requirements;

6.1.5 The Developer shall procure that Homes England and the Nominated Help to Buy Agent have up to date information in respect of the marketing of Eligible Dwellings and current availability and that such information is supplied in a manner which enables it to be uploaded directly onto any web site maintained by the Nominated Help to Buy Agent;

6.1.6 The Developer shall also procure that the information referred to in Condition 6.1.5 is also made available on request to other Local Help to Buy Agents who are appointed in respect of Help to Buy;

6.1.7 In marketing and selling the Eligible Dwellings to Eligible Purchasers:

(a) the Developer acknowledges that it will be responsible for site specific marketing of the Dwellings and for the avoidance of doubt the Nominated Help to Buy Agent will not be responsible for marketing the Dwellings on the Developer's behalf; and

(b) the Developer shall use all reasonable endeavours to cooperate with the Nominated Help to Buy Agent in relation to the disposal of the Eligible Dwellings to Eligible Purchasers;

6.1.8 Where an Eligible Purchaser wishes to reserve any Dwelling more than nine (9) months prior to the anticipated date of completion of the disposal (or where this is not known, the anticipated date of Practical Completion), such reservation shall only be permitted on the basis that and the Developer shall ensure that:

(a) the Property Information Form and reservation form in relation to any such Dwelling shall not be completed or submitted by the Eligible Purchaser more than ten (10) months prior to the anticipated legal date of completion of the disposal (or where this is not

known, the anticipated date of Practical Completion); and

- (b) without prejudice to Condition 7.9, the Developer shall not exchange contracts with the Eligible Purchaser more than six (6) months prior to the anticipated legal completion date of the disposal (and only with the benefit of a valid Authority to Proceed and Authority to Exchange) and the actual legal completion date of the disposal must not be more than six (6) months from the date of exchange.

6.2 Compliance with legislation

The Developer shall ensure that in exercising its rights and performing its obligations under this Agreement and in selecting and appointing any subcontractor it shall at all times comply with:

- 6.2.1 all applicable Legislation (including but not limited to legislation relating to health and safety, welfare at work, equality and diversity, anti-bribery, minimum and living wages, modern slavery and other relevant employment matters);
- 6.2.2 the Regulations; and
- 6.2.3 Good Industry Practice;

7. Procedure for receiving payment of Equity Loan Funding

- 7.1 The Developer shall procure that all potential purchasers of Eligible Dwellings (who are introduced to it or who introduce themselves to the Developer) are notified of the availability of Help to Buy in respect of such Eligible Dwellings.
- 7.2 The Developer shall work with the potential purchaser in order to fully complete the Property Information Form and the Developer shall ensure that the completed form is supplied to the Nominated Help to Buy Agent. The Developer shall ensure that the potential purchaser is notified of the contents of the declaration contained in the Property Information Form prior to signing the form, particularly in relation to:
- 7.2.1 the obligation to ensure that all information provided on the Property Information Form is accurate and true; and
- 7.2.2 the provision of the potential purchaser's prior consent to Homes England paying the Equity Loan Funding directly to the Developer in accordance with the terms of this Agreement
- 7.3 The Developer and Homes England shall use all reasonable endeavours to put in place (in so far as practicable) arrangements to ensure that any potential purchaser and their proposed purchase are subject to a full assessment by the Nominated Help to Buy Agent for eligibility (subject to full consideration of their formal application via the Property Information Form).
- 7.4 The Developer shall be entitled to require a potential purchaser to make a reservation of an Eligible Dwelling

at the point of completing the Property Information Form provided that it is acknowledged that:

- 7.4.1 both the Developer and the potential purchaser shall be entitled to withdraw an Eligible Dwelling from a reservation to an Eligible Purchaser prior to exchange of contracts on the same terms as would be applied to any other buyer; and
- 7.4.2 (if the Authority to Proceed is not issued within five (5) Business Days of receipt of the fully completed Property Information Form by the Nominated Help to Buy Agent or the Nominated Help to Buy Agent confirms that an Authority to Proceed authorising the Eligible Purchaser to proceed with the purchase will not be issued) either the Developer or the potential purchaser shall be entitled to withdraw such Eligible Dwelling from the reservation and the Developer agrees to return any reservation fee (which shall be no greater than £500) to the potential purchaser.
- 7.5 Homes England shall use reasonable endeavours to procure that the Nominated Help to Buy Agent acts expeditiously when considering any duly completed Property Information Form from a proposed purchaser in respect of an Eligible Dwelling and the Nominated Help to Buy Agent will provide written confirmation to the Developer and to the proposed purchaser whether such proposed purchaser qualifies to proceed to purchase the nominated Eligible Dwelling and if so shall serve upon the Developer and the applicant's legal advisor the Authority to Proceed within five (5) Business Days of receipt of the Property Information Form containing the required property details stating or confirming:
- 7.5.1 whether such potential purchaser qualifies as an Eligible Purchaser;
- 7.5.2 the Full Purchase Price;
- 7.5.3 the Agency Contribution and the Contribution Percentage; and
- 7.5.4 the Reduced Purchase Price; and
- 7.5.5 any additional cash monies that the Eligible Purchaser proposes or will be required by the Nominated Help to Buy Agent or the relevant Qualifying Lender to use in the purchase.
- 7.6 Homes England shall use reasonable endeavours to procure that at the same time as issuing of an Authority to Proceed, the Nominated Help to Buy Agent shall issue to the Eligible Purchaser's conveyancer:
- 7.6.1 a duly completed Solicitor's Pack; and
- 7.6.2 the completed original Equity Mortgage;
- 7.7 Homes England and the Developer hereby agree to comply with their respective obligations as set out in the Solicitor's Pack.
- 7.8 Homes England shall use reasonable endeavours to procure that the Nominated Help to Buy Agent shall issue an Authority to Exchange to the Eligible

Purchaser's conveyancer (copied to the Developer and Homes England) within five (5) Business Days of receipt of the duly signed Solicitor's Form 1.

7.9 Following receipt of both the Authority to Proceed and the Authority to Exchange the Developer shall proceed to exchange contracts for the sale of the relevant Eligible Dwelling to the Eligible Purchaser within no more than three (3) months after the date of the Authority to Proceed (save where the Authority to Proceed is confirmed by the Nominated Help to Buy Agent to be extended for a further period in which case the extended period shall apply). The contract for sale:

7.9.1 shall include the Requisite Contract Terms; and

7.9.2 shall be on terms that accord with, the Authority to Proceed and the Authority to Exchange; and

7.9.3 shall require completion of the disposal of the Eligible Dwelling to take place within six (6) months of the date of the contract or by the relevant Second Longstop Date for that year (if earlier).

7.10 If exchange does not occur within three (3) months of the Authority to Proceed (or any confirmed period of extension as detailed in Condition 7.9) the Authority to Proceed shall cease to have effect and the Developer shall notify the Nominated Help to Buy Agent.

7.11 Following exchange of contracts to dispose of an Eligible Dwelling to an Eligible Purchaser the Developer shall forthwith provide to the Nominated Help to Buy Agent a copy of the contract together with written confirmation of:

7.11.1 the date of exchange;

7.11.2 the proposed (or anticipated) date of completion of the disposal; and

7.11.3 the amount of the Equity Loan Funding payable to the Developer on completion of the disposal of that Eligible Dwelling.

7.12 Homes England shall use reasonable endeavours to procure that the Nominated Help to Buy Agent shall issue a Transaction Confirmation to the Developer following receipt of the Solicitor's Form 2 in relation to the relevant Eligible Dwelling from the Eligible Purchaser's Solicitor.

7.13 The Developer may within three (3) Business Days of the exchange of contracts for the sale of an Eligible Dwelling to an Eligible Purchaser (but in any event no later than twelve (12) Business Days prior to the anticipated date of completion of such sale), call on Homes England through IMS for the transfer of the Equity Loan Funding equivalent to the Agency Contribution for such Eligible Dwelling to an interest bearing client account of the Developer's Solicitor and Homes England shall transfer such Equity Loan Funding no later than such anticipated completion date notwithstanding the fact that the Conditions Precedent may not have been satisfied in respect of the relevant Eligible Purchaser and the relevant Eligible Dwelling PROVIDED THAT the Developer has confirmed on IMS:

7.13.1 the date of exchange of the relevant disposal;

7.13.2 the proposed (or anticipated) completion date of the relevant disposal;

7.13.3 the level of the Agency Contribution; and

7.13.4 the identity of the Eligible Dwelling and the Eligible Purchaser.

7.14 Interest at the Prescribed Rate shall accrue on the Equity Loan Funding paid pursuant to this Condition from the date of payment to the Developer up to and including the date of completion of the sale of the Eligible Dwelling to the Eligible Purchaser or the date of repayment of the Equity Loan Funding to Homes England (as applicable) and shall, save where otherwise directed by Homes England, be paid to the Developer.

7.15 The Developer shall procure that the Developer's Solicitor provides one undertaking in respect of all Areas to Homes England to hold any monies received from Homes England pursuant to Condition 7.13 to the strict order of Homes England until such time as (subject to Condition 3.6) the Conditions Precedent in respect of the relevant Eligible Dwelling are met and the Developer's Solicitor has received confirmation from the Nominated Help to Buy Agent that Conditions Precedent 2.1.6 (a), (b) and (c) have been satisfied in respect of that Eligible Dwelling provided always that Homes England shall not be required to transfer any funds to the Developer's Solicitor without receipt of such an undertaking.

7.16 Save where expressly agreed in writing in advance by Homes England (in its absolute discretion) the Developer shall in no circumstances be entitled to receive payments of Equity Loan Funding in any Area which in aggregate exceeds the Equity Loan Funding Projected Capacity for that Area.

7.17 The Developer acknowledges that prior to exchange of contracts to dispose of an Eligible Dwelling to an Eligible Purchaser Homes England or the Nominated Help to Buy Agent may by notice in writing withdraw the Authority to Proceed or issue a revised Authority to Proceed in which case the initial Authority to Proceed for the Eligible Dwelling shall cease to have effect.

7.18 For the avoidance of doubt, in the absence of the written consent of Homes England (in its absolute discretion), the Developer shall return the relevant Equity Loan Funding received (together with all accrued interest from the date of payment to the Developer until the date of repayment to Homes England) to Homes England where:

7.18.1 the Conditions Precedent have not been satisfied by the contractual completion date for the relevant disposal; or

7.18.2 within two (2) Business Days of the Developer becoming aware that the relevant disposal of an Eligible Dwelling to an Eligible Purchaser is no longer proceeding; or

7.18.3 where Equity Loan Funding is repayable pursuant to Condition 7.21.

7.19 The Developer acknowledges that Homes England will require the Eligible Purchaser's conveyancer to provide

the Nominated Help to Buy Agent with evidence of the Eligible Purchaser's mortgage valuation and mortgage offer from an Approved Lender and to comply with other terms relating to the appointment of the Eligible Purchaser's conveyancer before the Eligible Purchaser's conveyancer is authorised to exchange contracts for the acquisition of an Eligible Dwelling.

7.20 The Developer shall notify the Nominated Help to Buy Agent forthwith upon it becoming aware that a sale of an Eligible Dwelling to an Eligible Purchaser is no longer proceeding and shall provide details of any reservation fee retained.

7.21 The Developer shall notify the Nominated Help to Buy Agent and update the relevant sections of IMS forthwith upon it becoming aware that the proposed (or anticipated) completion date confirmed pursuant to Condition 7.13 is delayed and where Equity Loan Funding has been paid pursuant to Condition 7.13 and such delay is anticipated by the Developer to exceed ten (10) Business Days such Equity Loan Funding shall be returned in accordance with requirements of Condition 7.18. In such circumstances, provided the revised completion date will comply with the requirements of Condition 7.9, the Developer may reapply for payment of Equity Loan Funding pursuant to Condition 7.13.

7.22 If the Developer fails to comply with condition 7.13 within 3 months from the date of completion of the relevant Eligible Dwelling Homes England reserves the right at its discretion (which shall be final) not to make any payment of the Equity Loan Funding to the Developer,

8. Changes to Forecast Details and Additional Areas

8.1 Using the information provided by the Developer pursuant to Condition 13 together with any relevant information supplied to Homes England (whether by the Developer, the Nominated Help to Buy Agent or otherwise) Homes England shall, following consultation with the Developer, keep the Forecast Details under review and shall revise the Forecast Details (if required) in accordance with any of the procedures set out in Conditions 8.2 to 8.5.

8.2 Agreed changes to the Forecast Details

The parties may from time to time agree changes to the Forecast Details in respect of individual Areas (and in seeking to agree any such changes both parties shall act reasonably and with regard to any published written briefing notes or guidance issued by Homes England relating to the substitution of Eligible Dwellings) and if such changes are agreed they shall be implemented through the amendment by the Developer of the relevant sections on IMS and the electronic confirmation of that amendment by Homes England through IMS.

8.3 Increasing the Forecast Numbers in existing Areas

Where the parties agree that an Area is suitable for the Developer to put forward additional Dwellings to be made available to Eligible Purchasers for the provision of Equity Loan Funding and/or changes to the Forecast Number for that Area:

8.3.1 Homes England may agree to increase the Equity Loan Funding Forecast Capacity; and/or

8.3.2 the Parties may agree such changes as required to the Forecast Number for that Area.

and the parties shall effect such agreement in accordance with Condition 8.2.

8.4 Proposals for Additional Areas

The Developer shall be entitled at Homes England's invitation from time to time to submit proposals for additional Eligible Dwellings to be made available in order for Eligible Purchasers to access Equity Loan Funding in any Additional Areas and where Homes England is satisfied that:

8.4.1 the Developer's proposals in relation to the Additional Area:

- (a) comply with the requirements of the Help to Buy Initiative;
- (b) can be developed by the First Longstop Date for the relevant Year;
- (c) can be disposed of by the Second Longstop Date for the relevant Year; and
- (d) satisfy any other conditions which Homes England may wish to impose;

8.4.2 the Developer's performance in sales and marketing as against its projections in respect of other Areas has been of an acceptable standard; and

8.4.3 the Developer has complied with the terms of this Agreement (including any agreed variations to the same)

Homes England shall be entitled (but not obliged) to agree an Equity Loan Funding Projected Capacity and to make available Equity Loan Funding for Eligible Purchasers in relation to the Developer's proposed Eligible Dwellings for such Additional Area. Where Homes England allocates funding for an Agency accepted Additional Area, it shall confirm such acceptance by the provision of such funding through IMS and the Dwellings in such Area shall thereafter be subject to the provisions of this Agreement.

8.5 Agency led changes to the Forecast Details

8.5.1 Homes England may at any time assess progress of reservations and sales for an Area in relation to any Year taking into account:

- (a) the Forecast Number;
- (b) the number and frequency of sales and/or reservations to date; and
- (c) the time remaining until the relevant Second Longstop Date for that Year;

and, if (in Homes England's reasonable opinion) the Developer is unlikely to achieve the Forecast Number of sales in any Area prior to the relevant Second Longstop Date for

that Year, Homes England may specify a revised Forecast Number of sales (based on the above factors) and reduce the Equity Loan Funding Projected Capacity accordingly.

8.5.2 If the overall demand from purchasers in relation to the Help to Buy Initiative is less than the forecast demand across an Area or a number of Areas, Homes England (acting reasonably) may at any time (subject always to Condition 4.3) confirm a reduction in the Equity Loan Funding Projected Capacity for that Area or those Areas.

8.5.3 The parties hereby agree that any changes notified to the Developer by Homes England pursuant to this Condition 8.5 shall be implemented through the amendment by the Developer of the relevant sections on IMS and the electronic confirmation of that amendment by Homes England through IMS.

9. Help to Buy and Post Sales Agents

9.1 The parties acknowledge that Homes England has appointed a Post Sales Agent in relation to Eligible Dwellings which are subject to current Equity Mortgages.

9.2 The Developer shall co-operate with and provide, as expeditiously as possible, assistance and all required information to the Local Help to Buy Agent and/or the National Help to Buy Agent (as applicable).

9.3 Homes England shall use all reasonable endeavours to procure that the Local Help to Buy Agent and/or the Post Sales Agent (as applicable) acts expeditiously and provides all reasonable assistance and co-operation to the Developer.

10. State Aid

If Homes England is required pursuant to the Decision of the Commission of the European Communities published on 20 December 2011 in relation to public sector compensation granted to certain undertakings entrusted with the operation of services of general economic interest to recover any amount of overcompensation (as described in the Decision) Homes England will be entitled to recover any such amount from the Developer.

11. Variations

Save to the extent expressly stated to the contrary, any addition, variation or amendment to this Agreement shall only be binding if made in writing and signed by a duly authorised representative of each party.

12. Developer Default

12.1 On or after the occurrence of any Developer Default, Homes England (acting reasonably) shall notify the Developer in writing whether it considers the Developer Default to constitute a Developer Area Default.

12.2 Where a Developer Default is classified as a Developer Area Default Homes England shall be entitled, by notice in writing and with immediate effect, to exercise any or all of the following rights and remedies:

12.2.1 (where applicable) to suspend further Equity Loan Funding in relation to the relevant Area (save to the extent Condition 4.3 applies); and/or

12.2.2 to require repayment within 10 (ten) Business Days of any Equity Loan Funding paid in whole or part in relation to the relevant Area (save to the extent secured on an Eligible Dwelling pursuant to the Equity Mortgage or to which Condition 4.3 applies).

12.3 On or after the occurrence of any Developer Default which is not covered by Condition 12.2 above, Homes England shall be entitled by notice in writing and with immediate effect, to exercise any or all of the following rights and remedies:

12.3.1 to terminate this Agreement in full;

12.3.2 to suspend all further Equity Loan Funding payments (save to the extent Condition 4.3 applies); or

12.3.3 to require repayment within 10 (ten) Business Days of any Equity Loan Funding paid in whole or part in relation to any Area (save to the extent secured on an Eligible Dwelling pursuant to the Equity Mortgage or to which Condition 4.3 applies);

12.4 In relation to the exercise by Homes England of its rights in Conditions 12.2 or 12.3 the Developer shall pay on demand all Homes England's losses incurred as a result of the Developer Default (whether or not this Agreement is terminated) including any costs incurred by Homes England in investigating any Developer Default which has occurred.

13. Monitoring, Notifications, Reviews and Reporting

13.1 The Developer shall with effect from the date of this Agreement, submit to Homes England:

13.1.1 via IMS, any changes required from time to time to the Annual Forecast not later than the last working day of each calendar month, during the currency of this Agreement; and

13.1.2 an Annual Forecast no later than ten (10) Business Days following 28 February of the year prior to the period to which the Annual Forecast relates;

during the term of this Agreement.

13.2 The Developer shall notify Homes England immediately of:

13.2.1 any anticipated delays in an Area in achieving such Sales and Marketing Forecasts;

13.2.2 reasons for, and actions to mitigate, any underperformance;

13.2.3 any breach of any obligation or warranty under this Agreement or change in warranted information;

13.2.4 any Significant Event;

- 13.2.5 any matter or event which may entitle Homes England to terminate this Agreement in whole or in part; and
- 13.2.6 any other issue requested on reasonable notice by Homes England (including without limitation at a previous meeting).
- 13.3 Homes England may call a meeting with the Developer (to discuss the Annual Forecast, progress as to its submission, any other matter relating to this Agreement or the arrangements between the parties) at any time provided that Homes England:
- 13.3.1 gives reasonable prior written notice of such meeting; and
- 13.3.2 includes with the notice (or circulates within ten (10) Business Days of the notice) an agenda for such meeting.
- 13.4 Homes England and the Developer shall use all reasonable endeavours to ensure that any representatives at any meeting held pursuant to this Condition 13 have the necessary authority and knowledge to deal with the items on the agenda for such meeting.
- 13.5 Subject to the prior approval of the other party (such approval not be unreasonably withheld) either party may request that additional persons attend a meeting to provide detailed or particular advice or information.

14. Developer's records and accounting

- 14.1 The Developer shall, as and when requested by Homes England whether before or after the date of payment of the Equity Loan Funding or any part thereof, make available on an Open Book basis and in a timely manner to Homes England where required in connection with this Agreement or the Eligible Dwellings a copy of each of:
- 14.1.1 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 Developer for the purposes of this Agreement; and
- 14.1.2 all such data, materials, documents and accounts created, acquired or brought into existence by the Developer's officers, employees, agents or consultants relating to the Eligible Dwellings and which have been supplied to the Developer for the purposes of this Agreement.
- 14.2 **The Developer shall at all times:**
- 14.2.1 maintain a full record of particulars of all sale details (including valuations) and receipts received in respect of all Eligible Dwellings sold under Help to Buy;
- 14.2.2 when required to do so by Homes England, provide a summary of any information referred to in Condition 14.2.1 as Homes England may require to enable it to monitor the performance by the Developer of its obligations under this Agreement; and

- 14.2.3 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 Condition.

- 14.3 Compliance with the above shall require the Developer to keep (and where appropriate shall procure that any subcontractor shall keep) separate books of account (from those relating to any business, activity or operation carried on by the Developer and/or subcontractor and which do not directly relate to any Eligible Dwelling) in accordance with good accountancy practice with respect to all the Eligible Dwellings showing in detail:

- 14.3.1 income (including sales receipts);
- 14.3.2 valuations;
- 14.3.3 the amount of the Agency Contribution on each sale of an Eligible Dwelling;
- 14.3.4 amount of Equity Loan Funding received (and any repaid to Homes England); and
- 14.3.5 such other item as Homes England may require to conduct (itself or through a third party) cost audits for verification of income, cost expenditure or estimated expenditure, for the purpose of any of the provisions of this Agreement;

and the Developer shall have (and procure that to the extent expressly agreed the subcontractors shall have) the books of account evidencing the items listed in this condition 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.

- 14.4 On the expiry of this Agreement or (if earlier) upon termination thereof, the Developer shall if requested to do so deliver up to Homes England all the data, materials, documents and accounts referred to in this Condition 14 which it has in its possession, custody or control and shall procure the handing over to Homes England such data, materials, documents and accounts referred to in Condition 14.1.2 or as otherwise directed by Homes England.
- 14.5 The Developer must for a period of 10 (ten) years from the date upon which it receives any Equity Loan Funding retain all of the data, documents, materials and accounts referred to in this Condition 14 and the Developer may retain such data, documents, materials and accounts in electronic form only which may for the avoidance of doubt comprise copies where the originals have been supplied to Homes England pursuant to Condition 14.4.

15. Information and confidentiality

15.1 Confidentiality

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

15.1.2 Each party agrees to treat and to use all reasonable endeavours to procure that any relevant Group Company shall treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.

15.1.3 The obligations of confidence referred to in Condition 15.1.2 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.

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

- (a) to enable the disclosing party to perform its obligations under this Agreement or any Equity Mortgage; or
- (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Developer 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 advisor of that party

who also has an obligation to keep any such Confidential Information confidential; or

- (e) to meet reasonable information requests from Approved Lenders (or the Approved Lenders' professional advisors or insurance advisors) to the extent that such disclosure is necessary to the performance of this Agreement.

15.1.5 The Developer 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 Group Companies, 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 Developer shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

15.1.6 Nothing in this Condition 15 shall prevent Homes England:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of Homes England's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources; or
- (b) disclosing any Confidential Information obtained from the Developer:-
 - (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 or any person conducting an Office of Government Commerce gateway review;

(c) provided that in disclosing information under Condition 15.1.6(b)(i), ii), iii) or iv) Homes England discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.1.7 Nothing in this Condition 15 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

15.1.8 The obligations in this Condition 15.1 will survive the expiry or termination of this Agreement and each Equity Mortgage for a period of 2 years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.

15.2 Freedom of Information

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

15.2.2 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 Developer 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 unless otherwise expressly authorised to do so by Homes England.

15.2.3 Subject to Condition 15.2.4 below, the Developer acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:-

(a) without consulting the Developer or

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

15.2.4 Without in any way limiting Conditions 15.2.2 and 15.2.3, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Developer.

15.2.5 The Developer will assist and co-operate with Homes England as requested by Homes England to enable Homes England to comply with its obligations to disclose Information under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its Group Companies agents contractors and sub-contractors will), at their own cost:

(a) transfer any Request for Information received by the Developer or any Group Company (as applicable) to Homes England as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;

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

15.2.6 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 FOIA and / or EIR in relation to any Exempted Information.

15.3 Publication of information before Parliament

The parties acknowledge that the National Audit Office has the right to publish details of the Agreement in its relevant reports to Parliament.

15.4 Information on IMS

15.4.1 The Developer shall on or before the date of this Agreement enter into Homes England's standard user licence agreement in relation to the use of IMS.

15.4.2 The Developer shall keep the information stored on IMS updated on no less than a weekly basis in respect of the forecasting of the future claims for Equity Loan Funding and shall promptly (and in accordance with Condition 7.13) enter claims for Equity Loan Funding following exchange of contracts in respect of any purchase of an Eligible Dwelling by an Eligible Purchaser.

15.4.3 The Developer shall comply with any standards and/or procedures prescribed by Homes England in relation to the use of IMS and shall ensure that all information submitted to IMS is accurate in all material respects (and continues to be accurate).

16. Open Book

The Developer shall be responsible for proving the accuracy of any facts or figures referred to in this Agreement and the Developer shall prove (where requested to do so) the accuracy of any such facts or figures on an Open Book basis to the reasonable satisfaction of Homes England.

17. Value Added Tax

17.1 The Parties understand and agree that the Equity Loan Funding provided by Homes England under this Agreement is not consideration for any supply for Value Added Tax (VAT) purposes whether by the Developer or otherwise.

17.2 If, notwithstanding the agreement and understanding of the Parties as set out in Condition 17.1 above, it is determined that the Equity Loan Funding is consideration for a supply for VAT purposes, the Equity Loan Funding shall be treated as inclusive of any VAT.

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

18. Dispute resolution

18.1 All disputes and differences arising out of or in connection with this Agreement (a Dispute) shall be resolved pursuant to the terms of this Condition 18.

18.1.1 In the event that the Developer 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 Condition 18.

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

18.1.3 Where either no representatives of both parties are available to meet within the period set out in Condition 18.1.2 or the representatives fail to agree a unanimous resolution of the Dispute at such meeting, the Dispute shall be referred to the chief executives (or nominated deputies) of the Developer and Homes England (the Chief Executives).

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

18.1.5 If the Dispute remains unresolved after ten (10) Business Days following referral to the Chief Executives, such Dispute must be dealt with in accordance with Condition 18.2.

18.2 In the circumstances contemplated in Condition 18.1.5, 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:

18.2.1 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.

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

18.2.3 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.

19. No agency

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

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

20. Assignment and sub-contracting

- 20.1 Homes England will be entitled to transfer or assign all or part of this Agreement.
- 20.2 The Developer will not be entitled to transfer or assign all or part of this Agreement.

21. Exclusion of third party rights

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

22. Entire agreement

- 22.1 This Agreement and the conditions herein contained together with the Schedules and Annexes constitute the entire agreement between the parties and may only be varied or modified in writing by agreement duly executed on behalf of the parties.
- 22.2 The Developer hereby acknowledges that save as set out or referred to in the Agreement there are and have been no representations made by or on behalf of Homes England of whatsoever nature on the faith of which the Developer is entering into this Agreement.

23. Notices

- 23.1 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, (but not by facsimile or 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 as either party may from time to time notify to the other in writing provided that such other address is within England and Wales.
- 23.2 Any notice shall be deemed to be given by the sender and received by the recipient:
- 23.2.1 if delivered by hand, when delivered to the recipient;
- 23.2.2 if delivered by the Recorded Delivery Service, three (3) Business Days after delivery including the date of postage;

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

24. Severability

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

25. Cumulative rights and enforcement

Any rights and remedies provided for in this Agreement whether in favour of Homes England or the Developer are cumulative and in addition to any further rights or

remedies which may otherwise be available to those parties.

26. Waiver

- 26.1 The failure of any party at any one time to enforce any provision of this Agreement in no way affects its right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
- 26.2 Where in this Agreement any obligation of a party is to be performed within a specified time that obligation shall be deemed to continue after that time if the party fails to comply with that obligation within the time.
- 26.3 Any waiver or release of any right or remedy of either party must be specifically granted in writing signed by that party and shall:
- 26.3.1 be confined to the specific circumstances in which it is given;
- 26.3.2 not affect any other enforcement of the same or any other right; and
- 26.3.3 (unless it is expressed to be irrevocable) be revocable at any time in writing.

27. Public relations and publicity

The Developer shall ensure that Homes England's requirements from time to time in relation to public relations and publicity as notified to the Developer from time to time or otherwise as included in the Regulations are observed and implemented in respect of each Eligible Dwelling.

28. Data Protection

- 28.1 For the purposes of this Condition "Personal Data", "Data Processor", "Data Subject", "Data Controller", "Personal Data Breach", "Data Protection Officer" "Processing" 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 Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

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

Law relating to the processing of personal data and privacy;

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;

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

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

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.

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

Sub-processor means any third Party appointed to process Personal Data on behalf of Homes England related to this Agreement.

28.2 This Condition 28 applies where the Developer is Processing Personal Data on behalf of Homes England and shall be of no effect where the Developer is acting as a Data Controller (including as Joint Controllers) under Data Protection Legislation, and for the avoidance of doubt nothing in this Clause 28 shall operate so as to prevent or prohibit the Developer 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.

28.3 Homes England and the Developer acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Data Controller and the Developer is the Data Processor. The only processing that the Developer is authorised undertake on behalf of Homes England is detailed in Schedule 6 of this Agreement and may not be determined by the Developer. Nothing in this Condition 28 will prohibit the Developer 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.

28.4 The Developer 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:

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

28.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the performance of this Agreement;

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

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

28.5 The Developer 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 Agreement.

28.6 The Developer undertakes that to the extent that the Developer 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 this Agreement, it will at all times comply with the provisions of the Data Protection Legislation.

28.7 For the purposes of this Agreement, where the Developer is Processing Homes England's Personal Data on behalf of Homes England, it shall:

28.7.1 at all material times have in place and maintain Protective Measures which have been reviewed and approved by Homes England as appropriate to protect against a Data Loss Event having taken into account:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures

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 and/or accessing their manual and/or automated information systems;

28.7.2 only process Personal Data in accordance with Schedule 6 unless the Developer is required by Law or any Regulatory Body. Where the Developer is relying on such requirements as the basis for processing Personal Data, the Developer shall promptly notify Homes England of this before performing the Processing unless such

- requirements prohibit the Developer from so notifying Homes England;
- 28.7.3 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 no less onerous than those set out in this Condition 28, in all contractual arrangements with any Sub-processor engaged by the Developer;
 - (c) Provide Homes England with such information regarding the Sub-processor as Homes England may reasonably require.
- For the avoidance of doubt, the Developer shall remain fully liable for all acts or omissions of any Sub-processor.
- 28.7.4 allow Homes England (and or its designated auditors) to audit the Developer's compliance with the requirements of this Condition 28 on reasonable notice and/or, at Homes England's request, provide Homes England with evidence of the Developer's compliance with the obligations within this Condition 28.
- 28.8 The Developer 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 without prejudice to Condition 28.3 the Developer shall be entitled to disclose Homes England's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Developer to perform its obligations under this Agreement, or to the extent required under a court order subject always to compliance with Condition 28.9.
- 28.9 In respect of the Developer Personnel, the Developer shall:
- 28.9.1 take reasonable steps to ensure the reliability and integrity of any Developer Personnel who have access to the Personal Data;
 - 28.9.2 ensure that all Developer Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, have provided a confidentiality undertaking to the Developer or Sub-processor in relation to the same and comply with the obligations set out in this Condition 28;
 - 28.9.3 ensure that none of Developer 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 Agreement;
 - 28.9.4 ensure that the Developer 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 Developer under the Data Protection Legislation and this Agreement;
 - 28.9.5 ensure that the Developer Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 6);
- 28.10 The Developer shall:
- 28.10.1 provide a written description of the technical and organisational methods employed by the Developer for processing Personal Data (within the timescales required by Homes England); and
 - 28.10.2 not Process Personal Data outside the European Economic Area without the prior written consent of Homes England and, where Homes England consents to a transfer, to ensure:
 - (a) the Developer has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or the Law Enforcement Directive (*Directive (EU) 2016/680*) Article 37) as determined by Homes England;
 - (b) the Data Subject has enforceable rights and effective legal remedies in relation to such Personal Data;
 - (c) the Developer 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.
- 28.11 The Developer 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, to the Developer shall:
- 28.11.1 co-operate with Homes England to ensure and demonstrate that the Developer has appropriate technical and organisational measures in place to assist Homes England to comply with any Data Subject Request;
 - 28.11.2 notify Homes England immediately 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 Agreement;

(iv) any other complaint, communication or request relating to Homes England's obligations under the Data Protection Legislation;

(v) a request from and third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

(b) if it becomes aware of a Data Loss Event;

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 Developer's obligation to notify under this Condition shall include the provision of further information to Homes England in phases, as details become available;

28.12 Taking into account the nature of the processing, the Developer shall provide Homes England with full assistance in relation to either the Developer's or Homes England's obligations under Data Protection Legislation and any complaint, communication or request made pursuant to Condition 28.11 (and in so far as possible within the timescales reasonably required by Homes England) including by promptly providing Homes England:

28.12.1 with full details of the complaint, communication or request;

28.12.2 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;

28.12.3 at its request, with any Personal Data it holds in relation to a Data Subject

28.12.4 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.

28.13 The Developer shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation. The Developer shall notify Homes England immediately if it considers that any of Homes England's instructions infringe the Data Protection Legislation.

28.14 If the Developer 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 Developer shall:

28.14.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;

28.14.2 notify Homes England of the suspected incident and the findings of the Developer's initial investigation without undue delay after becoming aware of that event, and in any event within 24 hours of becoming so aware. The Developer shall take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England.

28.14.3 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

28.14.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.

28.15 The Developer shall maintain complete and accurate records and information to demonstrate its compliance with this Condition. This requirement does not apply where the Developer employs fewer than 250 staff, unless Homes England determines that the processing:

28.15.1 is not occasional;

28.15.2 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

28.15.3 is likely to result in a risk to the rights and freedoms of Data Subjects.

28.16 The Developer 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 Developer's destruction of and/or damage to any of Homes England's Personal Data processed by the Developer, Developer Personnel, Sub-processor, or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this Condition 28 by the Developer, Developer Personnel, or Sub-processor.

28.17 The Developer shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Developer's Processing of Homes England's Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to Homes England's Personal Data and in the defence or management of any enforcement

action or assessment by the Information Commissioner or any other competent authority in relation thereto and in any event within the timescales set out in this Agreement.

28.18 The Developer 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 Agreement or such time that the Developer no longer requires access to Homes England's Personal Data for the purposes of performing its obligations under this Agreement, in so far as the Developer is able to take into account its own data retention requirements and, unless the Developer is required by Law to retain the Personal Data.

28.19 Homes England may, at any time on not less than 30 working days' notice, revise this Condition by replacing it with any applicable controller to processor standard Conditions or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

28.20 The Developer and Homes England agree to take account of any guidance issued by the Information Commissioner's Office. Homes England may on not less than 30 working days' notice to the Developer amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

29. Co-operation

29.1 Each party undertakes to co-operate in good faith with the other to facilitate the proper performance of this Agreement and in particular will (subject to Condition 29.2):

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

29.1.2 not interfere with the rights of the other party (nor its employees, agents, representatives, contractors or subcontractors) in performing its obligations under this Agreement nor in any other way hinder or prevent the other party (nor its employees, agents, representatives, contractors or subcontractors) from performing those obligations provided that this provision shall not prevent either party from exercising its express rights under this Agreement or any other agreement in relation to the Dwellings.

29.2 Nothing in Condition 29.1 shall:

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

29.2.2 relieve either party from any obligation contained in this Agreement.

29.3 Without prejudice to the generality of the foregoing the Developer shall co-operate fully and in a timely manner with any reasonable request from time to time:

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

29.3.2 of Homes England where Homes England is required under any legislation to provide any document relating to the Dwellings to any person.

29.4 The Developer will not, and will use all reasonable endeavours to procure that its suppliers and sub-contractors will not, knowingly do or omit to anything in relation to the Help to Buy Initiative, the Dwellings or in the course of their other activities that may bring the standing of Homes England into disrepute or attract adverse publicity for Homes England.

29.5 No Party will publish any statement, orally or in writing, relating to the other Party which might damage that other Party's reputation or that of any of its officers or employees.

30. Anti-bribery

30.1 The Developer shall:

30.1.1 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");

30.1.2 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;

30.1.3 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").

30.1.4 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 30.1.2, and will enforce them where appropriate;

30.1.5 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 Developer in connection with the performance of this Agreement;

30.1.6 if required by Homes England, produce a written certificate to it signed by an officer of the Developer, confirming compliance with

this clause 30 by the Developer and all persons associated with it under clause 30.2. The Developer shall provide such supporting evidence of compliance as Homes England may reasonably request.

- 30.2 The Developer shall ensure that any person associated with the Developer 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 Developer in this clause 30 ("Relevant Terms"). The Developer 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.
- 30.3 Breach of this condition 30 shall be deemed to constitute a Developer Default.
- 30.4 For the purpose of this clause 30, 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 30 a person associated with the Developer includes but is not limited to any subcontractor of the Developer.

31. Governing law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of Condition 18 the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

32. No fetter on statutory functions

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

33. Survival of this agreement

- 33.1 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.
- 33.2 Insofar as any of the obligations of the Developer provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement shall survive and remain in full force and effect notwithstanding such termination or expiry.

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