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Homes and Communities Agency (trading as Homes England)

and

[Lead Partner]

and

[Other Original Consortium Members]

and

[Other Original Consortium Members]

Grant Agreement (Consortium)

in relation to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement

Homes England

Housing.Contracts@homesengland.gov.uk

CONSAHP2126004

OFFICIAL

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Grant Agreement

Date

Parties

- (1) **Homes and Communities Agency** (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**);
- (2) [] [a registered society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 (with FCA registration number [])] [a company (with registered number [])] [and a charity (with registered charity number [])] [limited liability partnership registered in England and Wales (with number [])] whose registered office is at [] (the **Lead Partner**); and
- (3) [] [a registered society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 (with FCA registration number [])] [a company (with registered number [])] [and a charity (with registered charity number [])] [limited liability partnership registered in England and Wales (with number [])] whose registered office is at [], [] [a registered society as defined in Section 1 of the Co-operative and Community Benefit Societies Act 2014 (with FCA registration number [])] [a company (with registered number [])] [and a charity (with registered charity number [])] [limited liability partnership registered in England and Wales (with number [])] whose registered office is at [] (together with the Lead Partner, each an **Original Consortium Member**) (and collectively the **Original Consortium Members**).

Introduction

- (A) Homes England is empowered under Section 19 of the Housing and Regeneration Act 2008 inter alia, to make grants available to facilitate the development and provision of housing.
- (B) The Original Consortium Members have submitted a bid to Homes England for grant funding to assist them in the delivery of affordable housing.
- (C) Homes England has agreed in response to the Consortium's bid to advance grant funding to the Consortium (as subsequently defined) pursuant to Homes England's Affordable Homes Programme 2021-2026 (**AHP 2021/26**) in an initial amount of £[] to facilitate the delivery of certain affordable housing schemes subject to and in accordance with the terms of this Agreement. Further grant funding may be made available to the Consortium pursuant to the AHP 2021/26 to facilitate the delivery of further affordable housing schemes subject to and in accordance with the terms of this Agreement.
- (D) All grant funding paid by Homes England to the Consortium pursuant to this Agreement is social housing assistance as defined in Section 32(13) of the Housing and Regeneration Act 2008.
- (E) The grant funding provided under this Agreement is (at its date) made in compliance with the United Kingdom Competition Requirement.

- (F) In using the grant funding provided under this Agreement each Consortium Member must comply with the applicable requirements of the Capital Funding Guide, the Recovery Determination and the information submitted and approved on IMS.
- (G) Each Consortium Member that is an RP Provider has been entrusted with the public service obligation and assigned the task of providing social housing in England by virtue of it registering as a provider of social housing with the Regulator as the same is provided for under the Housing and Regeneration Act 2008.
- (H) The purpose of the grant provided under this Agreement is to fund affordable housing. The parties acknowledge and agree that no Subsidy therefore arises in respect of any LA Scheme as the local authority is an emanation of the state discharging a public function.

1 Definitions and interpretations

1.1 Definitions

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

Acceptance Date means the date upon which Homes England accepts a scheme for the Delivery of AHP Housing in IMS pursuant to:

- (a) clause 5.1 (*Firm Schemes*);
- (b) clause 9.4 (*Firm Scheme substitution and additions*); or
- (c) clause 9.11 (*Firm Scheme substitution and additions*);

Acquisition Date means the date identified in IMS on which the Relevant Consortium Member is forecast to possess (and does possess) a Completed Interest;

Acquisition Stage means (where applicable) the Relevant Consortium Member possesses a Completed Interest;

Acquisition Tranche Grant means subject to clause **Error! Reference source not found.** (*Firm Schemes*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of the Acquisition Stage with respect to the relevant Firm Scheme;

Actual Development Costs means in respect of each Firm Scheme the amount of Development Costs actually incurred by the Relevant Consortium Member in Delivering that Firm Scheme as such amount is warranted and certified by the Lead Partner pursuant to clause 14.3.2(d) (*Grant Claim Procedures*);

Additional Scheme means a scheme for the Delivery of AHP Housing proposed by the Lead Partner in addition to the Original Schemes;

Additional Tranche Grant means each sum approved by Homes England in IMS pursuant to clause 14.7 (*Grant Claim Procedures*) in relation to a Firm Scheme;

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

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

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

Agreed Purposes means the purposes for which each of the AHP Dwellings is to be used as such purposes are described in the Firm Scheme Details;

Agreement means this grant agreement (including its Schedules);

Agreement Funding means any funding given by Homes England to the Lead Partner on behalf of the Consortium under the provisions of this Agreement;

AHP 2021/26 means the programme described in the guidance issued by Homes England on this website: <https://www.gov.uk/guidance/apply-for-affordable-housing-funding> (as the same may be supplemented, amended or updated from time to time);

AHP 2021/26 Funds means grant funding made available pursuant to the AHP 2021/26;

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

AHP Housing means housing provided by the Consortium pursuant to this Agreement that will be made available:

- (a) in respect of any Firm Scheme other than an Approved Scheme:
 - i permanently on Shared Ownership Lease terms;
 - ii on Rent to Buy terms for a period of not less than five (5) years from the point at which such housing first becomes available for letting;
 - iii permanently at an Affordable Rent; or
 - iv permanently at a Social Rent; and
- (b) in respect of any Approved Scheme, as Approved Housing;

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

Allocated Capital Grant means the maximum amount of capital grant payable by Homes England to the Lead Partner (on behalf of the Consortium) in respect of the Approved Capital Bid and identified in IMS as the total "funding requested" within the "Profiles" (as the same may be amended from time to time in accordance with the terms of this Agreement);

Allocation Change Notice means a notification submitted by Homes England under clause 12.3 (*Review, Monitoring and Reporting*);

Alternative Interest means such interest in land permitted by Homes England (in its absolute discretion) in writing in respect of a Firm Scheme (other than a Single Claim Scheme) pursuant to clause 14.9 (*Grant Claim Procedures*);

Applicable Tranche means:

- (a) with respect to a Single Claim Scheme, the Total Grant Tranche; and
- (b) with respect to any Firm Scheme other than a Single Claim Scheme, the Tranche identified on IMS as payable once the Relevant Consortium Member has achieved the Relevant Claim Stage;

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

Approved Housing means in respect of any:

- (a) Empty Homes Scheme, AHP Rent Dwellings;
- (b) HOLD Scheme, HOLD Housing; and
- (c) OPSO Scheme, OPSO Housing;

Approved Scheme means an Empty Homes Scheme, a HOLD Scheme or an OPSO Scheme (as the context requires);

Approved Standard means:

- (a) in respect of an Empty Homes Scheme, the Decent Homes Standard; and
- (b) in respect of a HOLD Scheme and/or OPSO Scheme, the HOLD / OPSO Standard;

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

Bid Default means Homes England determines (acting reasonably) that proper and sufficient progress against the Consortium's projections in the Approved Capital Bid has not been made by the Consortium in delivering the Approved Capital Bid;

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

Building Contract means a contract entered into between the Relevant Consortium Member and a Building Contractor relating to the construction, repair, refurbishment, conversion, development and/or Rehabilitation (as applicable) of a Firm Scheme;

Building Contractor means any building contractor or developer appointed or to be appointed by the Relevant Consortium Member in respect of a Firm Scheme;

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

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

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

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

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

CEDR means the Centre for Effective Dispute Resolution;

Change in Control means:

- (a) in respect of a Consortium Member that is an RP Provider, a change in control, which means the power of a person (or persons acting together) to secure that the affairs of another are conducted directly or indirectly in accordance with the wishes of that person (or those persons acting together) which in the case of a corporate body shall include:
 - i being the beneficial owner of more than 50% of the issued share capital, membership rights or voting rights in that corporate body; or
 - ii having the right to appoint or remove a majority of the board of management; or
 - iii otherwise controlling the votes at board meetings of that corporate body by virtue of any powers conferred by:
 - A the corporate body's governing document;
 - B any shareholder or members' agreement; or
 - C any other document regulating the affairs of that corporate body; or
- (b) in respect of a Consortium Member that is an LA Provider, such Consortium Member will be subject to a process of local government re-organisation approved by the Secretary of State which results in another local authority obtaining the legal capacity, power and authority to become a party to and to perform the obligations of it under this Agreement;

CIPFA means the Chartered Institute of Public Finance and Accountancy;

Competent Authority means (as the case may be):

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

Completed Firm Scheme means (notwithstanding the operation of clause 18.2.13 (*Repayment of Grant*)) a Firm Scheme in relation to which Homes England has paid the total Firm Scheme Grant;

Completed Interest means a Secure Legal Interest which:

- (a) is a SLI (Excused); or
- (b) meets the description in limbs (a), (b) or (c) of the definitions of SLI (SO Accommodation) or SLI (Rented Accommodation);

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

- (a) the Relevant Consortium Member holds a Completed Interest; and
- (b) each AHP Dwelling comprised within the Firm Scheme is fit for beneficial occupation as a residential development in accordance with applicable NHBC or equivalent requirements current at the date of any required inspection and meets the Submitted Standards, the Strategic Objectives and the terms of this Agreement,

and **Complete** shall be construed accordingly;

Completion Authority means a written irrevocable authority from each Consortium Member authorising Homes England to complete a Deed of Release or a Deed of Adherence (as applicable) following the execution of such a deed by Homes England;

Completion Date means the date identified in limb (a) of the definition of Firm Scheme Completion Date;

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

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

Confidential Information means in respect of Homes England all information relating to Homes England's business and affairs, its employees, suppliers including IMS systems, data and software programs and otherwise relating to the existence or terms of this Agreement in respect of which any Consortium Member becomes aware in its capacity as a party to this Agreement or which is received by any Consortium Member in relation to this

Agreement from either Homes England or any of its advisers or from any third party if the information was obtained by that third party directly or indirectly from Homes England or any of its advisers 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 Consortium Members means such specific information as the Lead Partner shall have identified to Homes England in writing prior to the date hereof as confidential information for the purposes of this Agreement;

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

Consortium means the Consortium Members jointly;

Consortium Member Affiliate means a third party whose relationship with the Relevant Consortium Member falls within limb (b) or (c) (as applicable) of the definition of Consortium Member Party;

Consortium Member Party means:

- (a) the applicable Consortium Member, the Building Contractor, any member of the Professional Team, agent, employee or Subcontractor of that Consortium Member and the Lead Partner's Representative;
- (b) where the Consortium Member is an RP Provider any subsidiary or holding company of that Consortium Member or any subsidiary to any such holding company as subsidiary and holding company are defined in Section 1159 of the Companies Act 2006; and
- (c) where the Consortium Member is an LA Provider any subsidiary, associate or joint venture in which the local authority has a material interest sufficient to require group financial statements to be prepared which account for these interests, in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom 2017/18 (as amended or updated) which is the Statement of Recommended Practice on local authority accounting or any code or other document which replaces it as the Statement of Recommended Practice;

Consortium Members means subject to clauses 7.11 (*Changes to Firm Schemes or the Consortium*), 7.12 (*Changes to Firm Schemes or the Consortium*) and 19.8 (*Default Events and Termination*) the Original Consortium Members and any New Consortium Member and Consortium Member shall be construed accordingly;

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

Continuing Firm Scheme means a Firm Scheme (other than one in relation to which a Removed Consortium Member is the Landlord) in respect of which:

- (a) Start on Site has or will have occurred at the date of the expiry of the notice period referred to in clause 19.4.2 (*Default Events and Termination*) or at the date of the expiry of the period referred to in clause 19.6.2 (*Default Events and Termination*) (as applicable); and
- (b) the First Tranche has been paid;

CORE means the national information source "Continuous Recording" that records information on new occupiers of affordable housing and the properties they rent or buy;

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

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

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

Decent Homes Standard has the meaning attributed to it in Schedule 2 (*Empty Homes Schemes*);

Deed of Adherence means the deed referred to in clause 7.13 (*Changes to Firm Schemes or the Consortium*) and substantially in the form set out in Schedule 11 (*Deed of Adherence*) as may be amended or supplemented by Homes England from time to time and which shall be issued by Homes England to the proposed New Consortium Member for execution;

Deed of Release means the deed referred to in clause 7.11 (*Changes to Firm Schemes or the Consortium*) and substantially in the form set out in Schedule 12 (*Deed of Release*) as may be amended or supplemented by Homes England from time to time and which shall be issued by Homes England to the proposed Outgoing Consortium Member for execution;

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

Delivery means the acquisition, development, conversion, refurbishment, repair and/or Rehabilitation (as applicable) of the Site and/or the Firm Scheme and/or AHP Housing (as the context requires) and **Delivered** and/or **Delivering** shall be construed accordingly;

Development Costs means the costs relating to Site acquisition and/or Works in relation to a Firm Scheme incurred or to be incurred in respect of such Firm Scheme by the Relevant Consortium Member in respect of the heads of expenditure set out in Part 1 to Schedule 4 (*Development Costs*) or such other heads of expenditure as Homes England may in its absolute discretion agree in respect of any Firm Scheme **provided that** any costs falling within the heads of expenditure set out in Part 2 to Schedule 4 (*Costs which are not Development Costs*) shall not be capable of being treated as Development Costs;

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

Disposal means, other than a Permitted Disposal, a transaction the effect of which is that the legal or beneficial interest in any AHP Dwelling or property comprised in a Firm Scheme on which any AHP Dwellings have been or are to be developed (as the case may be) transfers to, becomes vested in, is leased to or reverts to another person;

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

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

EIR Exception means any applicable exemption to EIR;

Eligible Dwelling means a dwelling identified in clause 11.7 (*Operational Obligations*) (but not an Exempted Dwelling);

Empty Homes Scheme means a Firm Scheme (other than a GB Scheme) in relation to which the Relevant Consortium Member has acquired or proposes to acquire previously empty dwellings in order to bring them into use as AHP Rent Dwellings by means of their conversion, refurbishment, repair and/or Rehabilitation (as applicable);

Empty Homes Scheme (L&R) means an Empty Homes Scheme where the Relevant Consortium Member holds or will hold a Secure Legal Interest (Empty Homes L&R);

Empty Homes Scheme (P&R) means an Empty Homes Scheme where the Relevant Consortium Member holds or will hold a Secure Legal Interest (Empty Homes P&R);

EU-UK Trade and Cooperation Agreement means the Trade and Cooperation Agreement Between The European Union And The European Atomic Energy Community, Of The One Part, And The United Kingdom Of Great Britain And Northern Ireland, Of The Other Part, Command Paper 426 (Treaty Series No. 8 (2021)), any modifications or supplements to it on or after it came into force, and any statutory instruments made in exercise of the powers conferred by it;

Excused Scheme means:

- (a) an Empty Homes Scheme (L&R); or
- (b) a Firm Scheme comprised of dwellings in respect of which the Capital Funding Guide authorises the Relevant Consortium Member to hold a variant legal interest to that contemplated in this Agreement and such variant legal interest has been approved by Homes England on IMS;

Exempted Dwelling means:

- (a) a Rent to Buy Dwelling;
- (b) an AHP Rent Dwelling which is comprised in an Empty Homes Scheme (L&R); or
- (c) any dwelling which is identified in paragraph 2 of the RTSO Guidance or in Legislation as exempted from the Right to Shared Ownership;

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

Expert means:

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

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

Final Tranche means the final (or in the case of a Single Claim Scheme, only) Tranche which may be claimed once the relevant Firm Scheme has achieved Firm Scheme Completion;

Financial Year means from the date of this Agreement to the next 31 March and thereafter from 1 April to 31 March in each year;

Firm Scheme means each scheme for the development of AHP Dwellings as has been fully detailed in the "Offer Lines" of IMS and accepted by Homes England through IMS as an approved "Offer Line" either:

- (a) in accordance with clause 5.1 (*Firm Schemes*); or
- (b) in accordance with clause 9.4 (*Firm Scheme substitution and additions*) or clause 9.11 (*Firm Scheme substitution and additions*);

Firm Scheme Completion means:

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

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

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

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

Firm Scheme Details means the descriptive and other details in respect of each Firm Scheme accepted by Homes England through IMS (as the same may be varied from time to time in accordance with the terms of this Agreement);

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

First Claim Date means the first date set out in the relevant Firm Scheme Details on which the Lead Partner is entitled to submit a claim for the relevant First Tranche on behalf of the Relevant Consortium Member pursuant to clause 14 (*Grant Claim Procedures*);

First Tranche means the first (or in the case of a Single Claim Scheme, only) Tranche which may be claimed by the Lead Partner (on behalf of the Relevant Consortium Member) once the Relevant Consortium Member has achieved the Relevant Claim Stage;

Flex Scheme means a Firm Scheme which Homes England has approved on IMS as a "CME Flex Scheme";

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

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

FOIA Exemption means any applicable exemption to FOIA;

For Profit Registered Provider means a body entered on the Register as a profit-making organisation as defined in Section 115 of the HRA 2008;

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

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

- (a) an Insolvency Event has occurred in relation to a Consortium Member;
- (b) a Consortium Member that is an LA Provider is subject to a Section 15 Direction which has or will have a Material Adverse Effect;
- (c) a Prohibited Act has been committed by or on behalf of a Consortium Member (in respect of which the Waiver Condition has not been satisfied);
- (d) any Consent necessary to the delivery of the Approved Capital Bid is withdrawn or revoked;
- (e) a Consortium Member ceases operating or trading; or
- (f) a Consortium Member's status as a Registered Provider is lost, removed or relinquished;

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

- (a) the Lead Partner's Investment Partner status is lost, removed or relinquished;
- (b) the Regulator directs or recommends that grant is not to be paid to the Lead Partner or to the Relevant Consortium Member; or
- (c) a Consortium Member (either by its own actions or omissions, or those of its contractors or agents) harms Homes England's reputation or brings Homes England or AHP 2021/26 into disrepute;

Fundamental Termination Amount means the amount calculated by deducting the aggregated amount of all Firm Scheme Grant paid to the Lead Partner pursuant to clause 15.1 (*Payment of Grant*) in relation to all Completed Firm Schemes prior to the Notice Date from the aggregated amount of all Firm Scheme Grant paid to the Lead Partner pursuant to that clause prior to such date;

GB Scheme means a Firm Scheme:

- (a) in respect of which the Relevant Consortium Member holds a Golden Brick SLI;
- (b) in respect of which the Lead Partner has not made any claim for Acquisition Tranche Grant; and
- (c) that is not a Flex Scheme or a Single Tranche Scheme;

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

Golden Brick SLI means the Relevant Consortium Member has in respect of the relevant Site entered into a binding contract with the owner of the legal and beneficial interest in the Site to acquire a Completed Interest in the relevant AHP Dwellings to be constructed on that Site such that:

- (a) the binding contract prescribes that legal completion of the transfer or lease of the Completed Interest to the Relevant Consortium Member shall take place:
 - i no earlier than the point at which the relevant AHP Dwellings constitute partly constructed buildings as defined in paragraph 4.7.4 of HM Revenue & Customs VAT Notice 708; but
 - ii prior to the relevant AHP Dwellings achieving Practical Completion;
- (b) the owner of the legal and beneficial interest in the Site is responsible pursuant to such binding contract for undertaking or procuring the construction of the relevant AHP Dwellings up to the point at which the Completed Interest is to be transferred or leased to the Relevant Consortium Member; and
- (c) the Relevant Consortium Member has or will have by the point at which the Completed Interest is to be transferred or leased to the Relevant Consortium Member contractual arrangements in place (whether as part of such binding contract or pursuant to a separate Building Contract) to undertake or procure the continued construction of the relevant AHP Dwellings to Practical Completion following its acquisition of the Completed Interest; and
- (d) unless otherwise agreed with Homes England (in Homes England's absolute discretion), the Relevant Consortium Member's acquisition of the Completed Interest pursuant to such binding contract is otherwise conditional only upon matters that are in form and substance within reasonable control of either the owner of the legal and beneficial interest in the Site and/or the Relevant Consortium Member;

GW1 Event means the occurrence of any of the following:

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

GW2 Event means any of the following:

- (a) the Lead Partner's Investment Partner status is lost, removed or relinquished;

- (b) the Regulator directs or recommends that Capital Grant is not to be paid to the Lead Partner or to the Relevant Consortium Member;
- (c) the Lead Partner fails to procure the delivery of all the AHP Housing which the Consortium was committed to deliver under the Approved Capital Bid by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS); or
- (d) a Section 114 Report has been made in relation to a Consortium Member that is an LA Provider which in Homes England's opinion has or will have a Material Adverse Effect;

GW3 Event means any of the following:

- (a) an Insolvency Event occurs in relation to a Consortium Member;
- (b) a Prohibited Act has been committed by or on behalf of a Consortium Member (in respect of which the Waiver Condition has not been satisfied);
- (c) the Consortium Member ceases operating or trading;
- (d) a Consortium Member's status as a Registered Provider is lost, relinquished or removed or Homes England becomes aware that such status will be or is likely to be lost, relinquished or removed;
- (e) any Consent necessary to deliver the Approved Capital Bid is withdrawn or revoked;
- (f) a Consortium Member (either by its own actions or omissions, or those of its contractors or agents) harms Homes England's reputation or brings Homes England or AHP 2021/26 into disrepute; or
- (g) a Section 15 Direction has been made in relation to a Consortium Member that is an LA Provider which in Homes England's opinion has or will have a Material Adverse Effect;

HOLD / OPSO Standard has the meaning attributed to it in Schedule 3 (*HOLD Schemes and OPSO Schemes*);

HOLD Housing means a new build dwelling or existing dwelling purchased on the open market to assist people with a long-term disability to purchase a home more suitable for their needs on Shared Ownership Lease terms;

HOLD Scheme means a Firm Scheme identified in IMS as comprising HOLD Housing;

Home Ownership Agency Arrangement means any scheme or arrangement promoted by Homes England from time to time in order to facilitate the process surrounding applications for Shared Ownership Dwellings;

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

Homes England Senior Officer means the Director of Affordable Housing Grants;

Housing Acts means the Housing Act 1985 and/or the Housing Act 1988 and/or the Housing Act 1996 and/or the HRA and/or Housing and Planning Act 2016 or any other acts or enablement's relating to the provision or regulation of housing;

HRA 2008 means the Housing and Regeneration Act 2008;

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

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

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

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

Indicative First Claim Date means the last day of the Quarter set out in the relevant Indicative Scheme Details by which the Lead Partner is forecast to submit a claim for the First Tranche on behalf of the Relevant Consortium Member for any resulting Firm Scheme;

Indicative Scheme means a prospective Firm Scheme identified on IMS within an indicative "Offer Line" on IMS as an Indicative Scheme, being:

- (a) a prospective Empty Homes Scheme in respect of which the Lead Partner expects to secure Firm Scheme status;
- (b) a prospective HOLD Scheme in respect of which the Lead Partner expects to secure Firm Scheme status; or
- (c) a Firm Scheme which does not fall under limbs (a) or (b) which Homes England may in its absolute discretion agree may be uploaded onto IMS by the Lead Partner as an Indicative Scheme;

Indicative Scheme Details mean the descriptive and other details in respect of each Indicative Scheme described in IMS and as accepted by Homes England through IMS as the same may be varied from time to time in accordance with the terms of this Agreement;

Information has the meaning in relation to:

- (a) the FOIA, given under Section 84 of the FOIA and which is held by Homes England or any Consortium Member (as appropriate) at the time of receipt of a Request for Information; and
- (b) EIR, given under the definition of environmental information in Regulation 2 of the EIR and which is held by Homes England or any Consortium Member (as appropriate) at the time of receipt of an Request for Information;

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

Insolvency Event means the occurrence of any of the following in relation to any Consortium Member that is an RP Provider:

- (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 and/or any moratorium pursuant to Section 145 of the HRA 2008;
- (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 creditors;
 - iii the appointment of a liquidator (other than in respect of a solvent liquidation on terms previously approved by Homes England, such approval not to be unreasonably withheld or delayed), receiver, administrative receiver, housing administrator, administrator, compulsory manager or other similar officer;
 - iv enforcement of any Security over any of its assets;
 - 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 of its assets which has a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme;

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

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

Know Your Customer Information means the information identified in the Homes England "know your customer" documentation as pertaining to the Lead Partner and each Consortium Member and their "Directors, Decision Makers or equivalent" or any other "know your customer" or comparable information identified by Homes England in connection with the Lead Partner's Investment Partner application or status or the terms of this Agreement;

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

LA Scheme means a Firm Scheme in respect of which an LA Provider is or will be the Landlord;

Landlord means the Consortium Member that has the Secure Legal Interest and who is or will be the landlord of the tenants of the AHP Dwellings comprised in the relevant Indicative Scheme or Firm Scheme (as applicable);

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

Legal Opinion means a legal opinion in the form set out in Schedule 10 (*Legal Opinion*) given:

- (a) where the Relevant Consortium Member is an LA Provider, by its solicitor and dated on or prior to the date of this Agreement; or
- (b) in the case of a New Consortium Member that is an LA Provider, by its solicitor and dated on or prior to the completion date of the Deed of Adherence;

Legislation means:

- (a) any Act of Parliament;
- (b) any delegated or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;
- (c) any exercise of the Royal Prerogative;
- (d) rule of court or directives or requirements of any Regulatory Body or notice of any Regulatory Body;

in each case in the United Kingdom; and

- (e) any regulations, orders, bye-laws, regulatory policy, guidance or codes of practice of any local, statutory or regulatory body or any competent authority (as the case may be) having jurisdiction over the territory in which the Firm Scheme is situated;

Local Housing Authority means a principal council (as defined in Section 270 of the Local Government Act 1972) or any body of government in England established as a successor to principal councils exercising the functions of a local housing authority in whose

administrative area the relevant Firm Scheme is being delivered by the Relevant Consortium Member;

Material Adverse Effect means the effect of any event or circumstance which is reasonably likely to be materially adverse to the ability of any Consortium Member to deliver its element of the Approved Capital Bid, an Indicative Scheme or a Firm Scheme (as the context requires) on the basis agreed under this Agreement and/or within the time limits (if any) for doing so;

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

Milestone means each stage in the Delivery of the Firm Scheme agreed by the parties in IMS (including (as applicable) the Acquisition Stage, Start on Site and Firm Scheme Completion);

Milestone Date means the date agreed by Homes England through IMS by which the relevant Milestone must have been achieved (as the same may be varied by Homes England pursuant to clause 8.1 (*Time extensions*));

Milestone Extension Event means any of the following:

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

- (j) any:
 - i official or unofficial strike;
 - ii lockout;
 - iii go-slow; or
 - iv other dispute,

generally affecting the house building industry or a significant sector of it;

- (k) the appointment of the Building Contractor under the Building Contract has been terminated or the Building Contract has been terminated (where applicable); or
- (l) any material failure by the Building Contractor under the terms of the Building Contract (where applicable) which has the direct result of delaying the Relevant Consortium Member's compliance with a Milestone Date and which did not result from the Relevant Consortium Member's failure effectively to manage the Building Contract; or
- (m) any impediment, prevention or default, whether by act or omission by Homes England except to the extent caused or contributed to by any default, whether by act or omission, of the Relevant Consortium Member,

unless:

- A any of the events arise (directly or indirectly) as a result of any wilful or negligent default or wilful or negligent act of the Relevant Consortium Member or, save in respect of the event referred to in (k) above, any of its Subcontractors of any tier; or
- B in respect of the event referred to in (f) above, such event arises as a result of any failure by the Relevant Consortium Member (whether wilful or otherwise) to notify the relevant statutory undertaker or utility company of the requirement for works or services to be completed by the date required to enable the Relevant Consortium Member to complete the Firm Scheme by the Firm Scheme Completion Date;

Milestone Failure means a failure by the Relevant Consortium Member fully to achieve any Milestone by the relevant Milestone Date;

Minimum SO Lease Term means a lease with a term of at least nine hundred and ninety (990) years;

Minimum Unexpired Term means the relevant lease has an unexpired term of, having regard to the acknowledgment set out in paragraph 12 of the Agreed Principles, at least one hundred and twenty five (125) years;

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

MMC Stage means each such stage in the delivery of a MMC Scheme which the parties agree must be achieved pursuant to clause 14.4 (*Grant Claim Procedures*) before the Lead Partner may submit a claim for Firm Scheme Grant on behalf of the Relevant Consortium Member;

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

New Consortium Member means an RP Provider or LA Provider approved by Homes England in writing who delivers to Homes England a Deed of Adherence in accordance with the clause 7.13 (*Changes to Firm Schemes or the Consortium*);

NHBC means the National House-Building Council;

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

Notice Date means the date of the notice served in accordance with clause 19.7 (*Default Events and Termination*);

Notification Failure means in relation to each of clauses 7.3.1 (*Changes to Firm Schemes or the Consortium*), 7.3.3 (*Changes to Firm Schemes or the Consortium*), 7.5.1 (*Changes to Firm Schemes or the Consortium*) and 7.5.3 (*Changes to Firm Schemes or the Consortium*) a failure by the Lead Partner to advise Homes England within the period specified in the relevant clause as to whether it wishes to proceed with a Firm Scheme or to withdraw it from the Agreement;

Older People's Shared Ownership Lease has the meaning attributed to it in Schedule 3 (*HOLD Schemes and OPSO Schemes*);

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

OPSO Housing means housing (which may include specialised housing and elements of care and support) to assist individuals over fifty five (55) years of age purchase a home more suitable for their needs on Older People's Shared Ownership Lease terms;

OPSO Scheme means a Firm Scheme identified in IMS as comprising OPSO Housing;

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

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

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

Original Scheme means:

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

Outgoing Consortium Member means a Consortium Member complying with the provisions of clauses 7.11 (*Changes to Firm Schemes or the Consortium*) and 7.12 (*Changes to Firm Schemes or the Consortium*);

Permitted Disposal means any of the following:

- (a) the grant of a tenancy compliant with clause 11.5 (*Operational Obligations*) in respect of an AHP Rent Dwelling or a Rent to Buy Dwelling;
- (b) the grant of a Shared Ownership Lease (which, for the avoidance of doubt, does not include the subsequent acquisition by the occupier of an increased share of the equity of the relevant Shared Ownership Dwelling);
- (c) a disposal to a statutory undertaker for the purposes of the supply or transmission (whether exclusively or otherwise) of statutory services to the Site;
- (d) a disposal pursuant to or required by a planning obligation within the meaning of Section 106 or Section 299A of the Town and Country Planning Act 1990 in connection with the Firm Scheme;
- (e) a disposal to a highway authority for the purposes of or in connection with the adoption of roads, footpaths or cycleways on the Site;
- (f) the grant of any mortgage or charge in favour of a commercial or institutional lender;
- (g) the grant of an easement which does not materially prejudice the use or amenity of the AHP Dwellings comprised in the relevant Firm Scheme; or
- (h) any other disposal which Homes England agrees from time to time in writing will be a Permitted Disposal;

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

Planning Condition means any condition attached to or imposed upon any decision by a competent authority to grant planning permission or reserved matters approval under Part III of the Town and Country Planning Act 1990 (including any approvals issued pursuant to conditions);

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

Planning Requirement means a requirement or obligation or duty or restriction arising from:

- (a) an agreement (and any approvals given pursuant to such agreement) in respect of and affecting any AHP Dwelling (or prospective AHP 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 Section 278 of the Highways Act 1980 and/or Section 104 of the Water Industry Act 1991 and/or the Housing Acts (and any other enabling powers) or an agreement with any competent authority or body relating to other similar services including any nominations agreements or similar; and/or
- (b) a Planning Condition;

Planning Scheme means a Firm Scheme where the development of AHP Housing is a Planning Requirement and where the AHP Housing is part of a wider non AHP Housing scheme;

Practical Completion means that stage in the execution of a Firm Scheme when the Works have been completed in accordance with the terms of the relevant Building Contract and/or the terms of this Agreement such that the AHP Dwellings comprised within the Firm Scheme are fit for beneficial occupation as a residential development in accordance with applicable NHBC or equivalent requirements current at the date of any required 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 Firm Scheme and which would be reasonable to include in a snagging list, and **Practically Complete** shall be construed accordingly;

Practical Completion Date means the date identified in limb (b) of the definition of Firm Scheme Completion Date;

Practical Completion Tranche Grant means subject to clause **Error! Reference source not found.** (*Firm Schemes*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of Practical Completion with respect to the relevant Firm Scheme;

Pre-Final Claim Change means a change to a Firm Scheme proposed by the Lead Partner pursuant to clause 7.1 (*Changes to Firm Schemes or the Consortium*) in the period after the payment of the First Tranche but before the payment of the Final Tranche in relation to that Firm Scheme;

Pre-First Claim Change means a change to a Firm Scheme proposed by the Lead Partner pursuant to clause 7.1 (*Changes to Firm Schemes or the Consortium*) in the period prior to the payment of the First Tranche in relation to that Firm Scheme;

Previous AHP Programme means a Previous Programme supporting the delivery of affordable housing;

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

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

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

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

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 a Consortium Member 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 or the Criminal Finances Act 2017; or
- (d) defrauding or attempting to defraud or conspiring to defraud Homes England or the Regulator;

Proposed Indicative Scheme means a scheme proposed by the Lead Partner as an Indicative Scheme which has not yet been accepted by Homes England on IMS;

Public Sector Funding means all funding in relation to a Firm Scheme in money or money's worth (including the Firm Scheme Grant) received or receivable by the Relevant Consortium Member from public sector bodies including for this purpose funding from government bodies (whether national or local), the European Union or bodies in receipt of lottery funds

from the National Lottery Distribution Fund pursuant to the National Lotteries Acts 1993 and 1998 and any further funding by Homes England not provided under this Agreement;

Purchase Point means the date upon which a Shared Ownership Dwelling is sold to its first purchaser or, in relation to a Rent to Buy Dwelling, a date which is not earlier than five (5) years after the point at which such Rent to Buy Dwelling first becomes available for letting;

Quarter means the period between each Quarter Date;

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

RCGF means the Recycled Capital Grant Fund maintained by the Relevant Consortium Member in accordance with the Recovery Determination;

RCGF Dwelling means a dwelling delivered as rental accommodation to which RCGF Proceeds are applied (in whole or in part) on or after 1 April 2021;

RCGF Proceeds means those proceeds of the RCGF utilised by the Relevant Consortium Member in meeting in whole or in part the Development Costs;

RCGF-Only Dwelling means a dwelling delivered as rental accommodation with RCGF Proceeds but to which no Social Housing Assistance has been applied;

Recover has the meaning set out in the Recovery Determination;

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

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

Registered Provider means (as appropriate) an English local authority entered on the Register pursuant to paragraph 3 of the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010 or a body entered on the Register as a profit making and/or a non-profit organisation (as such terms are defined in Section 115 of the HRA 2008);

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

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

Rehabilitated or Rehabilitation or Rehabilitating shall have the meaning ascribed in Section 3.3 (*Rehabilitation Requirements and Scheme Types*) in the Chapter of the Capital Funding Guide entitled "Procurement and scheme issues";

Relevant Authority means any governmental or other authority, court with relevant jurisdiction, the local planning authority, landlord, funder, adjoining landowner or any other

person whose consent is required to undertake the Works necessary to the Delivery of the Firm Scheme or perform the Relevant Consortium Member's obligations under this Agreement;

Relevant Body means:

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

Relevant Claim Date means the date identified in the relevant Firm Scheme Details by which the Relevant Claim Stage must be achieved;

Relevant Claim Stage means:

- (a) the Acquisition Stage;
- (b) Start on Site;
- (c) Firm Scheme Completion;
- (d) (in the case of any MMC Scheme) any applicable MMC Stage; and/or
- (e) (in the case of a claim for Additional Tranche Grant) such stage as is determined by Homes England (in its absolute discretion),

in each case identified on IMS which must be achieved prior to the Lead Partner making a claim for the Applicable Tranche in relation to the relevant Firm Scheme,

Relevant Consortium Member has the meaning given to it in respect of each clause as identified in Schedule 13 (*Relevant Consortium Member – Obligations Matrix*);

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

Relevant FOIA Authority has the meaning ascribed to it in paragraph 9 of Schedule 7 (*Information and Confidentiality*);

Remaining Tranche means any remaining Tranche due to be paid to the Lead Partner in respect of the relevant Firm Scheme;

Remediation Period means thirty (30) Business Days from the date upon which Homes England serves notice on the Lead Partner pursuant to clause 19.7 (*Default Events and Termination*);

Removed Consortium Member means a Consortium Member of the type referred to in clause 19.8.1 (*Default Events and Termination*) or clause 19.8.2 (*Default Events and Termination*);

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

Rent to Buy has the meaning set out in the Capital Funding Guide as at the date of this Agreement;

Rent to Buy Dwelling means an AHP Dwelling let or to be let on Rent to Buy terms;

Rent to Buy Tenant means an individual who fulfils the following criteria:

- (a) is at the time of letting in employment and has demonstrated an intention to buy his/her own home; and
- (b) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling a first time buyer; or
- (c) is at the time of letting and at the time of purchasing a Rent to Buy Dwelling returning to the market following a relationship breakdown and does not own any other residential property;

Replacement Lead Partner means the Consortium Member that assumes the role of the Lead Partner under this Agreement where the provisions of clause 19.8 (*Default Events and Termination*) apply;

Request for Information/RFI shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Indicative Schemes, the Firm Schemes, this Agreement or any activities or business of Homes England or a Consortium Member that is an LA Provider;

Restructure means any merger or de-merger or consolidation or reconstruction or amalgamation or a transfer of its engagements to any person or the acceptance of any transfer of engagements from any person or any other arrangement having an equivalent effect to these;

Review Meeting means a meeting held pursuant to clause 12.6 (*Review, Monitoring and Reporting*) and/or clause 12.7 (*Review, Monitoring and Reporting*);

RIDDOR means Reporting of Injuries Diseases and Dangerous Occurrences Regulations 2013;

Right to Buy means the right to purchase a dwelling at a discount conferred on tenants of local authorities by Part V of the Housing Act 1985;

Right to Shared Ownership means the right for a Tenant to purchase an Eligible Dwelling on Shared Ownership Lease terms as more particularly described in the RTSO Guidance and the Capital Funding Guide;

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

RTB Disposal means a disposal to a tenant of an AHP Dwelling pursuant to the tenant exercising their Right to Buy;

RTSO Guidance means the guidance entitled "Right to Shared Ownership: initial guidance for registered providers" at <https://www.gov.uk/government/publications/right-to-shared-ownership-initial-guidance-for-registered-providers/right-to-shared-ownership-initial-guidance-for-registered-providers> published by MHCLG on 8 September 2020 (as the same may be supplemented, amended or updated from time to time);

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

- (a) the Relevant Consortium Member is unable to make the representations and give the warranties set out in this Agreement (in any case in whole or in part) or is in breach of any representation or warranty set out in such Schedule and there is or is likely to be a resulting Material Adverse Effect in relation to that Firm Scheme;
- (b) the withdrawal or revocation of any Consent required to enable the Relevant Consortium Member to Deliver that Firm Scheme;
- (c) a breach of the Relevant Consortium Member's obligations under any of clause 10 (*Delivery Obligations*) or clause 11 (*Operational Obligations*) other than clause 11.8 (*Operational Obligations*) in relation to that Firm Scheme;
- (d) the exercise by Homes England of its rights under clause 16.1.2 (*Adjustments to Remaining Tranches*) or a failure by the Relevant Consortium Member to agree any adjustment proposed by Homes England to the Firm Scheme Grant pursuant to clause 16.2 (*Adjustments to Remaining Tranches*); **Error! Reference source not found.**;
- (e) the Relevant Consortium Member is in material breach of the Agreement or has otherwise failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Firm Scheme;
- (f) a failure or inability by the Lead Partner or Relevant Consortium Member to comply with the requirements of clause 14 (*Grant Claim Procedures*);
- (g) Start on Site is not achieved by the Start on Site Date and following discussions with the Lead Partner Homes England (acting reasonably) considers that the Firm Scheme is unlikely to reach Firm Scheme Completion by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS);
- (h) the Relevant Consortium Member fails to achieve Firm Scheme Completion by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS); or

- (i) a failure by the parties to agree a revised Firm Scheme Grant figure pursuant to clause 18.3.3 (Repayment of Grant);
- (j) the Relevant Consortium Member does not hold a Golden Brick SLI for a GB Scheme;
- (k) the Relevant Consortium Member does not hold the requisite Alternative Interest previously approved by Homes England in respect of a Firm Scheme; or
- (l) any conditions attached to an Alternative Interest are not satisfied within the relevant timeframe required by Homes England (in its absolute discretion);

Scheme Termination Event means an event which would permit this Agreement to be terminated in relation to one or more particular Firm Schemes pursuant to clause 19.1 (*Default Events and Termination*);

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

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

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

Secure Legal Interest means a:

- (a) SLI (SO Accommodation) with respect to each Firm Scheme (other than an Excused Scheme) which comprises one or more Shared Ownership Dwellings;
 - (b) SLI (Rented Accommodation) with respect to each Firm Scheme (other than an Excused Scheme) which comprises one or more AHP Rent Dwellings or Rent to Buy Dwellings; or
 - (c) SLI (Excused) with respect to each Excused Scheme,
- provided that in each case, where the Relevant Consortium Member possesses:
- (d) the freehold estate and one or more leasehold interests derived from the freehold estate; or
 - (e) more than one leasehold interest in a chain of leases,

in any Firm Scheme, the interest which is the lowest leasehold interest owned by the Relevant Consortium Member in the chain of leases must satisfy limb (a), (b) or (c) above (as applicable); and

- (f) in respect of a GB Scheme, a Golden Brick SLI;

Secure Legal Interest (Empty Homes P&R) means the Relevant Consortium Member has in respect of the Site a SLI (Rented Accommodation) which meets the description set out in limbs (a) to (c) of the definition of SLI (Rented Accommodation);

Secure Legal Interest (Empty Homes L&R) means the Relevant Consortium Member has in respect of the Site a:

- (a) leasehold title where the lease has less than thirty (30) years unexpired duration, registered with title absolute or registered with good leasehold title and in the latter case defective title indemnity insurance in favour of the Relevant Consortium Member with a limit of indemnity to at least the Firm Scheme Grant for that Site; or
- (b) lease of between five (5) and seven (7) years unexpired duration,

provided that in each case, where the Relevant Consortium Member possesses more than one leasehold interest in a chain of leases in the Empty Homes Scheme (L&R), the interest which is the lowest leasehold interest owned by the Relevant Consortium Member in the chain of leases must satisfy limb (a) or (b) above (as applicable);

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

Service of Public Economic Interest has the meaning given to it under the United Kingdom Competition Requirement;

Shared Ownership Dwelling means an AHP Dwelling to be disposed of on Shared Ownership Lease terms;

Shared Ownership Lease means a shared ownership lease that:

- (a) satisfies the definition of "Shared ownership arrangements" as set out in Section 70 of the HRA 2008; and
- (b) meets any applicable requirements of the Capital Funding Guide;

Shared Personal Data means Personal Data shared between Homes England and any Consortium Member for Processing pursuant to this Agreement which is currently anticipated to be limited to Personal Data relating to Homes England employees such as email addresses and contact names and/or data requested pursuant to clause 12.20.2 (*Review, Monitoring and Reporting*);

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

Site means the site identified to Homes England as being the area of land, buildings or dwelling-houses comprised or to be comprised in a Firm Scheme;

SLI (SO Accommodation) means the Relevant Consortium Member has in respect of the Site;

- (a) freehold title registered with title absolute;

- (b) leasehold title registered with title absolute where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the Purchase Point; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has an unexpired term which is sufficient for the Minimum SO Lease Term to be granted at the Purchase Point;

and, in each case defective title indemnity insurance in favour of the Relevant Consortium Member with a limit of indemnity to at least the Firm Scheme Grant for that Site; or

- (d) an Alternative Interest (in respect of which the Relevant Consortium Member has satisfied any conditions (as are then required to be satisfied) imposed by Homes England pursuant to clause 14.10 (*Grant Claim Procedures*)) which allows the Relevant Consortium Member to acquire one of the interests in limbs (a), (b) or (c) by Practical Completion;

SLI (Rented Accommodation) means the Relevant Consortium Member has in respect of the Site;

- (a) freehold title registered with title absolute;
- (b) leasehold title registered with title absolute where the lease has a Minimum Unexpired Term; or
- (c) either:
 - i freehold title registered with possessory title; or
 - ii leasehold title registered with good leasehold title where the lease has a Minimum Unexpired Term,

and, in each case defective title indemnity insurance in favour of the Relevant Consortium Member with a limit of indemnity to at least the Firm Scheme Grant for that Site; or

- (d) an Alternative Interest (in respect of which the Relevant Consortium Member has satisfied any conditions (as are then required to be satisfied) imposed by Homes England pursuant to clause 14.10 (*Grant Claim Procedures*)) which allows the Relevant Consortium Member to acquire one of the interests in limbs (a), (b) or (c) by Practical Completion;

SLI (Excused) means the Relevant Consortium Member has in respect of:

- (a) any Empty Homes Scheme (L&R), a Secure Legal Interest (Empty Homes L&R); and
- (b) any Excused Scheme other than an Empty Homes Scheme (L&R), a legal interest of the length permitted under the Capital Funding Guide and approved by Homes England on IMS;

SO Consultation Outcome means the document entitled New model for Shared Ownership: technical consultation – summary of responses published by MHCLG on 1 April 2021 (as may be supplemented, amended or updated from time to time);

Social Housing has the meaning attributed to it in Section 68 of the HRA 2008;

Social Housing Assistance has the meaning given to it in Section 32(13) of the HRA 2008;

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

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

Specified Default means the occurrence of any of the following:

- (a) a failure by any Consortium Member to comply with its obligations in any of clause 11.8 (*Operational Obligations*), Schedule 6 (*Anti-Bribery and Anti-Corruption*) or clause 12 (*Review, Monitoring and Reporting*) and/or any information supplied in connection with its obligations in clause 12 (*Review, Monitoring and Reporting*), is materially deficient, misleading or inaccurate;
- (b) any Consortium Member is unable to make the representations and give the warranties set out in this Agreement (Representations and Warranties) (in any case in whole or in part) or is in breach of any representation or warranty set out in this Agreement and there is or is likely to be a resulting Material Adverse Effect in relation to the Approved Capital Bid;
- (c) a failure by any Consortium Member to comply with any obligation to pay or repay Homes England any amount due under this Agreement; or
- (d) any Consortium Member is in material breach of the Agreement or has otherwise breached or failed to comply with any term of this Agreement and such breach or failure has or will have a Material Adverse Effect in relation to the Approved Capital Bid;

SPEI Allowable Costs means those costs incurred by the Relevant Consortium Member in providing the AHP Housing as specified in the 'Scheme Costs' tab of the relevant 'Offer Line Sub Product' screen on IMS (calculated using generally acceptable accounting principles) as follows:

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

SPEI Entrustment means the assignment of the specific task of providing and operating the AHP Dwellings as social housing (within the meaning of Section 68 of the Housing and Regeneration Act 2008) under the terms of this Agreement (including Schedule 14 (*SPEI Entrustment*)) and as a Service of Public Economic Interest under the United Kingdom Competition Requirement;

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

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

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

SPEI Revenue means all income (including all Public Sector Funding but excluding Firm Scheme Grant) which the Relevant Consortium Member or Consortium Member Affiliate receives for the purposes of or earns from the AHP Housing;

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

Start on Site means with respect to the relevant Firm Scheme:

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

Start on Site Date means the date identified in IMS on which Start on Site is forecast to be achieved (and has been achieved);

Start on Site Tranche Grant means subject to clause **Error! Reference source not found.** (*Firm Schemes*) (and any variation required or agreed pursuant to the terms of this Agreement) an amount equivalent to such per centum of the Firm Scheme Grant as is approved by Homes England on IMS as payable on achievement of Start on Site with respect to the relevant Firm Scheme;

Start on Site Works means:

- (a) in respect of any:
 - i Empty Homes Scheme; or
 - ii Firm Scheme which comprises Rehabilitation,

the commencement of the physical Works to the Site; and

- (b) in respect of any Firm Scheme which is not identified in the above limbs (a)i or (a)ii:

- i excavation for strip or trench foundations or for pad footings;
- ii digging out and preparation of ground for raft foundations;
- iii vibrofloatation, piling, boring for piles or pile driving;
- iv drainage works specific for the buildings forming part of the Firm Scheme;
or
- v such works of demolition or service diversion as are expressly and strictly contemplated in Section 3 (Grant Claims and payments) in the Chapter of the Capital Funding Guide entitled "Finance";

Strategic Objectives means the strategic objectives (including, inter alia, the use of Modern Methods of Construction and of small to medium-sized enterprise (SME) contractors) applicable to each Firm Scheme as identified in the relevant "Offer Line Sub Product – screen for capture" in IMS;

Subcontractor means any subcontractor appointed by the Relevant Consortium Member to undertake all or part of the Works;

Submitted Standards means:

- (a) in respect of each Firm Scheme the standards submitted by the Lead Partner and referenced in the Firm Scheme Details in IMS in respect of each Firm Scheme; and
- (b) in respect of any Approved Scheme, the applicable Approved Standard;

Subsidy means any direct or indirect financial assistance which:

- (a) arises from the resources of the United Kingdom Government, devolved government, other public authority in the United Kingdom or an emanation of any of these, including:
 - i a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
 - ii the forgoing of revenue that is otherwise due;
 - iii the provision of goods or services, or the purchase of goods or services;
or
 - iv a measure analogous to these;
- (b) confers an economic advantage on one or more economic actors;
- (c) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
- (d) has, or could have, an effect on trade or investment between the United Kingdom and any part of the European Economic Area and/or any other

country or countries which the United Kingdom has entered into a trade agreement with which has provisions in respect of public sector funding arrangements;

Substitute Scheme has the meaning ascribed to it in clause 9.1 (*Firm Scheme substitution and additions*);

SW1 Event means a failure by the Relevant Consortium Member to Deliver the Firm Scheme (other than one comprised within an SW3 Event) in accordance with the Firm Scheme Details or to the Submitted Standards and/or the Strategic Objectives;

SW2 Event means the occurrence of any of the following:

- (a) the Relevant Consortium Member or Lead Partner are unable to give the confirmations or certifications required by IMS or to make the representations and give the warranties referred to in clause 14 (*Grant Claim Procedures*) (in any case in whole or in part); or
- (b) a material breach by the Relevant Consortium Member or the Lead Partner (as applicable) of any obligation under this Agreement in relation to a Firm Scheme (other than one comprised within an SW1 Event or SW3 Event in relation to that Firm Scheme) and which:
 - i the Relevant Consortium Member or the Lead Partner (as applicable) has not taken steps to remedy it to Homes England's satisfaction (acting reasonably); or
 - ii is incapable of remedy;
- (c) any Consent necessary to Deliver the Firm Scheme is revoked or withdrawn;

SW3 Event means a failure by the Relevant Consortium Member to Deliver a Firm Scheme in accordance with the Firm Scheme Delivery Timetable (in circumstances where Homes England did not agree revised Milestone Dates in accordance with clause 8 (*Time extensions*));

Tenancy Standard means the tenancy standard published by the Regulator from time to time pursuant to its power under Section 193 of the HRA 2008;

Tenant means a tenant of an Eligible Dwelling who satisfies the eligibility criteria identified in Section 3 of the RTSO Guidance;

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

Total Termination Event means an event which would permit this Agreement to be terminated as a whole pursuant to clause 19.3 (*Default Events and Termination*), clause 19.5 (*Default Events and Termination*) or clause 19.7 (*Default Events and Termination*);

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

Transparency Obligations means the obligations set out in clause 13 (*Transparency Obligations*);

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

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

Unlawful Subsidy means Subsidy which is in contravention of or is an infringement of the United Kingdom Competition Requirement;

Uplift Amount means an amount of the type described in the Recovery Determination and calculated for the purposes of clause 18.10 (*Repayment of Grant*) in accordance with the methodology set out from time to time in the Capital Funding Guide;

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

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

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

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

Withdrawn Scheme means a Firm Scheme withdrawn by the Lead Partner pursuant to clause 7.3.1 (*Changes to Firm Schemes or the Consortium*);

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

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

1.2 Interpretation

- 1.2.1 Words denoting any gender include all other genders.
- 1.2.2 The singular includes the plural and vice versa.
- 1.2.3 Any reference in this Agreement to any clause, sub-clause, paragraph, schedule or section heading is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or section heading of this Agreement.
- 1.2.4 Any reference to this Agreement or to any other document or publication shall include (except where expressly stated otherwise) any variation, amendment or supplement to or restatement of such document or publication to the extent that such variation, amendment, supplement or restatement is not prohibited under the terms of this Agreement.
- 1.2.5 Any reference to any enactment, order, regulation, determination or similar instrument shall (except where expressly stated otherwise) be construed as a reference to the enactment, order, regulation, determination or instrument as amended, replaced, consolidated or re-enacted.
- 1.2.6 A reference to a **person** includes firms, partnerships and corporate bodies and their successors and permitted assignees or transferees.
- 1.2.7 Headings are for convenience of reference only.
- 1.2.8 A **party** means a party to this Agreement.
- 1.2.9 The words **includes** or **including** are to be construed without limitation.
- 1.2.10 Where any discretion is granted by this Agreement to any party, that party shall be entitled to exercise that discretion freely and without fetter (implied or otherwise)
- 1.2.11 A paragraph in a Schedule shall be construed as reference to a paragraph in that particular Schedule.
- 1.2.12 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.
- 1.2.13 In any case where the consent or approval of Homes England (or any officer of Homes England) is required or a notice is to be given by Homes England, such consent or approval or notice shall only be validly given if it is in writing and signed by (if relevant) the officer stipulated in this Agreement or such other person as

may be specified by Homes England by notice in writing to the Relevant Consortium Member.

- 1.2.14 An obligation to do anything includes an obligation to procure its being done.
- 1.2.15 Any restriction includes an obligation not to permit infringement of the restriction.
- 1.2.16 The terms Site and Firm Scheme include each and every part of it.
- 1.2.17 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.
- 1.2.18 Save where a contrary intention is shown, any reference to Homes England acting reasonably shall be interpreted as requiring Homes England to act in a commercially reasonable manner and any reference to the exercise of a discretion by Homes England shall be construed as permitting Homes England to exercise its discretion freely and without constraint of any kind.
- 1.2.19 If there is any ambiguity or conflict between the implied terms and the express terms of this Agreement then the express terms shall prevail.
- 1.2.20 Each Consortium Member shall in relation to the delivery of its obligations under this Agreement be responsible as against Homes England for the acts or omissions of any Consortium Member Parties as if they were the acts or omissions of the Relevant Consortium Member.
- 1.2.21 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 a Consortium Member 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.
- 1.2.22 In the event of any conflict between the Original Allocated Capital Grant figure set out in IMS (and accepted by Homes England through IMS) and the Original Allocated Capital Grant figure set out in the definition of Original Allocated Capital Grant in this Agreement, the Original Allocated Capital Grant figure set out in IMS shall prevail.
- 1.2.23 Where this Agreement refers to information set out in IMS, this Agreement shall be construed as incorporating such information into its terms.
- 1.2.24 The terms "Allocated Capital Grant" "Original Allocated Capital Grant" and "Firm Scheme Grant" shall (unless the context precludes such interpretation) include every Tranche thereof.

- 1.2.25 Any terms used in the definition of "Subsidy" shall, unless the context requires otherwise, be construed as having the meaning given to them in the United Kingdom Competition Requirement.
- 1.2.26 Any reference to a Section and/or a Chapter of the Capital Funding Guide in this Agreement shall refer to any successor, replacement or amendment of such Section or Chapter from time to time.
- 1.2.27 Where a Consortium Member is directly delivering a Firm Scheme itself and without the use of any Building Contractor, any Subcontractor or a Professional Team, any reference or provision in this Agreement relating to any such person or team shall be disregarded insofar as it relates to that Firm Scheme.
- 1.2.28 Save where an obligation in this Agreement is expressed to be an obligation of the Consortium (in which case the Consortium Members shall be jointly liable for its discharge) liability for the discharge of such obligation will rest with each individual Consortium Member to whom the relevant obligation applies.
- 1.2.29 All confirmations, acknowledgements, submissions and representations made by the Lead Partner to Homes England are (unless made by the Lead Partner in relation to any Firm Scheme in respect of which it is or will be the Landlord) are deemed to be made on behalf of the Relevant Consortium Member or the Consortium as the context requires.

2 Purpose

- 2.1 Homes England has agreed to make the Allocated Capital Grant available to the Consortium to enable it to provide the AHP Housing subject to and in accordance with the terms and conditions of this Agreement.
- 2.2 Each party undertakes to co-operate with the other to facilitate the proper performance of this Agreement and the delivery of the Indicative Schemes and the Firm Schemes.
- 2.3 Each Consortium Member acknowledges the content of the Approved Capital Bid and:
- 2.3.1 shall use all reasonable endeavours to deliver that element of the AHP Housing comprised in the Approved Capital Bid for which it is to be the Landlord; and
- 2.3.2 shall co-operate with the Lead Partner in order to facilitate the Lead Partner's compliance with its obligations under this Agreement in relation to the delivery of the Approved Capital Bid.
- 2.4 The Lead Partner shall:
- 2.4.1 use all reasonable endeavours to procure the delivery of the Approved Capital Bid by the Consortium in accordance with the requirements of this Agreement; and
- 2.4.2 ensure that each Consortium Member is provided with (and continues to be provided with) complete and accurate Indicative Scheme Details and Firm Scheme Details in respect of any Indicative Schemes or Firm Schemes of which they are or will be the Landlord.

3 **Acknowledgements, Representations and Warranties**

- 3.1 Without prejudice to any other term of this Agreement, the parties acknowledge for the purposes of the record that Homes England agreed in response to the Consortium's initial bid under the AHP 2021/26 to advance grant funding to the Lead Partner in an initial amount equal to the Original Allocated Capital Grant to facilitate the delivery of the Original Approved Capital Bid.
- 3.2 Without prejudice to any other term of this Agreement, each Consortium Member:
- 3.2.1 expressly acknowledges the Agreed Principles and agrees to observe them and to be bound by them;
 - 3.2.2 represents and warrants in the terms set out in Part 2A or Part 2B of Schedule 1 (*Acknowledgements, Representations and Warranties*) (as applicable) to Homes England on the date hereof and on each day during the currency of this Agreement; and
 - 3.2.3 acknowledges and agrees that Homes England is relying on such representations and warranties and that each of such warranties and representations shall be separate and independent and, save as expressly provided to the contrary, shall not be limited by reference to any of them or by any other provisions of this Agreement.
- 3.3 Without prejudice to any other term of this Agreement, each Consortium Member that is an RP Provider acknowledges and agrees that it will offer the Right to Shared Ownership in accordance with the requirements of this Agreement, the Capital Funding Guide and the RTSO Guidance.

4 **Indicative Schemes**

- 4.1 The Lead Partner confirms that such details of each Indicative Scheme comprised within the Original Approved Capital Bid as Homes England requires have been uploaded onto IMS by the date of this Agreement.
- 4.2 The Lead Partner shall be entitled to submit Proposed Indicative Schemes to Homes England after the date of this Agreement and where it wishes to do so, it must submit to Homes England through IMS such details of such Proposed Indicative Schemes as Homes England may require.
- 4.3 Homes England shall be entitled to accept or reject the details submitted for any Proposed Indicative Scheme. Where Homes England accepts a Proposed Indicative Scheme into the Approved Capital Bid pursuant to clause 4.2 (*Indicative Schemes*), it shall confirm its acceptance to the Lead Partner through IMS.
- 4.4 If a Proposed Indicative Scheme is accepted by Homes England in IMS pursuant to clause 4.3 (*Indicative Schemes*) then with effect from the date of that acceptance:
- 4.4.1 such scheme shall be deemed to be an Indicative Scheme and becomes subject to the processes set out in clauses 4.4 to 4.10 (inclusive) (*Indicative Schemes*) and clause 5.1.2 (*Firm Schemes*);

- 4.4.2 any details set out by the Lead Partner with respect to such Indicative Scheme in IMS and as confirmed by Homes England in IMS shall be deemed to be the relevant Indicative Scheme Details for the purposes of this Agreement; and
- 4.4.3 the Allocated Capital Grant shall be deemed to be adjusted by the amount of the Indicative Allocation agreed by Homes England in IMS in relation to the new Indicative Scheme.
- 4.5 The Relevant Consortium Member must use all reasonable endeavours to ensure that each Indicative Scheme is worked up so that it is capable of being brought forward as a Firm Scheme by the Indicative First Claim Date.
- 4.6 The Lead Partner must use all reasonable endeavours to ensure that each Indicative Scheme is uploaded onto IMS in accordance with the procedure and timescale set out in clause 5.1.2 (*Firm Schemes*).
- 4.7 The Relevant Consortium Member or the Lead Partner (as applicable) must notify Homes England in writing immediately upon becoming aware of any matter or circumstance which is likely to prejudice its ability to comply with its obligations under clause 4.5 (*Indicative Schemes*).
- 4.8 On receipt of a notice under clause 4.6 (*Indicative Schemes*) or on otherwise becoming aware of any likely delay to an Indicative Scheme becoming a Firm Scheme by the Indicative First Claim Date, Homes England (acting reasonably) shall be entitled to withdraw the relevant Indicative Allocation and in determining whether to pursue any such withdrawal Homes England shall be entitled to take into account such factors as it considers appropriate including:
- 4.8.1 the likely availability of Homes England resources in relation to any delayed Delivery of the prospective Firm Scheme; and
- 4.8.2 the adequacy of the Relevant Consortium Member's performance to date in respect of other Indicative Schemes and Firm Schemes where it is the Landlord.
- 4.9 The Lead Partner shall be entitled to propose changes to any Indicative Scheme at any point prior to the date which is ten (10) Business Days before the Indicative First Claim Date. Any such changes must be communicated to Homes England by the Lead Partner proposing changes to the Indicative Scheme Details through IMS. Homes England shall be entitled at its discretion to:
- 4.9.1 accept the proposed changes, in which case the Lead Partner must ensure that the accepted changes are correctly logged in IMS. The changes shall be deemed to be effective from the point at which they are formally accepted by Homes England in IMS; or
- 4.9.2 reject the proposed changes, in which case the parties will be bound by the Indicative Scheme Details as they existed prior to the changes proposed under this clause 4.9 (*Indicative Schemes*).
- 4.10 If an Indicative Scheme is withdrawn from the Approved Capital Bid the Allocated Capital Grant figure shall be reduced commensurately.

5 Firm Schemes

5.1 The Lead Partner must:

- 5.1.1 not less than five (5) Business Days (or such other period agreed by Homes England in its absolute discretion) prior to the projected First Claim Date ensure that such details of each Original Scheme (other than an Indicative Scheme) as are required by Homes England have been accurately uploaded onto IMS; and
- 5.1.2 (subject to clauses 4.5 (*Indicative Schemes*) to 4.8 (*Indicative Schemes*) (inclusive)) as soon as reasonably practicable and in any event by the Indicative First Claim Date, upload onto IMS (or amend through IMS) such details of each Indicative Scheme as are required in order for Homes England to consider the conversion of such Indicative Scheme to a Firm Scheme for the Delivery of AHP Housing,

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

5.2 In permitting the Lead Partner to submit the details referred to in clause 5.1 (*Firm Schemes*), the Relevant Consortium Member is deemed to represent and warrant to Homes England in relation to each Firm Scheme (where it is the Landlord) that:

5.2.1 the Firm Scheme:

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

5.2.2 it:

- (a) possesses a Secure Legal Interest in the Site;
- (b) has obtained all Consents necessary for the lawful Delivery of the Firm Scheme in accordance with the Firm Scheme Details as are then required; and
- (c) has complied with all applicable requirements of the Capital Funding Guide in relation to the Firm Scheme; and

5.2.3 where the Relevant Consortium Member is an LA Provider, it:

- (a) is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
- (b) has not nor have any of its officers made a Section 114 Report nor is it aware of any circumstances which would give rise to the making of a Section 114 Report.

- 5.3 Homes England has no obligation to make any payment of grant to the Lead Partner in relation to anything other than a Firm Scheme.
- 5.4 Save for Total Grant Tranche, Homes England may at its absolute discretion vary from time to time the percentages attributed to any Tranche in respect of a Firm Scheme save that, no such variation will take effect in relation to any Tranche which has already been paid except for clerical updates to the percentages attributed to any such Tranche solely resulting from the inclusion of any Additional Tranche Grant paid pursuant to clauses 14.7 (*Grant Claim Procedures*) and 14.8 (*Grant Claim Procedures*).
- 5.5 Under no circumstances shall Homes England be obliged to accept any scheme as a Firm Scheme if Homes England (acting reasonably) believes that it does not, will not or is unlikely to have sufficient financial resources available to it (taking account inter alia of its commitments under the AHP 2021/26 or other programme commitments) to provide grant funding in relation to the relevant scheme.
- 6 Empty Homes Schemes, HOLD Schemes and OPSO Schemes**
- 6.1 Where the Consortium Members are Delivering or will Deliver one or more Empty Homes Schemes as part of the Approved Capital Bid, the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations specified in Schedule 2 (*Empty Homes Schemes*) with respect to each such Empty Homes Schemes.
- 6.2 Where the Consortium Members are Delivering or will Deliver one or more HOLD Schemes or OPSO Schemes as part of the Approved Capital Bid, the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations specified in Schedule 3 (*HOLD Schemes and OPSO Schemes*) with respect to each such HOLD Schemes and/or OPSO Schemes (as applicable).
- 7 Changes to Firm Schemes or the Consortium**
- 7.1 The Lead Partner may propose changes to any Firm Scheme (on behalf of the Relevant Consortium Member) at any time prior to the Firm Scheme Completion Date. Any such changes must be proposed via IMS and must take account of any Tranche already received by the Lead Partner.
- 7.2 Where a Pre-First Claim Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the process set out in clause 7.3 (*Changes to Firm Schemes or the Consortium*) unless Homes England agrees that the relevant change may be agreed by some other means.
- 7.3 If Homes England:
- 7.3.1 accepts a Pre-First Claim Change in principle, it shall be entitled to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the proposed change. Where the result of that recalculation is a lower Firm Scheme Grant figure than that set out in the Firm Scheme Details, Homes England will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether the Relevant Consortium Member wishes to withdraw the Firm Scheme from this Agreement or proceed with it on the basis of the

recalculated Firm Scheme Grant figure or to withdraw the proposed a Pre-First Claim Change. If:

- (a) the Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will (subject to any invocation by the Relevant Consortium Member of clause 9.1 (*Firm Scheme substitution and additions*) and any resulting operation of clause 9 (*Firm Scheme substitution and additions*)) withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately;
- (b) the proposed Pre-First Claim Change is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), the Lead Partner shall reinstate in IMS the Firm Scheme Details ante the date of the proposed Pre-First Claim Change and, following Homes England's approval of such reinstated details in IMS, the Firm Scheme shall proceed on the basis of those reinstated Firm Scheme Details;
- (c) the Relevant Consortium Member wishes to proceed with the Firm Scheme, the Lead Partner must immediately amend the Firm Scheme Details in IMS to reflect the Pre-First Claim Change and the recalculated Firm Scheme Grant figure. The amended Firm Scheme Details (together with any adjustments to the sum and percentages of any subsequent Tranche due resulting from the recalculated Firm Scheme Grant figure being lower than the original Firm Scheme Grant figure) will be deemed to be effective from the date of their acceptance by Homes England (through IMS); or
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement.

7.3.2 accepts a Pre-First Claim Change (including any change to the Firm Scheme Grant figure) as proposed by the Lead Partner, it will accept the change through IMS and the relevant Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;

7.3.3 rejects a Pre-First Claim Change, Homes England will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether the Relevant Consortium Member wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:

- (a) the Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will permanently withdraw the Firm Scheme Grant allocated to such scheme and the Allocated Capital Grant figure will be reduced commensurately; or
- (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement and

clause 7.3.3(a) (*Changes to Firm Schemes or the Consortium*) shall apply.

7.4 Where a Pre-Final Claim Change is proposed, Homes England will be entitled to accept or reject such change or to accept it subject to adjustment by Homes England in accordance with the process set out in clause 7.5 (*Changes to Firm Schemes or the Consortium*) unless Homes England agrees that the relevant change may be agreed by some other means.

7.5 If Homes England:

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

- (a) the Firm Scheme is withdrawn by the Lead Partner (on behalf of the Relevant Consortium Member), Homes England will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Relevant Consortium Member must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it (if any), such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (b) the Relevant Consortium Member wishes to proceed with the Firm Scheme, the Lead Partner must immediately amend the Firm Scheme Details in IMS to reflect both the Pre-Final Claim Change and the recalculated Firm Scheme Grant figure and the amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS). Any Remaining Tranche will be adjusted downwards to take account of the recalculated Firm Scheme Grant figure in such proportions as Homes England shall determine. If such adjustment would result in any Remaining Tranche being a negative figure (and being therefore an overpayment of Firm Scheme Grant), the Relevant Consortium Member must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative figure and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same;
- (c) the Lead Partner (on behalf of the Relevant Consortium Member) wishes to retract the Pre-Final Claim Change, it must do so immediately via IMS and the Firm Scheme will proceed as contemplated ante the Lead Partner's submission of the Pre-Final Claim Change; or
- (d) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium

Member to withdraw the Firm Scheme from this Agreement and clause 7.5.1(a) (*Changes to Firm Schemes or the Consortium*) shall apply.

- 7.5.2 accepts the Pre-Final Claim Change (including any change to the Firm Scheme Grant figure) as proposed by the Lead Partner (on behalf of the Relevant Consortium Member), it will accept the change through IMS and the relevant Firm Scheme Details will be deemed to have been amended with effect from the date of such acceptance;
- 7.5.3 rejects the Pre-Final Claim Change, Homes England will notify the Lead Partner and the Lead Partner will have twenty (20) Business Days from the date of Homes England's notification to advise Homes England as to whether Relevant Consortium Member wishes to proceed with the Firm Scheme on the original basis or to withdraw it. If:
- (a) the Relevant Consortium Member wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the balance of the Firm Scheme Grant allocated to such scheme and the Relevant Consortium Member must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same; or
 - (b) a Notification Failure occurs, Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement and clause 7.5.3(a) (*Changes to Firm Schemes or the Consortium*) shall apply.
- 7.6 The parties acknowledge and agree that any changes required to Firm Scheme Details with respect to a Single Claim Scheme will be governed by the principles set out in clauses 7.2 (*Changes to Firm Schemes or the Consortium*) and 7.3 (*Changes to Firm Schemes or the Consortium*).
- 7.7 Homes England will not be obliged to pay any Tranche to the Lead Partner in relation to any Firm Scheme unless any extant changes required to be made to the Firm Scheme Details by clause 7.3 (*Changes to Firm Schemes or the Consortium*) or clause 7.5 (*Changes to Firm Schemes or the Consortium*) have been made and have been accepted by Homes England in IMS.
- 7.8 Under no circumstances will Homes England be required to accept any Pre-First Claim Change or Pre-Final Claim Change which would have the result of increasing the amount of the Allocated Capital Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme.
- 7.9 Where pursuant to clause 7.5.1(b) (*Changes to Firm Schemes or the Consortium*) any Tranche must be adjusted downwards to take account of the recalculated Firm Scheme Grant figure, nothing shall preclude the parties from agreeing the proportion of such adjustment but in default of agreement the proportion determined by Homes England shall prevail.
- 7.10 Any change to the Firm Scheme Details and/or the Approved Capital Bid resulting from the application of this clause 7 (*Changes to Firm Schemes or the Consortium*) shall be

implemented by such party as is determined by Homes England amending the Firm Scheme Details in IMS and confirmed by Homes England's acceptance of that amendment through IMS and in default of agreement the parties will be bound by the Firm Scheme Details as they existed prior to the change proposed.

7.11 A Consortium Member shall be released as a party to this Agreement where:

7.11.1 a Deed of Release has been completed in accordance with the provisions of clause 7.12 (*Changes to Firm Schemes or the Consortium*); and

7.11.2 either:

(a) following information supplied and/or representations made by the Consortium, Homes England is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Capital Bid without the need for a change to it; or

(b) any change to the Approved Capital Bid as a result of the proposed withdrawal of the Outgoing Consortium Member requested by the Lead Partner does not materially and adversely affect the delivery of the Approved Capital Bid and Homes England has given its prior written consent to such change,

provided that no Deed of Release may be completed where an Outgoing Consortium Member is to remain the Landlord of any Firm Scheme that is yet to reach Practical Completion and in respect of which the relevant Firm Scheme Grant is yet to be claimed.

7.12 Subject to the proviso in clause 7.11.2 (*Changes to Firm Schemes or the Consortium*), on and from the date that the Outgoing Consortium Member provides to Homes England the Completion Authority and the Deed of Release duly executed by it and all other Consortium Members, the Outgoing Consortium Member shall no longer be a party to this Agreement.

7.13 On and from the date that a New Consortium Member provides to Homes England the Completion Authority and the Deed of Adherence, duly executed by it and the other Consortium Members, the New Consortium Member shall become a party to this Agreement and be bound by the obligations of a Consortium Member as herein provided.

7.14 Where a New Consortium Member is an LA Provider it must also provide a Legal Opinion to Homes England with the documents provided pursuant to clause 7.13 (*Changes to Firm Schemes or the Consortium*).

8 **Time extensions**

8.1 Where a Milestone Failure occurs or is in the opinion of Homes England reasonably likely to occur (having regard to the information supplied pursuant to clause 11.4 (*Operational Obligations*) or clause 12 (*Review, Monitoring and Reporting*)) and such failure is directly caused by a Milestone Extension Event, Homes England shall, subject always to clause 8.3 (*Time extensions*), extend the relevant Milestone Date and associated Firm Scheme Completion Date by such period as it (acting reasonably) considers appropriate to take account of the delay caused or likely to be caused by the Milestone Extension Event.

8.2 Homes England shall not be obliged to extend a Milestone Date:

- 8.2.1 unless a Milestone Extension Event exists; or
- 8.2.2 in circumstances where such extension would (when taken individually or together with other extensions granted in relation to this Agreement) in Homes England's reasonable opinion materially and adversely affect the delivery of the Approved Capital Bid or (when taken individually or together with other extensions granted under this Agreement or to other grant recipients of the AHP 2021/26) materially and adversely affect Homes England's projected expenditure profile in relation to any year of the AHP 2021/26 and in particular (but without limitation) such expenditure profile in relation to the last Quarter of the relevant Financial Year.
- 8.3 Homes England shall not under any circumstances be required or obliged to extend a Firm Scheme Completion Date beyond 31 March 2026 but may at its absolute discretion elect to do so and any decision to grant a such an extension shall be subject to sufficient financial resources being available to Homes England at the relevant time.
- 9 **Firm Scheme substitution and additions**
- 9.1 A Consortium Member may instruct the Lead Partner to request that Homes England accepts the substitution of a different scheme (a **Substitute Scheme**) in place of an Undeliverable Scheme or a Withdrawn Scheme.
- 9.2 Where clause 9.1 (*Firm Scheme substitution and additions*) applies, the Lead Partner must submit to Homes England through IMS such details of the relevant Substitute Scheme as Homes England may require. In permitting the submission of or in submitting the details of the Substitute Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the Substitute Scheme as it gives pursuant to clause 5.2 (*Firm Schemes*) in relation to a Firm Scheme.
- 9.3 Homes England shall consider the submitted details and if Homes England is satisfied:
- 9.3.1 with the information provided;
 - 9.3.2 with the level of grant funding requested;
 - 9.3.3 with the frequency of grant payment requested;
 - 9.3.4 that the Substitute Scheme offers value for money;
 - 9.3.5 that the Substitute Scheme is consistent with the Approved Capital Bid (including the scheme cost information and information in relation to the level of the Relevant Consortium Member's contribution);
 - 9.3.6 that the Relevant Consortium Member's performance in respect of other Firm Schemes and/or Indicative Schemes (in respect of which it is Landlord) has satisfied the terms of this Agreement;
 - 9.3.7 that Start on Site for the Substitute Scheme will occur on or before 30 September 2025 (or such other date agreed by Homes England (in its absolute discretion) in

IMS) and the Substitute Scheme can be fully delivered by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS);

9.3.8 that no Bid Default, Fundamental Default nor Specified Default subsists; and

9.3.9 that the Submitted Standards and the Strategic Objectives submitted in respect of such scheme by the Lead Partner are satisfactory,

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

9.4 Where Homes England accepts a Substitute Scheme into the Approved Capital Bid pursuant to clause 9.3 (*Firm Scheme substitution and additions*) it will confirm its acceptance of such scheme to the Lead Partner through IMS.

9.5 With effect from the date of Home's England's confirmation under clause 9.4 (*Firm Scheme substitution and additions*):

9.5.1 the Substitute Scheme shall constitute a Firm Scheme and shall be immediately subject to the whole terms and conditions of this Agreement;

9.5.2 the details set out by the Lead Partner in respect of the Substitute Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and

9.5.3 the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such Substitute Scheme.

9.6 It is agreed by the parties that any Firm Scheme Grant received by the Relevant Consortium Member in relation to the Undeliverable Scheme shall be deemed to have been received by the Relevant Consortium Member in relation to the Substitute Scheme on the basis recorded in IMS.

9.7 The Relevant Consortium Member acknowledges and agrees that an Undeliverable Scheme constitutes a "project" for the purposes of and falls within paragraph 7(e) of the Recovery Determination.

9.8 The parties shall be entitled from time to time to agree to add Additional Schemes to those comprised within the Original Approved Capital Bid.

9.9 Where clause 9.8 (*Firm Scheme substitution and additions*) applies, the Lead Partner shall submit to Homes England through IMS such details of the proposed Additional Scheme as Homes England may require. In permitting the submission of or in submitting the details of the Additional Scheme, the Relevant Consortium Member or Lead Partner (as applicable) is deemed to make and give the same representations and warranties in relation to the proposed Additional Scheme as it makes to Homes England pursuant to clause 5.2 (*Firm Schemes*) in relation to a Firm Scheme.

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

9.10.1 the Additional Scheme offers value for money;

- 9.10.2 the Relevant Consortium Member's performance in respect of other Firm Schemes comprised within the Approved Capital Bid has been of an acceptable standard and has satisfied the terms of this Agreement;
- 9.10.3 Start on Site for the Additional Scheme will occur on or before 30 September 2025 (or such other date as Homes England may in its absolute discretion agree) and the Additional Scheme can be fully delivered by 31 March 2026 (or such other date agreed by Homes England (in its absolute discretion) in IMS);
- 9.10.4 no Bid Default, Fundamental Default nor Specified Default subsists; and
- 9.10.5 the Submitted Standards and the Strategic Objectives submitted in respect of such Additional Scheme by the Lead Partner are satisfactory,

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

9.11 Where Homes England accepts an Additional Scheme into the Approved Capital Bid pursuant to clause 9.10 (*Firm Scheme substitution and additions*) it shall confirm such acceptance to the Lead Partner through IMS.

9.12 With effect from the date of Home's England's confirmation under clause 9.11 (*Firm Scheme substitution and additions*):

- 9.12.1 the Additional Scheme shall be deemed to be a Firm Scheme for the purposes of this Agreement and immediately subject to its whole terms and conditions;
- 9.12.2 the details set out by the Lead Partner in respect of the Additional Scheme in IMS and as confirmed by Homes England through IMS shall be deemed to be Firm Scheme Details for the purposes of this Agreement; and
- 9.12.3 each of the Lead Partner and the Relevant Consortium Member must ensure that it complies with all of its obligations under this Agreement as they apply to such new Firm Scheme.

9.13 If Homes England agrees to make available any grant funding in relation to a Substitute Scheme or Additional Scheme, the Allocated Capital Grant will (subject to clause 9.6 (*Firm Scheme substitution and additions*)) be deemed to be increased or decreased (as appropriate) by the Firm Scheme Grant agreed by Homes England in IMS in relation to the relevant Firm Scheme.

10 **Delivery Obligations**

10.1 The Relevant Consortium Member must in relation to each Firm Scheme:

- 10.1.1 carry out the acquisition of the Site (where required), procure and (where applicable) diligently pursue the completion of the Works so that:
 - (a) the Firm Scheme is (subject to clause 8.1 (*Time extensions*)) Delivered in accordance with the Firm Scheme Delivery Timetable;
 - (b) when Delivered, the Firm Scheme fully complies with the Firm Scheme Details and meets the Submitted Standards and the Strategic Objectives;

- (c) any applicable requirements of Procurement Law and of the Consents are satisfied;
- 10.1.2 actively market or allocate the AHP Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to individuals as AHP Housing following Firm Scheme Completion (or as soon as reasonably possible thereafter);
- 10.1.3 promptly notify Homes England in writing of any failure or likely failure to comply with clause 10.1.1(a) (*Delivery Obligations*);
- 10.1.4 procure that prior to any AHP Dwelling comprised in such Firm Scheme being occupied, all certification required in respect of the Firm Scheme (or any part thereof) is obtained (including certification that such AHP Dwelling has passed "Gateway 3" when implemented) under any building safety legislation arising out of the Building Safety Bill 2021; and
- 10.1.5 where any AHP Dwelling forms part of a building that is above either 18 metres or 7 storeys in height (whichever is the lower), register as a signatory to the Building a Safer Future Charter.

11 Operational Obligations

- 11.1 In Delivering a Firm Scheme and in operating and administering the Firm Scheme after Firm Scheme Completion, the Relevant Consortium Member must observe and comply with Legislation, the applicable terms of the Capital Funding Guide and the Recovery Determination and the Consents.
- 11.2 The Relevant Consortium Member shall procure that Homes England's Representative (or any person nominated by them) shall have at all reasonable times and upon giving reasonable notice the right to enter onto the Site and to take such action as they consider appropriate to inspect the progress of the Firm Scheme and to monitor compliance by the Relevant Consortium Member with its obligations under this Agreement.
- 11.3 The Consortium Members shall provide such evidence as Homes England may reasonably require to satisfy itself that sufficient progress is being made against the Approved Capital Bid pursuant to the terms of this Agreement and that the Consortium Members are complying with the terms and conditions of this Agreement.
- 11.4 The Relevant Consortium Member must notify Homes England in writing (save in respect of clause 11.4.1 (*Operational Obligations*), where notification is required to be given through IMS by the Lead Partner):
 - 11.4.1 immediately once Start on Site has occurred;
 - 11.4.2 immediately, in the event of the receipt by it of any other Public Sector Funding or guarantees of it, or the offer of the same, in respect of the Firm Scheme (or any part of it) beyond any amount of Public Sector Funding notified to Homes England by the Lead Partner pursuant to clause 5.1 (*Firm Schemes*), clause 9.2 (*Firm Scheme substitution and additions*) or clause 9.9 (*Firm Scheme substitution and additions*);

- 11.4.3 immediately upon becoming aware of any event or circumstance which may have a Material Adverse Effect; and
- 11.4.4 of any other event or circumstance in relation to the Firm Scheme as Homes England may reasonably require from time to time and within such timeframes as Homes England may reasonably require.
- 11.5 Without prejudice to clause 11.1 (*Operational Obligations*), the Relevant Consortium Member must in operating and administering a Firm Scheme after Firm Scheme Completion:
- 11.5.1 subject to clause 18.1 (*Repayment of Grant*) not use the AHP Dwellings for any purpose other than the Agreed Purposes without Homes England's prior written consent;
- 11.5.2 not charge a higher initial rent in relation to an AHP Rent Dwelling or a Rent to Buy Dwelling than set out in the relevant Firm Scheme Details;
- 11.5.3 subject to any contrary requirement of Legislation comply with the Rent Standard in respect of the AHP Rent Dwellings;
- 11.5.4 comply with the Tenancy Standard in respect of the AHP Rent Dwellings and Rent to Buy Dwellings;
- 11.5.5 observe and comply with the requirements of the Capital Funding Guide (and where applicable, the SO Consultation Outcome and the RTSO Guidance) in relation to:
- (a) any disposal of the Shared Ownership Dwellings and ensure that such disposal takes effect only at arm's length and on market terms;
 - (b) the form and content of any Shared Ownership Lease granted by or to be granted by Relevant Consortium Member in relation to an AHP Dwelling;
 - (c) the letting, management or disposal of AHP Rent Dwellings;
 - (d) the purpose, client group, letting, rents, management and disposals of Rent to Buy Dwellings;
 - (e) the nature of the housing and/or housing product (as described in the Capital Funding Guide) being funded pursuant to this Agreement; and
 - (f) the operation of the Right to Shared Ownership (where the Relevant Consortium Member is an RP Provider);
- 11.5.6 comply at its own cost with Homes England's requirements in relation to Compliance Audit;
- 11.5.7 in relation to AHP Housing, participate in the CORE system from time to time (including recording any lettings made together with any sales of stock including outright sales and shared ownership sales but excluding any sales of additional equity to the current shared owner);

- 11.5.8 in relation to each AHP Rent Dwelling use the most appropriate form of tenancy having regard to the terms of the Tenancy Standard and the efficient use of public funds;
- 11.5.9 ensure that it participates in any Home Ownership Agency Arrangements where any Firm Scheme includes Shared Ownership Dwellings or Rent to Buy Dwellings;
- 11.5.10 not seek possession of any Shared Ownership Dwelling on the basis of Ground 8 of Schedule 2 Housing Act 1988;
- 11.5.11 ensure that all Rent to Buy Dwellings are made available as Rent to Buy Dwellings for a period of not less than five (5) years from the point at which they first becomes available for letting and ensure that prior to any change to that purpose or to any disposal they are offered for sale to the then current Rent to Buy Tenant in occupation;
- 11.5.12 comply with any Legislation, regulations and guidance issued by any Regulatory Body which is in force and/or applies in England in relation to building safety; and
- 11.5.13 provide Homes England with such information (and within such timescales) as Homes England may reasonably require to enable Homes England to monitor compliance by that Consortium Member with its obligations under this Agreement.
- 11.6 The Relevant Consortium Member shall ensure that Homes England's requirements from time to time in relation to public relations and publicity for capital projects (including Site signage) as notified to the Lead Partner from time to time or otherwise as included in the Capital Funding Guide are observed and implemented in respect of each Firm Scheme.
- 11.7 Each Consortium Member:
- 11.7.1 that is an RP Provider must (subject to any contrary Legislation) offer and continue to offer the Right to Shared Ownership to the then current Tenant of each:
- (a) AHP Rent Dwelling; and
 - (b) RCGF Dwelling,
- which is not an Exempted Dwelling, in accordance with any applicable requirements of the RTSO Guidance, the SO Consultation Outcome and the Capital Funding Guide; and
- 11.7.2 where the Relevant Consortium Member possesses a Secure Legal Interest which is a leasehold interest:
- (a) ensure that the terms of the relevant lease:
 - i are not inconsistent with the principles of the AHP 2021/26, the operation of the Right to Shared Ownership (where the Relevant Consortium Member is an RP Provider) nor the Relevant Consortium Member's obligations under this Agreement; and

- ii do not permit such lease to be terminated (save in the case of non payment of rent or breach of tenant covenants) prior to the expiry of the Minimum Unexpired Term or Minimum SO Lease Term (where applicable); and
- (b) the Relevant Consortium Member must not vary the lease referred to in clause 11.7.2(a) (*Operational Obligations*) in a manner which could frustrate the operation of this Agreement or, where the Relevant Consortium Member is an RP Provider, the Right to Shared Ownership.

11.8 In discharging its obligations or making any representation or warranty under this Agreement, each Consortium Member must act at all times with the utmost good faith, with the intent to deliver the Approved Capital Bid and with proper regard to the need for efficiency in the use of public funds.

11.9 Where a Consortium Member is aware that it is in breach of an obligation under this Agreement it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.

11.10 The Relevant Consortium Member must:

11.10.1 provide Homes England with a completed Disposal Notification (in accordance with any applicable requirements of the Capital Funding Guide and the requirements of clause 11.11 (*Operational Obligations*)) no less than ten (10) Business Days prior to a Disposal taking place (and for the avoidance of doubt, the parties acknowledge that the provisions of this clause 11.10.1 apply to any RTB Disposal); and

11.10.2 in relation to any LA Scheme (save where a Disposal is an RTB Disposal (or where Homes England otherwise agrees)):

- (a) provide any disponee with a copy of this Agreement; and
- (b) procure that there is a binding contract between the Relevant Consortium Member and any disponee which:
 - i acknowledges that the amount of Firm Scheme Grant allocated to the AHP Dwellings or property comprised in the Disposal is social housing assistance received by it for the purposes of Section 33(7) of the HRA 2008 and is subject to the terms of the Recovery Determination and the Capital Funding Guide; and
 - ii imposes such conditions on the disponee as Homes England may specify (which may include a requirement that the disponee offer the Right to Shared Ownership and/or comply with such provisions of this Agreement as Homes England may identify (having regard to the nature of the Disposal));
- (c) provide Homes England with a copy of the contract referred to in clause 11.10.2(b) (*Operational Obligations*) within ten (10) Business Days of the relevant Disposal.

- 11.11 The Relevant Consortium Member will:
- 11.11.1 ensure that that any Disposal Notification, Constitutional Change Notification or any other notifications or certificates to be provided by the Relevant Consortium Member to Homes England pursuant to this Agreement (the **RCM Notifications**) are provided by a senior officer of the Relevant Consortium Member with access to the information and knowledge needed accurately to give the information required; and
 - 11.11.2 notify Homes England if it becomes aware that any RCM Notification is erroneous in any material respect.
- 11.12 The Relevant Consortium Member must procure that a valuation of each Site is obtained in accordance with any applicable requirements of Section 3.6 (*Valuations*) in the Chapter of the Capital Funding Guide entitled "Procurement and Scheme Issues" and any other requirements identified by Homes England from time to time (acting reasonably).
- 12 **Review, Monitoring and Reporting**
- 12.1 Each Consortium Member must comply fully with the contract management and reporting obligations set out in this Agreement.
- 12.2 Each Consortium Member acknowledges the high importance to Homes England of it being promptly advised when any circumstance occurs which may:
- 12.2.1 impact on its ability to Deliver any Firm Scheme in accordance with the terms of this Agreement;
 - 12.2.2 indicate that Homes England is making available more grant than is required to Deliver any Firm Scheme or the Approved Capital Bid;
 - 12.2.3 in the case of an LA Provider, gives rise to the making of a Section 114 Report or the issue of a Section 15 Direction;
 - 12.2.4 constitute a breach of clauses 10 (*Delivery Obligations*) or 11 (*Operational Obligations*); or
 - 12.2.5 constitute a Default Event,
- (collectively the **Contract Monitoring Outputs**).
- 12.3 Where Homes England becomes aware either via the Contract Monitoring Outputs or through other monitoring, that delivery of the Approved Capital Bid has not been secured in accordance with the requirements of this Agreement or is unlikely to be so secured (a **Delivery Failure**), Homes England may in order to address such Delivery Failure issue an Allocation Change Notice requiring:
- 12.3.1 a reduction, increase or other change to the number of AHP Dwellings to be delivered; and/or
 - 12.3.2 a reduction or other adjustment to the Allocated Capital Grant or to any Firm Scheme Grant; and/or

12.3.3 any other change to the Approved Capital Bid that Homes England deems reasonably necessary,

and such Allocation Change Notice shall be discussed as soon as reasonably practicable by Homes England and the Lead Partner and in any event within fifteen (15) Business Days of the date of issue of the Allocation Change Notice.

12.4 Nothing in clause 12.3 (*Review, Monitoring and Reporting*) shall preclude Homes England and the Lead Partner from agreeing an alternative means of dealing with the Delivery Failure to that set out in the Allocation Change Notice **save that** unless such alternative is agreed and reflected in IMS by the end of the then current Financial Year, the change required by Homes England in the Allocation Change Notice shall take effect on the next following 1 April and Homes England shall be entitled to make all such changes to IMS as are necessary to reflect the contents of the Allocation Change Notice.

12.5 The Lead Partner shall submit such other information in relation to this Agreement, the Approved Capital Bid and/or its Delivery of the Firm Schemes as may be requested on reasonable notice by Homes England from time to time.

12.6 The Lead Partner's Representative (or, where agreed with Homes England in advance, such other member of the Lead Partner's executive management team) and (where agreed by Homes England in advance) a senior officer of one or more other Consortium Members shall attend a review meeting when requested to do so by Homes England with reasonable prior written notice.

12.7 Homes England shall attend a review meeting reasonably requested by the Lead Partner or (with Homes England's prior written consent (in its absolute discretion)) a Consortium Member provided that:

12.7.1 the date of such meeting is agreed by Homes England; and

12.7.2 the Lead Partner (or Relevant Consortium Member (where applicable)) provides an agenda for such meeting at the time of request.

12.8 At each Review Meeting Homes England and the Lead Partner shall discuss or review (without limitation):

12.8.1 all changes made to any Firm Scheme or to the Approved Capital Bid in the period since the immediately preceding Review Meeting (or since the date of this Agreement where no Review Meeting has been held) and any changes anticipated by the Lead Partner to be requested during the current Financial Year;

12.8.2 all withdrawals of Indicative Schemes;

12.8.3 the capacity of the Consortium Members to bring forward additional housing supply under AHP 2021/26;

12.8.4 the Consortium's performance in delivering the Approved Capital Bid (including the conversion of Indicative Schemes into Firm Schemes);

- 12.8.5 progress in relation to each Indicative Scheme and Firm Scheme including delivery forecasts, lettings and sales forecasts and progress against previous such forecasts;
 - 12.8.6 the Contract Monitoring Outputs;
 - 12.8.7 the position in relation to each Firm Scheme where Landlord is an RP Provider on agreeing nomination arrangements in respect of AHP Rent Dwellings and Shared Ownership Dwellings with relevant Local Housing Authorities (where applicable);
 - 12.8.8 save where clause 12.22.1 (*Review, Monitoring and Reporting*) or 12.22.2 (*Review, Monitoring and Reporting*) applies, any Change in Control or, in the case of Consortium Member that is an RP Provider, any Restructure which is anticipated in the then current or upcoming Financial Year;
 - 12.8.9 each Consortium Member's performance in meeting the Strategic Objectives; and
 - 12.8.10 such other matters in relation to the performance or subject matter of this Agreement as are notified by either party to the other in writing at least five (5) Business Days prior to the date of the Review Meeting.
- 12.9 The parties agree that the Regulator shall also be entitled to send a representative to attend any Review Meeting.
- 12.10 Save as otherwise agreed between the parties, any meeting under this clause 12 (*Review, Monitoring and Reporting*) shall be minuted by the Lead Partner and such minutes shall be distributed within ten (10) Business Days following the meeting to Homes England and any other attendee.
- 12.11 The Lead Partner shall:
- 12.11.1 provide Homes England with such information as Homes England shall reasonably require to support or facilitate the discussions and monitoring referred to in this Agreement; and
 - 12.11.2 take all reasonable steps to ensure that any information provided to Homes England pursuant to this clause 12 (*Review, Monitoring and Reporting*) is accurate in all material aspects,
- and each Consortium Member must provide the Lead Partner with such information as the Lead Partner requires in order to allow it to discharge its obligations under this clause 12 (*Review, Monitoring and Reporting*).
- 12.12 The Lead Partner shall, as and when requested by Homes England (in connection with this Agreement, the Approved Capital Bid or any Indicative Scheme or Firm Scheme) promptly provide to Homes England hard and/or electronic copies of:
- 12.12.1 any and all data, materials, documents and accounts of any nature created, acquired or brought into existence in any manner whatsoever by or on behalf of each Consortium Member (including where the source was created by and/or is

held by a Consortium Member Party (or its consultants)) for the purposes of or in connection with this Agreement; and

- 12.12.2 the elemental breakdown of the construction costs in relation to each Firm Scheme.
- 12.13 On termination of this Agreement, each Consortium Member shall if requested to do so deliver up to Homes England or procure the delivery to Homes England of all the data, materials, documents and accounts referred to in this clause 12 (*Review, Monitoring and Reporting*).
- 12.14 Each Consortium Member must for a period of ten (10) years from the date upon which it receives the Final Tranche retain all of the data, documents, materials and accounts referred to in this clause 12 (*Review, Monitoring and Reporting*) and each Consortium Member may retain such data, documents, materials and accounts in electronic form only.
- 12.15 Each Consortium Member agrees that Homes England's auditors (including the Comptroller and Auditor General) shall have unrestricted rights of access to any and all information to which Homes England is entitled under this Agreement or to which Homes England's auditors are entitled pursuant to the National Audit Act 1983 and the Government Resources and Accounts Act 2000 or otherwise.
- 12.16 Each Consortium Member shall promptly and fully co-operate with any request for information or evidence from time to time of:
- 12.16.1 any auditor (whether internal or external) of Homes England; and/or
- 12.16.2 Homes England, to the extent such request relates to this Agreement (or any matter associated with it) and which Homes England is required by any Competent Authority or by Legislation to provide to any third party.
- 12.17 Each Consortium Member shall ensure that for each Firm Scheme it and each Consortium Member Affiliate keeps on an Open Book Basis (in accordance with generally accepted accounting practice) separate books of account for items relating to the AHP Housing which identify:
- 12.17.1 in relation Firm Schemes Delivered by an RP Provider, items of SPEI Revenue and SPEI Allowable Costs; and
- 12.17.2 in relation to all Firm Schemes, the Firm Scheme Grant and such other items required under this clause 12 (*Review, Monitoring and Reporting*).
- 12.18 Each Consortium Member shall upon Homes England's written request:
- 12.18.1 make available upon reasonable notice for Homes England's inspection (and that of any person referred to in this clause 12 (*Review, Monitoring and Reporting*) or in clause 22 (*Information and Confidentiality*) or any person appointed pursuant to clause 28 (*Dispute resolution*)) the books of account referred to in clause 12.17 (*Review, Monitoring and Reporting*) (together with, if specified, such supporting correspondence, agreements, orders, invoices, receipts and other documents) and shall submit a report in relation to the same to Homes England (or such other

persons as are referred to in this clause 12 (*Review, Monitoring and Reporting*)) as and when requested to do so; and

- 12.18.2 procure that a representative of Homes England (or any of its auditors or advisors) may on reasonable notice visit any place where any records or information of the type described in this clause 12 (*Review, Monitoring and Reporting*) are held or maintained and examine such records or information.
- 12.19 Each RP Provider shall ensure that it and any Consortium Member Affiliate (at its or their cost) co-operates with Homes England during an SPEI Review and it shall if requested promptly provide Homes England with SPEI Information and such other information, evidence and/or explanation as Homes England may reasonably require.
- 12.20 Each Consortium Member shall promptly:
- 12.20.1 participate in any evaluation of AHP 2021/26 that MHCLG or Homes England or its or their agents may require from time to time; and
- 12.20.2 supply (subject always to its data protection obligations under Schedule 8 (*Data Protection*)) any information and data requested by MHCLG, Homes England or its or their agents in respect of any such evaluation, which may include information/data pertaining to any AHP Dwellings (including, inter alia, addresses and tenures of such dwellings).
- 12.21 The Lead Partner shall promptly, accurately update IMS with such information as may be requested by Homes England from time to time (acting reasonably) in connection with the terms of this Agreement.
- 12.22 Save where:
- 12.22.1 a Consortium Member or its holding company is a public limited company and is prohibited by listing rules from doing so; or
- 12.22.2 a Change in Control occurs automatically by operation of law and without the Consortium Member being able to notify in advance,
- the Relevant Consortium Member shall provide Homes England with a completed Constitutional Change Notification (in accordance with the requirements of clause 11.11 (*Operational Obligations*)) at least ten (10) Business Days prior to any Change in Control or (in respect of an RP Provider) Restructure. Where the circumstances contemplated in clause 12.22.1 (*Review, Monitoring and Reporting*) or clause 12.22.2 (*Review, Monitoring and Reporting*) apply the Relevant Consortium Member shall provide Homes England with a completed Constitutional Change Notification within ten (10) Business Days of the relevant Change in Control or Restructure occurring.
- 12.23 Each Consortium Member will promptly notify Homes England in writing if any Know Your Customer Information becomes inaccurate or out of date and provide Homes England with revised Know Your Customer Information promptly upon Homes England's request.
- 12.24 The parties acknowledge and agree that Homes England may review whether the Lead Partner continues to meet the requirements for Investment Partner status and the Lead Partner will co-operate with such review and will provide Homes England with such further

information, evidence and/or explanation with respect to any such review as Homes England may request.

12.25 Nothing in this Agreement will preclude Homes England from engaging with any Consortium Member and/or the Lead Partner in relation to the relevant Consortium Member's performance of its obligations under this Agreement.

13 **Transparency Obligations**

13.1 Subject to clause 13.2 (*Transparency Obligations*) below, each Consortium Member acknowledges that:

13.1.1 where the proportion of the Allocated Capital Grant received or to be received by that Consortium Member (itself or if aggregated with other AHP 2021/26 Funds or funds made available to it under (i) any subsequent Homes England capital funding programme or (ii) any Previous Programme) exceeds £3,000,000, that Consortium Member must publish details quarterly of all expenditure in excess of £500 incurred by it in delivering Firm Schemes by such means as ensures that such details can be accessed by the general public; and

13.1.2 except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Agreement, each Consortium Member's consent is hereby given to Homes England to publish such information as it considers appropriate in relation to the AHP 2021/26, including, but not limited to, details of the Approved Capital Bid, Development Costs, other costs and funding for Firm Schemes, including from time to time agreed changes to this information.

13.2 Each Consortium Member that is an LA Provider:

13.2.1 must comply with the Transparency Code; and

13.2.2 agrees that if the Transparency Code is not binding upon it, it will be bound by the terms of clause 13.1 (*Transparency Obligations*) (*mutatis mutandis*).

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

13.3.1 following consultation with the Lead Partner and having taken (or not taken, as the case may be) its views into account; or

13.3.2 without consulting the Lead Partner.

13.4 The Lead Partner shall assist and cooperate (and procure that the other Consortium Members assist and co-operate) with Homes England to enable Homes England to publish the information referred to in clause 13.1.2 (*Transparency Obligations*).

14 **Grant Claim Procedures**

14.1 The parties acknowledge and agree that it is a condition precedent to the Lead Partner making any claim for Firm Scheme Grant under this clause 14 (*Grant Claim Procedures*) that with respect to the relevant Firm Scheme:

- 14.1.1 the Acceptance Date has passed; and
 - 14.1.2 the Relevant Consortium Member possesses a Secure Legal Interest; and
 - 14.1.3 where the claim is made in relation to a Firm Scheme in respect of which Homes England has permitted the Relevant Consortium Member to hold an Alternative Interest, any conditions attached to such approval which are then required to have been satisfied, have been satisfied.
- 14.2 Subject to the Relevant Claim Stage having been achieved by the Relevant Claim Date, the Lead Partner shall be entitled to submit a claim for the Applicable Tranche through IMS in accordance with the requirements of IMS from time to time and in compliance with the applicable procedures relating to grant claim and payments set out in the Capital Funding Guide.
- 14.3 In permitting the Lead Partner to submit a claim pursuant to clause 14.2 (*Grant Claim Procedures*) the Relevant Consortium Member is deemed to:
- 14.3.1 repeat the representations and warranties set out in clause 5.2 (*Firm Schemes*) other than clause 5.2.2(b) (*Firm Schemes*);
 - 14.3.2 represent and warrant to Homes England that:
 - (a) the Relevant Claim Stage has been achieved and the date on which the Relevant Claim Stage was achieved is no later than the date forecast in IMS;
 - (b) where the claim is being made for a Tranche with respect to a Flex Scheme it has incurred Actual Development Costs to at least the value of the Applicable Tranche;
 - (c) it has procured a valuation of the relevant Site in accordance with clause 11.12 (*Operational Obligations*) (where applicable);
 - (d) all confirmations and certifications made or to be made by the Lead Partner on the Relevant Consortium Member's behalf in IMS in relation to the Firm Scheme have been, are or will be correct in all material respects and the Relevant Consortium Member has authorised the Lead Partner to make such confirmations and certifications;
 - (e) it is a Registered Provider;
 - (f) no Withholding Event or Default Event has occurred or arisen (excluding any Withholding Event or Default Event which has either been waived in writing by Homes England or remedied to the satisfaction of Homes England (in its absolute discretion) and Homes England has confirmed this in writing);
 - (g) the Relevant Consortium Member has provided Homes England with a Disposal Notification in accordance with the requirements of clause 11.10 (*Operational Obligations*) in respect of any Disposal of the relevant Site;

- (h) any Change in Control or, for a Consortium Member that is an RP Provider, Restructure which has taken place in relation to it since the date of the Agreement has been notified to Homes England pursuant to clause 12.22 (*Review, Monitoring and Reporting*);
- (i) all information provided to Homes England pursuant to clause 12 (*Review, Monitoring and Reporting*) relating to it and/or set out on IMS in relation to progress of the delivery of the Firm Scheme Delivery Timetable remains accurate and correct in all material respects;
- (j) it has obtained all Consents necessary for the lawful Delivery of the Firm Scheme in accordance with the Firm Scheme Details as are then required or, with respect to a Firm Scheme which has achieved Practical Completion, to the extent that they are not obtained the Relevant Consortium Member has taken all necessary steps to obtain them, is waiting only for the Relevant Authority to issue them and is not aware (having made all reasonable enquiries) of any reason why such Consents will not be given or issued;
- (k) the Firm Scheme will be or has been Delivered (as applicable) in accordance with the Submitted Standards, the Strategic Objectives, the Firm Scheme Details and the requirements of this Agreement;
- (l) it is participating in the Home Ownership Agency Arrangements (where applicable); and
- (m) where the Consortium Member is an LA Provider:
 - i it is not subject to any Section 15 Direction nor do any circumstances exist which would permit such a direction to be issued; and
 - ii no Section 114 Report has been made nor is it aware of any circumstances that would give rise to the making of any such report;
- (n) where the claim is made in respect of a GB Scheme:
 - i the Firm Scheme is not designated as a Flex Scheme or Single Claim Scheme on IMS and Lead Partner has not made (and will not make) any claim for Acquisition Tranche Grant in respect of such GB Scheme;
 - ii the Relevant Consortium Member holds a Golden Brick SLI and will be entitled to a Completed Interest prior to Practical Completion; and
 - iii Start on Site in respect of the Site has been achieved;
- (o) where the claim is made in respect of a Firm Scheme in respect of which Homes England has permitted the Relevant Consortium Member to hold an Alternative Interest, any conditions attached to such approval which are then required to have been satisfied, have been satisfied; and
- (p) where the claim is made for the Final Tranche, the Relevant Consortium Member holds a Completed Interest.

- 14.4 In submitting a claim pursuant to clause 14.2 (*Grant Claim Procedures*) on its own behalf, the Lead Partner is deemed to represent and warrant to Homes England:
- 14.4.1 in the terms set out in clauses 14.3.1 (*Grant Claim Procedures*), 14.3.2(a) to 14.3.2(c) (inclusive) (*Grant Claim Procedures*) and 14.3.2(e) to clause 14.3.2(p) (inclusive) (*Grant Claim Procedures*);
 - 14.4.2 in the terms set out in clause 14.8 (*Grant Claim Procedures*) for the purposes of an application made pursuant to clause 14.7 (*Grant Claim Procedures*);
 - 14.4.3 that all confirmations and certifications made or to be made by it in IMS in relation to the Firm Scheme have been are or will be correct in all material respects; and
 - 14.4.4 where it is an LA Provider, in the terms set out in clause 14.3.2(m) (*Grant Claim Procedures*).
- 14.5 In submitting a claim pursuant to clause 14.2 (*Grant Claim Procedures*) or clause 14.7 (*Grant Claim Procedures*), the Lead Partner is deemed to represent and warrant to Homes England that it retains its status as an Investment Partner and all information set out on IMS in relation to progress of the delivery of the Approved Capital Bid and each applicable Firm Scheme Delivery Timetable remains accurate and correct in all material respects.
- 14.6 Where any Firm Scheme is identified on IMS as being an MMC Scheme, Homes England and the Lead Partner may agree alternative Relevant Claim Stages and/or Milestones (which better reflect the nature and characteristics of Modern Methods of Construction) in IMS or in such other medium as Homes England may specify and where this clause 14.6 (*Grant Claim Procedures*) applies Homes England reserves the right to require that the Lead Partner (on behalf of itself and on behalf of the Relevant Consortium Member) makes additional representations and warranties as a condition of any claim for Firm Scheme Grant.
- 14.7 Save in respect of a Single Claim Scheme, in exceptional circumstances and subject always to paragraph 13 of Part 1 of Schedule 1 (*Agreed Principles*) and Homes England's rights under clause 5.4 (*Firm Schemes*) Homes England may (in its absolute discretion) allow the Lead Partner to submit a claim for additional tranche(s) of funding for a Firm Scheme outside of the Acquisition Tranche Grant, Start on Site Tranche Grant and Practical Completion Tranche Grant in such amount as Homes England may authorise and approve in IMS (**Additional Tranche Grant**).
- 14.8 In allowing the Lead Partner to claim any Additional Tranche Grant, Homes England shall (in addition to the representations and warranties set out in clause 14.3 (*Grant Claim Procedures*)) be entitled to require the Lead Partner and/or Relevant Consortium Member to make such other representations and warranties (through IMS or otherwise) as Homes England requires as a condition of such claim. The Lead Partner must make its application for Additional Tranche Grant through IMS and in accordance with the requirements of Homes England from time to time and in compliance with the applicable procedures relating to grant claims and payments set out in the Capital Funding Guide.
- 14.9 In exceptional circumstances Homes England may permit the Relevant Consortium Member hold an Alternative Interest as a Secure Legal Interest in respect of a Firm Scheme.

14.10 In permitting the Relevant Consortium Member to hold an Alternative Interest in respect of a Firm Scheme, Homes England may impose such conditions as it (in its absolute discretion) considers to be appropriate, such conditions may include a requirement to enter into additional or ancillary documentation on terms satisfactory to Homes England (in its absolute discretion).

15 **Payment of Grant**

15.1 Subject to:

15.1.1 Homes England (acting reasonably) being satisfied with the Lead Partner's application for payment including the information warranted pursuant to clause 14 (*Grant Claim Procedures*); and

15.1.2 clause 7 (*Changes to Firm Schemes*), clause 15.3 (*Payment of Grant*), clause 15.4 (*Payment of Grant*), clause 16 (*Adjustments to Remaining Tranches*) and clause 17 (*Withholding of Grant*); and

15.1.3 the Condition Precedent having been satisfied in relation to an LA Scheme,

Homes England shall (resources permitting) pay the Applicable Tranche to the Lead Partner within fifteen (15) Business Days of receipt of a relevant satisfactory application.

15.2 If Homes England is not satisfied with the Lead Partner's application for payment, it must notify the Lead Partner in writing as soon as reasonably practicable and in any event within ten (10) Business Days of receipt of the application for payment identifying the reason for its dissatisfaction. Homes England must allow the Lead Partner a period of up to ten (10) Business Days to address the issues identified in the notification and to resubmit or amend its application accordingly in which case the provisions of clause 14 (*Grant Claim Procedures*) and this clause 15 (*Payment of Grant*) (as applicable) will be reapplied to the Lead Partner's resubmitted or amended application for payment.

15.3 Homes England shall not be obliged to pay the Lead Partner in respect of a Firm Scheme any:

15.3.1 Acquisition Tranche Grant before the Acquisition Date (as confirmed by Homes England through IMS);

15.3.2 Start on Site Tranche Grant before the Start on Site Date (as confirmed by Homes England through IMS);

15.3.3 Practical Completion Tranche Grant before the Practical Completion Date (as confirmed by Homes England through IMS);

15.3.4 Total Grant Tranche (with respect to a Single Claim Scheme) before the Completion Date (as confirmed by Homes England through IMS); and/or

15.3.5 Tranche (of any description) if the Firm Scheme has not been accepted by Homes England through IMS or the Relevant Consortium Member does not possess the relevant Secure Legal Interest required in respect of the Firm Scheme (having regard to paragraph 14 of Part 1 of Schedule 1 (*Agreed Principles*)).

15.4 Where Homes England pays Firm Scheme Grant to the Lead Partner, the Allocated Capital Grant shall be reduced by a commensurate amount.

15.5 Each Consortium Member acknowledges and agrees that notwithstanding that Firm Scheme Grant is or will be paid to the Lead Partner, each Consortium Member is deemed to have received such Firm Scheme Grant as grant (for the purposes of Sections 19 and 31-34 of the HRA 2008) in relation to those Firm Schemes in relation to which it is or will be the Landlord.

16 Adjustments to Remaining Tranches

16.1 If Homes England becomes aware prior to or following receipt of the Lead Partner's application for payment of the Final Tranche pursuant to clause 14.2 (*Grant Claim Procedures*) that the Relevant Consortium Member has failed to Deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details (including the Submitted Standards and the Strategic Objectives), Homes England shall be entitled (at its discretion) either:

16.1.1 unless such Firm Scheme is a Single Claim Scheme, to recalculate the Firm Scheme Grant allocated to the Firm Scheme by reference to the Firm Scheme that has actually been Delivered; or

16.1.2 to:

(a) withhold and cancel the Final Tranche payment due in relation to the relevant Firm Scheme;

(b) reallocate or redirect an amount equivalent to such Final Tranche payment due to such other person or purpose as Homes England in its discretion considers appropriate; and

(c) recover from the Relevant Consortium Member a sum equivalent to any Firm Scheme Grant already paid to it in relation to the relevant Firm Scheme.

16.2 If Homes England exercises its right under clause 16.1.1 (*Adjustments to Remaining Tranche**Error! Reference source not found.*), Homes England will notify the Lead Partner and the Lead Partner will have ten (10) Business Days from the date of receipt of Homes England's notification to advise Homes England as to whether the Relevant Consortium Member wishes to withdraw the Firm Scheme from this Agreement or to proceed with the Firm Scheme on the basis of the recalculated Firm Scheme Grant figure. If:

16.2.1 the Relevant Consortium Member wishes to withdraw the Firm Scheme, Homes England will permanently withdraw the Remaining Tranches allocated to such scheme and the Relevant Consortium Member must repay Homes England a sum equivalent to such part of the Firm Scheme Grant as has then been received by it, such repayment to be made within fifteen (15) Business Days of receipt of Homes England's written demand for the same;

16.2.2 the Relevant Consortium Member wishes to proceed with the Firm Scheme:

- (a) it must immediately amend the Firm Scheme Details in IMS to reflect the recalculated Firm Scheme Grant figure and any Tranche already received. The amended Firm Scheme Details will be deemed to be effective from the date of their acceptance by Homes England (through IMS);
- (b) the Final Tranche figure will be adjusted to take account of the recalculated Firm Scheme Grant figure and of any change to the sum and percentage amount necessitated by the recalculated Firm Scheme Grant figure being lower than the original Firm Scheme Grant figure. If such adjustment would result in the Final Tranche being a negative amount (and being therefore an overpayment of Firm Scheme Grant), the Relevant Consortium Member must pay Homes England a sum equivalent to the difference (expressed as a positive sum) between the negative amount and zero within fifteen (15) Business Days of receipt of Homes England's written demand for the same; and
- (c) Homes England will (resources permitting) pay the adjusted Final Tranche due (subject to it being a positive amount) to the Lead Partner within fifteen (15) Business Days of the date of Homes England's acceptance of the Lead Partner's amendments to the Firm Scheme Details referred to in clause 16.2.2(a) (*Adjustments to Remaining Tranches*).

16.3 If the Lead Partner fails to provide a definitive response to Homes England within the period prescribed in clause 16.2 (*Adjustments to Remaining TranchesError! Reference source not found.*), Homes England shall be entitled (but not obliged) to treat such failure as a decision by the Relevant Consortium Member to withdraw the Firm Scheme from this Agreement and the provisions of clause 16.2.1 (*Adjustments to Remaining TranchesError! Reference source not found.*) shall take effect.

16.4 Under no circumstances will Homes England be required to accept or implement any recalculation pursuant to clause 16.2 (*Adjustments to Remaining TranchesError! Reference source not found.*) which would have the result of increasing the amount of the Allocated Capital Grant or the Firm Scheme Grant in relation to the relevant Firm Scheme as reflected in the Firm Scheme Details ante the amendments referred to in clause 16.2.2(a) (*Adjustments to Remaining TranchesError! Reference source not found.*).

16.5 If Homes England exercises its rights under clause 16.1.2 (*Adjustments to Remaining TranchesError! Reference source not found.*), the Relevant Consortium Member must repay Homes England all sums due thereunder in accordance with the provisions of clause 18.6 (*Repayment of Grant*).

17 **Withholding of Grant**

17.1 Notwithstanding any other term of this Agreement:

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

- (a) shall be entitled to suspend the payment of any Tranche due to the Lead Partner;

- (b) shall, as soon as reasonably practicable, notify the Lead Partner of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the GW1 Event (the **GW1 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the GW1 Failure has been remedied, notify the Lead Partner to that effect and shall (subject to clause 17.3 (*Withholding of Grant*)) make such payment of any Tranche as may then be due to the Lead Partner (assuming no other General Withholding Event subsists). Such payment to be made within ten (10) Business Days of the date of Homes England's notification under this clause 17.1.1(c) (*Withholding of Grant*); and
- (d) shall be entitled, if the GW1 Failure has not been remedied within the period prescribed pursuant to clause 17.1.1(b) (*Withholding of Grant*) or it is or becomes apparent that the GW1 Failure is incapable of remedy either within such period or at all, to exercise the same rights as are set out in clauses 17.1.2(a) (*Withholding of Grant*) to 17.1.2(c) (*Withholding of Grant*) (inclusive);

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

- (a) shall not be obliged to make the payment of any Tranche due to the Lead Partner;
- (b) shall (on giving the Lead Partner not less than ten (10) Business Days written notice) be entitled to cancel any further payment of Allocated Capital Grant due to the Lead Partner under this Agreement; and
- (c) shall be entitled to reallocate or redirect such part of the Allocated Capital Grant as has not yet been paid to the Lead Partner to such other person or for such purpose as Homes England in its discretion considers appropriate;

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

- (a) shall not be obliged to make the payment of any Tranche due to the Lead Partner;
- (b) shall (on giving the Lead Partner not less than ten (10) Business Days written notice) be entitled to cancel any further payment of Allocated Capital Grant due to the Lead Partner under this Agreement; and
- (c) shall be entitled to reallocate or redirect such part of the Allocated Capital Grant as has not yet been paid to the Lead Partner to such other person or for such purpose as Homes England in its discretion considers appropriate;

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

- (a) shall not be obliged to make any payment to the Lead Partner in relation to the relevant Firm Scheme pending the outcome of the procedure

described in clause **Error! Reference source not found.** (*Adjustments to Remaining TranchesError! Reference source not found.*);

- (b) shall be entitled to exercise its rights under clause **Error! Reference source not found.** (*Adjustments to Remaining TranchesError! Reference source not found.*); and
- (c) shall where the provisions of clause 16.2.1 (*Adjustments to Remaining TranchesError! Reference source not found.*) have effect, be entitled to reallocate or redirect such part of the Firm Scheme Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as Homes England in its discretion considers appropriate;

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

- (a) shall be entitled to suspend the payment of any Tranche due to the Lead Partner in relation to the relevant Firm Scheme;
- (b) shall, as soon as reasonably practicable, notify the Lead Partner of such suspension and the period within which it (acting reasonably) requires the failure or breach giving rise to the SW2 Event (the **SW2 Failure**) to be remedied;
- (c) shall, if it is satisfied (acting reasonably) that the SW2 Failure has been remedied, notify the Lead Partner to that effect and shall (subject to clause 17.3 (*Withholding of Grant*)) make such payment of any Tranche as may then be due to the Lead Partner (assuming no other General Withholding Event or Scheme Withholding Event (in relation to that Firm Scheme) subsists). Such payment to be made within ten (10) Business Days of the date of Homes England's notification under this clause 17.1.5(c) (*Withholding of Grant*); and
- (d) shall be entitled, if the SW2 Failure has not been remedied within the period prescribed pursuant to clause 17.1.5(b) (*Withholding of Grant*) or it is or becomes apparent that the SW2 Failure is incapable of remedy either within such period or at all, to exercise the same rights as are set out in clauses 17.1.6(a) to 17.1.6(c) (inclusive) (*Withholding of Grant*);

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

- (a) shall not be obliged to make the payment of any Tranche due to the Lead Partner in relation to the relevant Firm Scheme;
- (b) shall (on giving the Lead Partner not less than ten (10) Business Days written notice) be entitled to cancel any Tranche available to the Lead Partner in relation to the relevant Firm Scheme; and
- (c) shall be entitled to reallocate or redirect such part of the Firm Scheme Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as Homes England in its discretion considers appropriate.

17.2 Homes England shall incur no liability of any description to any Consortium Member in or as a result of exercising its rights under this clause 17 (*Withholding of Grant*).

17.3 Homes England shall not be obliged to make any payment of any Tranche to the Lead Partner where the due date for such payment falls after 31 March 2026 unless Homes England has in its absolute discretion permitted an extension to that date pursuant to clause 8.3 (*Time extensions*).

18 **Repayment of Grant**

18.1 The parties acknowledge and agree that notwithstanding any other term of this Agreement:

18.1.1 the Recovery Determination has effect (*mutatis mutandis*) in respect of grant paid under this Agreement and that each party has the respective rights and obligations described in such determination;

18.1.2 for the purposes of the Recovery Determination the terms of this Agreement represent the conditions attached to the making of Capital Grant; and

18.1.3 on the occurrence of a Relevant Event the Relevant Consortium Member must recycle or repay (as applicable) the Capital Grant Recoverable in each case in accordance with the terms of the Recovery Determination.

18.2 Without prejudice to any other term of this Agreement, Homes England reserves the right whether following termination of this Agreement or otherwise (which right each Consortium Member expressly acknowledges and agrees) at its discretion to recover from the Relevant Consortium Member the Firm Scheme Grant or such part or aggregation thereof as is determined in accordance with clause 18.3 (*Repayment of Grant*) (the **Recoverable Amount**) in circumstances where:

18.2.1 a Prohibited Act has occurred and the Relevant Consortium Member has not satisfied the Waiver Condition in respect of such Prohibited Act;

18.2.2 the relevant Tranche has been paid to the Lead Partner on the basis of a misrepresentation made by or on behalf of the Relevant Consortium Member other than in the circumstances specified in clause 18.2.5 (*Repayment of Grant*);

18.2.3 Homes England has made an overpayment in relation to a Firm Scheme or has made a payment in error to the Lead Partner;

18.2.4 a Balancing Sum has arisen;

18.2.5 the Final Tranche has been paid to the Lead Partner but Homes England becomes aware (whether following the completion of a Compliance Audit or otherwise) that the Relevant Consortium Member has failed to Deliver the relevant Firm Scheme in accordance with the agreed Firm Scheme Details;

18.2.6 the Relevant Consortium Member has breached its obligations under any of clauses 10 (*Delivery Obligations*), clause 11 (*Operational Obligations*) or clause 12 (*Review, Monitoring and Reporting*);

18.2.7 a Scheme Termination Event has occurred;

- 18.2.8 a Total Termination Event has occurred;
- 18.2.9 Homes England has exercised its rights under:
- (a) clause 17.1.1 (*Withholding of Grant*) (and the GW1 Failure has not been remedied within the period prescribed in clause 17.1.1(b) (*Withholding of Grant*)); or
 - (b) clause 17.1.2 (*Withholding of Grant*);
- 18.2.10 Homes England has exercised its rights under or clause 17.1.3 (*Withholding of Grant*);
- 18.2.11 Homes England has exercised its rights under:
- (a) clause 17.1.5 (*Withholding of Grant*) (and the SW2 Failure has not been remedied within the period prescribed in clause 17.1.5(b) (*Withholding of Grant*)); or
 - (b) under clause 17.1.6 (*Withholding of Grant*); or
- 18.2.12 Homes England has exercised its rights under clauses 16.1.2 (*Adjustments to Remaining Tranches**Error! Reference source not found.*), 16.2.1 (*Adjustments to Remaining Tranches**Error! Reference source not found.*) or 16.3 (*Adjustments to Remaining Tranches**Error! Reference source not found.*); or
- 18.2.13 Start on Site (including the actions contemplated thereby) for the relevant Firm Scheme has not been achieved by 30 September 2025 (or such other date agreed by Homes England (in its absolute discretion) in IMS) and no Start on Site Tranche Grant has been paid.
- 18.3 In the circumstances set out in:
- 18.3.1 clauses 18.2.1 (*Repayment of Grant*), 18.2.2 (*Repayment of Grant*), 18.2.6 (*Repayment of Grant*) or 18.2.7 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to the Firm Scheme Grant paid with respect to any Firm Scheme deemed by Homes England (acting reasonably) to have been affected;
 - 18.3.2 clauses 18.2.3 (*Repayment of Grant*) and 18.2.4 (*Repayment of Grant*), the Recoverable Amount shall be a sum equal to the amount of the overpayment, the sum paid in error or the Balancing Sum as applicable;
 - 18.3.3 clause 18.2.5 (*Repayment of Grant*), subject always to clause 18.4 (*Repayment of Grant*) the Recoverable Amount shall be determined in accordance with the following procedure:
 - (a) the Relevant Consortium Member and Homes England (acting in good faith) shall seek to agree within fifteen (15) Business Days of the Non Compliance Notification Date a revised figure for the Firm Scheme Grant figure reflecting the changed nature of the delivered Firm Scheme as against that described in the Firm Scheme Details;

- (b) where a revised figure for Firm Scheme Grant is agreed, the Recoverable Amount shall be the product of the following calculation:

$$RA = FSG - RFSG$$

where

RA is the Recoverable Amount;

FSG is the Firm Scheme Grant paid pursuant to clause 15.1 (*Payment of Grant*) in respect of the relevant Firm Scheme; and

RFSG is the revised Firm Scheme Grant figure agreed pursuant to clause 18.3.3(a) (*Repayment of Grant*);

- (c) the Relevant Consortium Member must notify the Lead Partner of the revised figure for the Firm Scheme Grant and the Lead Partner shall immediately amend the relevant information on IMS to reflect any agreement reached made pursuant to clause 18.3.3(a) (*Repayment of Grant*);
- (d) where the Relevant Consortium Member and Homes England are unable to agree a revised Firm Scheme Grant figure in accordance with clause 18.3.3(a) (*Repayment of Grant*) Homes England shall be entitled to terminate this Agreement in part in accordance with clause 19.1 (*Default Events and Termination*) and the Recoverable Amount shall be an amount equal to the Firm Scheme Grant paid pursuant to clause 15.1 (*Payment of Grant*) in respect of the relevant Firm Scheme.

Under no circumstances will Homes England be required to make any payment to the Lead Partner if the application of the calculation in clause 18.3.3(b) (*Repayment of Grant*) results in RA being a negative figure;

18.3.4 clause 18.2.8 (*Repayment of Grant*), the Recoverable Amount shall:

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

18.3.5 clause 18.2.9 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to the Fundamental Termination Amount;

18.3.6 clause 18.2.10 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to the aggregated amount of all Firm Scheme Grant already paid by Homes England to the Lead Partner under this Agreement;

- 18.3.7 clause 18.2.11 (*Repayment of Grant*) the Recoverable Amount shall be a sum equal to any Firm Scheme Grant already paid to the Lead Partner in relation to the relevant Firm Scheme;
- 18.3.8 clause 18.2.12 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to any Firm Scheme Grant already paid in relation to the relevant Firm Scheme; or
- 18.3.9 clause 18.2.13 (*Repayment of Grant*) the Recoverable Amount shall be a sum equivalent to any Firm Scheme Grant already paid in relation to the relevant Firm Scheme.
- 18.4 In the circumstances contemplated in clause 18.2.8 (*Repayment of Grant*) and clause 18.3.4 (*Repayment of Grant*), the parties agree that Homes England is entitled to recover the Recoverable Amount from:
- 18.4.1 any single Consortium Member;
- 18.4.2 all Consortium Members in such proportions as Homes England (acting reasonably) shall determine; or
- 18.4.3 such Consortium Members and in such proportions as Homes England (acting reasonably) shall determine,
- provided that** nothing in this clause 18.4 (*Repayment of Grant*) shall entitle Homes England to recover (in aggregate) more than the sum of the Recoverable Amount determined in accordance with clause 18.3.4¹ (*Repayment of Grant*).
- 18.5 Where Homes England (acting reasonably) considers that the Relevant Consortium Member acted fraudulently or dishonestly in claiming (or permitting the Lead Partner to claim) the Firm Scheme Grant for the relevant Firm Scheme, such claim shall be deemed to be a Prohibited Act and Homes England will not be bound by the terms of clause 18.3.3 (*Repayment of Grant*).
- 18.6 The Relevant Consortium Member must pay the Recoverable Amount to Homes England within ten (10) Business Days of demand together with interest at two per centum (2%) above the base rate from time to time of the Royal Bank of Scotland plc such interest to run from the date upon which the Firm Scheme Grant (or relevant part thereof), overpayment or payment in error was paid to the Lead Partner until the date upon which Homes England receives the repayment required from the Relevant Consortium Member under this clause 18 (*Repayment of Grant*).
- 18.7 Each Consortium Member acknowledges and agrees that the disposal or letting of an AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 18.8 The parties acknowledge that the Late Payment of Commercial Debts (Interest) Act 1998 does not apply to this Agreement.

¹ It is assumed that the Consortium will make arrangements for the allocation between Consortium Members of liability for repayment of the Recoverable Amount under its own Consortium arrangements.

18.9 Notwithstanding any other term of this clause 18 (*Repayment of Grant*), where a payment has been made following an administrative error by Homes England (for which the Relevant Consortium Member was not responsible), the Relevant Consortium Member shall not be liable for interest on the amount repayable under clause 18.6 (*Repayment of Grant*).

18.10 Where the Relevant Consortium Member is a For Profit Registered Provider and save where Homes England agrees (in writing) to the contrary, Homes England hereby directs the Relevant Consortium Member to pay the Uplift Amount to Homes England within ten (10) Business Days of the occurrence of a Relevant Event.

19 **Default Events and Termination**

19.1 On the occurrence of a Scheme Default, Homes England shall (subject to clause 19.2 (*Default Events and Termination*)) be entitled (without any liability to the Relevant Consortium Member) immediately upon serving written notice to:

19.1.1 terminate this Agreement insofar as it relates to the Firm Scheme to which the Scheme Default relates;

19.1.2 withhold and cancel any further payment of Firm Scheme Grant due to the Lead Partner in relation to the Firm Scheme; and

19.1.3 reallocate or redirect such part of the Firm Scheme Grant which has not yet been paid to the Lead Partner to such other person or for such purpose as Homes England in its discretion considers appropriate.

19.2 Where the Scheme Default is of a type described in limb (a), (c) or (e) of the definition of "Scheme Default", Homes England:

19.2.1 must notify the Lead Partner of the Scheme Default and of the period within which it (acting reasonably) requires the Scheme Default to be remedied; and

19.2.2 shall be entitled, if the Scheme Default has not been remedied within the period prescribed pursuant to clause 19.2.1 (*Default Events and Termination*) or it is or becomes apparent that the Scheme Default is incapable of remedy either within such period or at all, to exercise the rights set out in clause 19.1 (*Default Events and Termination*).

19.3 On the occurrence of a Specified Default, Homes England shall (subject to clause 19.4 and clause 19.8 (*Default Events and Termination*)) be entitled and without any liability to the Consortium to:

19.3.1 terminate this Agreement in its entirety;

19.3.2 withhold and cancel any further payment of Allocated Capital Grant due to the Consortium under this Agreement (other than any payments payable in relation to Continuing Firm Schemes); and

19.3.3 reallocate or redirect such part of the Allocated Capital Grant (which has not yet been paid to the Lead Partner and which is not payable in relation to Continuing Firm Schemes) to such other person or for such purpose as Homes England in its discretion considers appropriate.

19.4 Homes England's entitlement to exercise the rights set out in clause 19.3 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

19.4.1 Homes England must serve written notice on the Lead Partner requiring the Lead Partner to remedy (or procure the remediation of) the Specified Default;

19.4.2 if within a period of thirty (30) Business Days following service of such notice:

- (a) the Specified Default has not been remedied;
- (b) where so permitted by Homes England, the Lead Partner or (at Homes England's discretion) the Relevant Consortium Member has not given an undertaking to remedy the Specified Default on terms satisfactory to Homes England; or
- (c) it becomes apparent that the Specified Default is incapable of remedy either within such period or at all,

Homes England shall be entitled immediately and without any liability to any Consortium Member to exercise its rights under clause 19.3 (*Default Events and Termination*).

19.5 On the occurrence of a Bid Default, Homes England shall (subject to clause 19.6 (*Default Events and Termination*) and clause 19.8 (*Default Events and Termination*)) be entitled and without any liability to any Consortium Member to:

19.5.1 terminate this Agreement in its entirety;

19.5.2 withhold and cancel any further payment of Allocated Capital Grant due to the Consortium under this Agreement (other than any payments payable in relation to Continuing Firm Schemes); and

19.5.3 reallocate or redirect such part of the Allocated Capital Grant (which has not yet been paid to the Lead Partner and which is not payable in relation to Continuing Firm Schemes) to such other person or for such purpose as Homes England in its discretion considers appropriate.

19.6 Homes England's entitlement to exercise the rights set out in clause 19.5 (*Default Events and Termination*) shall be suspended pending completion of the following procedure within the timescales prescribed below:

19.6.1 Homes England must notify the Lead Partner in writing of its intention to call a Bid Default and to exercise its rights under clause 19.5 (*Default Events and Termination*);

19.6.2 the Lead Partner and Homes England (both acting in good faith) shall meet within ten (10) Business Days of the date of the notice referred to in clause 19.6.1 (*Default Events and Termination*) to seek to agree adjustments to the Approved Capital Bid and/or the Allocated Capital Grant to reflect any demonstrable underperformance by the Consortium Members against their delivery projections as set out in the Approved Capital Bid;

- 19.6.3 where adjustments are agreed, the Lead Partner shall promptly (and in any event within fifteen (15) Business Days of the date of the above meeting) make all such amendments to the information contained in IMS in respect of the Approved Capital Bid as are necessary to reflect the agreement made pursuant to clause 19.6.2 (*Default Events and Termination*) and in that case Homes England's rights under clause 19.5 (*Default Events and Termination*) shall lapse in respect of that Bid Default which gave rise to the implementation of the procedure under this clause 19.6 (*Default Events and Termination*); and
- 19.6.4 if the Lead Partner and Homes England are unable to agree adjustments to the Approved Capital Bid pursuant to clause 19.6.2 (*Default Events and Termination*) within fifteen (15) Business Days of the date of the meeting or the Lead Partner fails correctly to amend the information contained in IMS in accordance with clause 19.6.3 (*Default Events and Termination*), Homes England shall be entitled immediately and without any liability to any Consortium Member to exercise its rights under clause 19.5 (*Default Events and Termination*).
- 19.7 On the occurrence of a Fundamental Default, Homes England shall on the service of written notice be entitled forthwith and without any liability to any Consortium Member to:
- 19.7.1 terminate this Agreement in its entirety;
- 19.7.2 withhold and cancel any further payment of Allocated Capital Grant due to the Lead Partner under this Agreement; and
- 19.7.3 reallocate or redirect such part of the Allocated Capital Grant (which has not yet been paid to the Lead Partner) to such other person or for such purpose as Homes England in its discretion considers appropriate.
- 19.8 Homes England's right to terminate this Agreement pursuant to clause 19.7 (*Default Events and Termination*) shall be suspended for the duration of the Remediation Period. Where on or before the expiry of the Remediation Period:
- 19.8.1 the Fundamental Default related to or was committed or caused by a Consortium Member other than the Lead Partner, the Relevant Consortium Member has been removed from the Consortium;
- 19.8.2 the Fundamental Default related to or was committed or caused by the Lead Partner and:
- (a) the Lead Partner has (save where the Fundamental Default relates to the loss or removal of the Lead Partner's Investment Partner status) been removed from the Consortium; and
- (b) the remaining Consortium Members have agreed with Homes England (acting reasonably (taking account of the requirement that the Replacement Lead Partner must have Investment Partner status)) the identity of the Replacement Lead Partner; and
- 19.8.3 the Removed Consortium Member has provided to Homes England a Deed of Release duly executed by it and the other Consortium Members together with the Completion Authority; and

19.8.4 either:

- (a) following information supplied and/or representations made by the Consortium (excluding the Removed Consortium Member) Homes England is satisfied (acting reasonably) that the Consortium is capable of delivering the Approved Capital Bid without the need for a change to it; or
- (b) any change to the Approved Capital Bid requested by the then Lead Partner as a result of the withdrawal of the Removed Consortium Member does not materially and adversely affect the delivery of the Approved Capital Bid and Homes England has agreed such change in advance in writing.

Homes England's right under clause 19.7 (*Default Events and Termination*) shall lapse in respect of the particular Fundamental Default which gave rise to the implementation of the Remediation Period.

19.9 Where clause 19.3 (*Default Events and Termination*) or clause 19.5 (*Default Events and Termination*) applies and:

19.9.1 there are no Continuing Firm Schemes, Homes England may terminate this Agreement in its entirety in accordance with the terms of clause 19.3 (*Default Events and Termination*) or clause 19.5 (*Default Events and Termination*) (as applicable); and

19.9.2 there are Continuing Firm Schemes, Homes England may terminate this Agreement in relation to all but the Continuing Firm Schemes, such termination to take effect in accordance with the timescales specified in clause 19.4 (*Default Events and Termination*) or clause 19.6 (*Default Events and Termination*) as applicable.

19.10 Each Consortium Member agrees that Homes England shall not be liable for any costs, claims, expenses, demands or losses suffered or incurred by it as a result of the exercise of the exercise of Homes England's rights under clause 18 (*Repayment of Grant*) or clause 19 (*Default Events and Termination*).

20 **Subsidy**

20.1 This Agreement is drafted with the intention that it is lawful and complies with the requirements of the United Kingdom Competition Requirement.

20.2 Where the Relevant Consortium Member is an RP Provider:

20.2.1 the Relevant Consortium Member acknowledges and accepts the SPEI Entrustment;

20.2.2 if the Agreement Funding gives rise to an SPEI Overpayment or otherwise constitutes Unlawful Subsidy then Homes England shall be entitled to recover from the Relevant Consortium Member the amount of such SPEI Overpayment and/or Unlawful Subsidy together with such interest as it is required by Legislation

to recover and the Relevant Consortium Member must pay such amount(s) within ten (10) Business Days of Homes England requesting repayment; and

20.2.3 the Relevant Consortium Member shall promptly give written notice to Homes England of any Public Sector Funding it receives from a third party in relation to any AHP Housing.

20.3 Where the Relevant Consortium Member is an LA Provider:

20.3.1 notwithstanding that the parties have entered into this Agreement with the objective that it is lawful and complies with the requirements of the United Kingdom Competition Requirement, if any Agreement Funding used by an LA Provider is found to constitute Unlawful Subsidy (or is under investigation by a Competent Authority or subject to judicial proceedings in relation to compliance with the requirements of the United Kingdom Competition Requirement) then:

(a) the parties acting in good faith will promptly seek to restructure the arrangements surrounding such Agreement Funding and the terms of this Agreement to the extent necessary to ensure that no Unlawful Subsidy subsequently arises from it; and/or

(b) the parties shall promptly cooperate in good faith to provide evidence that such Agreement Funding (or the restructured Firm Scheme Grant) does not or will not give rise to Unlawful Subsidy; and

20.3.2 if any Agreement Funding used by an LA Provider is found to constitute Unlawful Subsidy and/or is not capable of being restructured so as to be compliant then the Relevant Consortium Member must repay any sum of Unlawful Subsidy plus such interest as is prescribed by the United Kingdom Competition Requirement within ten (10) Business Days of Homes England issuing it with a written demand for payment.

20.4 If, following the date of this Agreement, Legislation requires Homes England to amend this Agreement to comply with a United Kingdom Competition Requirement then Homes England may, acting reasonably, provide written notice to the Consortium to vary this Agreement to the extent necessary to comply with such change in Legislation.

21 **Anti-Bribery and Anti-Corruption**

Each Consortium Member must comply with the terms of Schedule 6 (*Anti-Bribery and Anti-Corruption*).

22 **Information and Confidentiality**

Each Consortium Member must comply with the terms of Schedule 7 (*Information and Confidentiality*).

23 **Data Protection**

Each Consortium Member must comply with the terms of Schedule 8 (*Data Protection*).

24 **Intellectual Property**

Each Consortium Member must comply with the terms of Schedule 9 (*Intellectual Property*).

25 **Health and Safety and compliance**

25.1 The Consortium will:

25.1.1 comply in all material respects with all relevant Legislation including but not limited to Legislation relating to health and safety, welfare at work, equality and diversity, minimum and living wages and other relevant employment matters;

25.1.2 comply with all applicable anti-slavery and human trafficking Legislation from time to time in force including but not limited to the Modern Slavery Act 2015;

25.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

and will use reasonable endeavours to procure that all Consortium Member Parties engaged in the delivery of the Approved Capital Bid do likewise.

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

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

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

25.4.1 where the Relevant Consortium Member is engaging consultants and a contractor or contractors as Subcontractors to Deliver the Firm Scheme the Relevant Consortium Member elects to be the only client in relation to such Firm Scheme; or

25.4.2 where the Relevant Consortium Member is contracting with a developer as a Subcontractor to Deliver a Firm Scheme the Relevant Consortium Member shall procure that such developer shall elect to be the only client in relation to the Firm Scheme on or before the date that such scheme becomes a Firm Scheme,

and Homes England hereby agrees to such election.

25.5 The Relevant Consortium Member shall not seek to withdraw, terminate or in any manner derogate from such election pursuant to clause 25.4.1 (*Health and Safety and compliance*) or (if appropriate) shall procure that any developer/employer shall not withdraw, terminate or in any manner derogate from any election pursuant to clause 25.4.1 (*Health and Safety and compliance*) without Homes England's prior written consent, which Homes England may in its absolute discretion withhold.

- 25.6 Each Consortium Member shall at all times comply with all obligations, requirements and duties arising under the HS Act and the CDM Regulations in connection with the Works.
- 25.7 Each Consortium Member shall at all times procure the compliance with all obligations, requirements and duties arising under the HS Act by any and all parties appointed in connection with the Works or allowed on the Site.
- 25.8 Each Consortium Member shall at all times maintain and procure that there is maintained an accurate record of all health, safety and environmental incidents which occur on or in connection with each Firm Scheme in the form set out in Schedule 5 (*Form of Health and Safety Report*) to this Agreement.
- 25.9 Without prejudice to any other provision of this Agreement, the Relevant Consortium Member shall notify Homes England's Safety Health and Environmental (SHE) Team via <https://homesengland.info-exchange.com/incidents> or such other form and method as Homes England may specify from time to time within five (5) Business Days of the occurrence of any of the following events which arise out of or in connection with a Firm Scheme:
- 25.9.1 any specified (major) injuries, requiring reporting under RIDDOR;
- 25.9.2 a fatal accident to any worker or a member of the public;
- 25.9.3 any injury to a member of the public requiring reporting under RIDDOR;
- 25.9.4 any dangerous occurrence, as defined by RIDDOR;
- 25.9.5 any enforcement action taken by the Health and Safety Executive, Local Fire Authority, the Police and Statutory Environmental Regulators (including the serving of enforcement, warning, improvement or prohibition notices);
- 25.9.6 any incident having health, safety or environmental implications which attracts the attention of the police and/or the media;
- 25.9.7 the commencement of any criminal prosecution under health and safety or environmental legislation; and
- 25.9.8 any environmental incident that may be brought to the attention of the regulatory authorities, either directly or indirectly, which has the potential to give rise to a formal warning or prosecution, either as a single occurrence or as a contributory occurrence in a series of events.
- 25.10 Each Consortium Member will procure that all its Subcontractors and Professional Team comply at all times with the HS Act and the CDM Regulations and will procure that the Relevant Consortium Member and each Subcontractor and member of the Professional Team shall at all times have due regard to the protection and safety of members of the public and their property on the Site, adjoining land owners and their property, visitors to the Site and their property and will at all times comply with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations (including the CDM Regulations) and legislation relating to the health and safety of workers, and to the undertaking of construction works.

26 Construction Industry Scheme

26.1 In this clause 26 (*Construction Industry Scheme*), the following definitions shall apply:

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

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

HMRC means HM Revenue & Customs.

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

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

27 Assignment and sub-contracting

27.1 Homes England will be entitled to transfer or assign all or part of this Agreement at any time without the consent of the Consortium Members.

27.2 No Consortium Member will be entitled to transfer or assign all or part of this Agreement.

28 Dispute resolution

28.1 All disputes and differences arising out of or in connection with this Agreement including in relation to any non-contractual obligation (a **Dispute**) shall be resolved pursuant to the terms of this clause 28 (*Dispute resolution*).

28.2 Negotiation

28.2.1 In the event that a Consortium Member (the **Disputing Member**) or Homes England considers that a Dispute exists between them in relation to this Agreement, 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 a senior officer (or nominated deputies) of the Disputing Member and Homes England Senior Officer (**Senior Officers**) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 28.2 (*Negotiation*).

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

28.2.3 The Chief Executives shall meet within ten (10) Business Days (or such other longer period not exceeding twenty (20) Business Days as the Disputing Member and Homes England 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.

28.3 Referral to Expert

28.3.1 If there has been no resolution of the Dispute within twenty (20) days of the referral to Chief Executives either the Disputing Member or Homes England may give to the other written notice referring the dispute to a suitably qualified independent Expert for determination in accordance with this clause 28.3 (*Referral to Expert*).

28.3.2 The Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the Disputing Member and Homes England within a maximum of three (3) months of the matter being referred to the Expert.

28.3.3 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 28.3 (*Referral to Expert*) then:

28.3.3.1 either the Disputing Member or Homes England may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and

28.3.3.2 this clause 28.3 (*Referral to Expert*) shall apply in relation to the new Expert as if they were the first Expert appointed.

28.3.4 All matters under this clause 28.3 (*Referral to Expert*) must be conducted, and the Expert's decision shall be written, in the English language.

28.3.5 The Disputing Member and Homes England shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.

28.3.6 To the extent not provided for by this clause 28.3 (*Referral to Expert*), the Expert may in their reasonable discretion determine such other procedures to assist with the conduct of the determination as they consider just or appropriate, including (to the extent they consider necessary) instructing professional advisers to assist them in reaching their determination.

28.3.7 The Disputing Member and Homes England shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other reasonably requires to make a submission under this clause 28.3 (*Referral to Expert*).

28.3.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute (which may include any issue involving the interpretation of any provision of this Agreement, their jurisdiction to determine the matters and issues referred to them or their terms of reference). The Expert's written decision on the matters referred to them shall be final and binding on the parties in the absence of manifest error or fraud.

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

28.4 **Submission to Courts**

Notwithstanding the foregoing, at any time Homes England, at its sole discretion, may choose to submit any Dispute to the courts of England. If a process pursuant to either clause 28.2 (*Negotiation*) and/or 28.3 (*Referral to Expert*) has been initiated, at the time that Homes England chooses to submit the matter to the courts of England and Wales, then it is agreed that such process is to be immediately discontinued without any binding determination being made. The Disputing Member and Homes England hereby irrevocably submit to the exclusive jurisdiction of the courts of England.

28.5 **Continued Performance**

No reference of any dispute to an Expert pursuant to this clause 28 (*Dispute resolution*) shall relieve the Disputing Member and Homes England from any liability for the due and punctual performance of its obligations under this Agreement.

29 **Further assurance**

29.1 At any time upon the written request of Homes England each Consortium Member:

29.1.1 shall promptly execute and deliver or procure the execution and delivery of any and all such further instruments and documents as may be necessary for the purpose of:

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

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

30 **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.

31 No agency

31.1 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.

31.2 The Consortium Members 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 any Consortium Member. Neither the Consortium Member nor any of its employees shall at any time hold itself or themselves out to be an employee of Homes England.

32 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.

33 Entire Agreement

33.1 This Agreement and the clauses herein contained together with the Schedules constitute the entire agreement between the parties and may only be varied or modified in writing by deed.

33.2 Each Consortium Member 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 it is entering into this Agreement.

34 Severability

If any term, clause or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, clause 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.

35 Cumulative rights and enforcement

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

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

36 Waiver

36.1 Neither the failure of any party at any one time to enforce any provision of this Agreement nor the payments by Homes England of Firm Scheme Grant under clause 15.1 (*Payment*

of Grant) in any way affects the relevant party's right thereafter to require complete performance by the other party, nor may the waiver of any breach or any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

36.2 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.

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

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

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

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

37 VAT

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

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

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

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

37.3.2 the time of the supply for VAT purposes,

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

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

38 Survival of this Agreement

- 38.1 Insofar as any of the rights and powers of Homes England provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 38.2 Insofar as any of the obligations of any Consortium Member 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.
- 38.3 Without limitation the provisions of clauses 3 (*Acknowledgements, Representations and Warranties*), 5.3 (*Firm Schemes*), 6 (*Empty Homes Schemes, HOLD Schemes and OPSO Schemes*), 7 (*Changes to Firm Schemes*), 9.7 (*Firm Scheme substitution and additions*), 10 (*Delivery Obligations*), 11 (*Operational Obligations*), 12 (*Review, Monitoring and Reporting*), 13 (*Transparency Obligations*) 14 (*Grant Claim Procedures*), 15 (*Payment of Grant*), **Error! Reference source not found.** (*Adjustments to Remaining Tranches***Error! Reference source not found.**), 17 (*Withholding of Grant*), 18 (*Repayment of Grant*), 18.10 (*Repayment of Grant*), 19 (*Default Events and Termination*), 20 (*Subsidy*), 21 (*Anti-Bribery and Anti-Corruption*), 22 (*Information and Confidentiality*), 23 (*Data Protection*), 24 (*Intellectual Property*), 28 (*Dispute resolution*), 35 (*Cumulative rights and enforcement*), 36 (*Waiver*), 39 (*Execution*), 40 (*Governing law*), Schedule 6 (*Anti-Bribery and Anti-Corruption*), Schedule 7 (*Information and Confidentiality*), Schedule 8 (*Data Protection*), Schedule 9 (*Intellectual Property*), and this clause 38 (*Survival of this Agreement*) and such other provisions of this Agreement as are necessary to give effect to such clauses and/or Schedules are expressly agreed by the parties to survive the termination or expiry of this Agreement.

39 Execution

39.1 This Agreement may be executed:

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

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

40 Governing law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and subject to the provisions of clause 28 (*Dispute resolution*) the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

41 Notices

41.1 Any notice to be given hereunder shall be in writing addressed to Homes England Senior Officer (in the case of notices to be given to Homes England) or the Lead Partner's Representative (in the case of notices to be given to the Lead Partner) and shall be sufficiently served if delivered by hand and receipted for by the recipient or sent by recorded

delivery and addressed in the case of any party to the other party's registered office as set out at the beginning of this Agreement or to such other addresses a party may from time to time notify to the other in writing provided that such other address is within England and Wales.

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

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

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

provided that if the delivery or receipt is:

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

41.2.4 is after 4.00 pm,

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

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Schedule 1

Acknowledgements, Representations and Warranties

Part 1

Agreed Principles

- 1 The provisions of this Agreement represent the conditions upon which Homes England makes the Allocated Capital Grant available to the Consortium Members for the purposes of Sections 19 and 31 HRA 2008.
- 2 The Allocated Capital Grant is being made available by Homes England on the express understanding that it is applied solely for the purposes of funding the Development Costs in respect of AHP Dwellings which are to be let or sold to individuals as AHP Housing.
- 3 All RCGF Proceeds:
 - 3.1 identified in the Firm Scheme Details must be applied solely for the purposes of funding the Development Costs in respect of the relevant Firm Scheme; and
 - 3.2 used for the purposes of funding (in whole or in part) the Development Costs constitute social housing assistance for the purposes of Section 32 HRA 2008 and are subject to the terms of the Recovery Determination.
- 4 The Public Sector Funding in respect of a Firm Scheme may not exceed an amount equal to the Actual Development Costs incurred by the Relevant Consortium Member in respect of the Delivery of that Firm Scheme nor may the Public Sector Funding in respect of the Approved Capital Bid exceed an amount equal to the aggregated Actual Development Costs in respect of the delivery of the Approved Capital Bid.
- 5 All Firm Scheme Grant paid under this Agreement is:
 - 5.1 social housing assistance as defined in Section 32(13) of the HRA 2008; and
 - 5.2 subject to the provisions of the HRA 2008 and any applicable determinations made under such provisions.
- 6 The provisions of clause 18 (*Repayment of Grant*) represent events and principles determined by Homes England for the purposes of Sections 32-34 of the HRA 2008.
- 7 Any failure by the a Consortium Member to comply with the terms of this Agreement or the occurrence of a Default Event or Withholding Event constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination.
- 8 The terms of the Capital Funding Guide are incorporated within this Agreement (*mutatis mutandis*).
- 9 Each Consortium Member must hold Registered Provider status at the point at which any AHP Rent Dwelling or Rent to Buy Dwelling provided pursuant to this Agreement is made available for rent and must be the immediate landlord of the individual occupational tenants

in such AHP Rent Dwelling or Rent to Buy Dwelling at that point and throughout the period of the Relevant Consortium Member's ownership of such AHP Dwelling.

- 10 The AHP Rent Dwellings provided with the benefit of the Allocated Capital Grant shall (save in the case of an LA Provider) be deemed to have been provided with public money for the purposes of Section 180 HRA 2008.
- 11 Where a Consortium Member applies RCGF Proceeds towards the delivery of any dwelling in any year of the AHP 2021/26:
 - 11.1 the terms of this Agreement will be construed as applying to such RCGF Proceeds (*mutatis mutandis*), except that paragraph 10 of this Part 1 of Schedule 1 (*Agreed Principles*) does not apply to any RCGF-Only Dwelling; and
 - 11.2 the Relevant Consortium Member must comply with any applicable terms of the Capital Funding Guide with respect to such dwelling.
- 12 Each Consortium Member acknowledges that, pursuant to the programme requirements of the AHP 2021/26, where it possesses or will possess a SLI (Rented Accommodation) in the form of a lease, the unexpired term of such lease must be of the longest duration that it can reasonably negotiate and comply with any applicable requirements of the Capital Funding Guide.
- 13 The aggregate of the Acquisition Tranche Grant, Start on Site Tranche Grant, the Practical Completion Tranche Grant and each or any Additional Tranche Grant in respect of each Firm Scheme cannot exceed one hundred per centum (100%) of the Firm Scheme Grant.
- 14 Each Consortium Member acknowledges that it:
 - 14.1 must hold a Completed Interest:
 - 14.1.1 on submission of a claim made in respect of a Flex Scheme pursuant to clause 14 (*Grant Claim Procedures*); or
 - 14.1.2 on submission of a claim made for Final Tranche in respect of any Firm Scheme pursuant to clause 14 (*Grant Claim Procedures*); and
 - 14.2 must hold a Golden Brick SLI or Completed Interest (as applicable) in respect of a GB Scheme.

Part 2A

Representations and Warranties – RP Providers

1 Powers, vires and consents

- 1.1 It 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.
- 1.2 It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement.
- 1.3 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.
- 1.4 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.
- 1.5 The execution, delivery and performance by it of this Agreement do not:
- 1.5.1 insofar as it is aware contravene any applicable law or directive or any judgement, order or decree of any court having jurisdiction over it;
 - 1.5.2 conflict with, or result in any breach of any of the terms of, or constitute a default under, any agreement or other instrument to which it is a party or any licence or other authorisation to which it is subject or by which it or any of its property is bound; or
 - 1.5.3 contravene or conflict with its memorandum and articles of association or rules (as applicable) from time to time.
- 1.6 All consents, required by it in connection with the execution, delivery, issue, validity or performance or enforceability of this Agreement have been obtained and have not been withdrawn.
- 1.7 So far as it is aware, it is not in breach of or in default under any agreement to which it is a party or which is binding on it or any of its assets which has or could have a Material Adverse Effect.
- 1.8 To the best of its knowledge, no claim is presently being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge, pending or threatened against it or any of its assets which will or might have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.
- 1.9 To the best of its knowledge, no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge 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 it.
- 1.10 It has not committed any Prohibited Act.

2 Deliverability

- 2.1 No person having any Security over its property or any of its other assets has enforced or given notice of its intention to enforce such Security.
- 2.2 It has obtained or will by Firm Scheme Completion have obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.
- 2.3 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.4 No Default Event has occurred and is continuing.
- 2.5 All information supplied by or on behalf of it to Homes England or its agents or employees in connection with the Consortium's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.6 It has informed Homes England of any material change that has occurred since:
- 2.6.1 the date of submission of the Approved Capital Bid prior to the date of this Agreement; and
- 2.6.2 the Approved Capital Bid, as the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any additional Public Sector Funding.
- 2.7 It is not aware of any material fact or circumstance that has not been disclosed to Homes England and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 2.8 All data or other information submitted on IMS in respect of the Approved Capital Bid, any Indicative Scheme, Substitute Scheme, Additional Scheme and each Firm Scheme is accurate and the it is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate.
- 2.9 All data or other information supplied to Homes England and/or the Regulator in connection with, or related to the Approved Capital Bid, any Firm Scheme (including that submitted pursuant to clause 12 (*Review, Monitoring and Reporting*)) any Disposal Notification and/or Constitutional Change Notification is complete and accurate.
- 2.10 It is not in breach of its Transparency Obligations.
- 2.11 Save where expressly agreed by Homes England, no Firm Scheme which is a Planning Scheme is being subsidised by Firm Scheme Grant or RCGF.

- 2.12 Save where expressly agreed by Homes England, all AHP Dwellings have been let or disposed of (as applicable) in accordance with the terms of the applicable Firm Scheme Details.
- 2.13 So far as it is aware (having made all reasonable enquiries) each Firm Scheme where it is Landlord (including, inter alia, each Start on Site Date and Firm Scheme Completion Date) is capable of being Delivered without the need for a change to the Firm Scheme Details.
- 2.14 It has issued any Disposal Notification and/or Constitutional Change Notification in accordance with the requirements of this Agreement where required to do so under this Agreement.
- 2.15 It will not advance or on-lend any Firm Scheme Grant to a third party (in whole or in part).

3 Application of Approved Capital Bid

Save where expressly agreed by Homes England, none of the AHP Dwellings to be provided pursuant to this Agreement has received or is intended to receive funding from Homes England other than as provided for in this Agreement nor has it been included amongst the projected units to be delivered under any Previous AHP Programme.

4 Authority of Lead Partner's Representative

The Lead Partner's Representative is empowered to act on behalf of each Consortium Member for all purposes connected with this Agreement.

5 Propriety

5.1 No member, employee, agent or consultant of the Consortium Member or of any partner organisation of the Consortium Member has any personal, proprietary or pecuniary interest in:

5.1.1 any person from whom the Consortium Member is purchasing land or property for the purposes of or in connection with this Agreement;

5.1.2 any contractor engaged or to be engaged by the Consortium Member in connection with this Agreement;

5.1.3 any land or other property to be acquired or developed refurbished or improved by the Consortium Member for the purposes of or in connection with this Agreement.

5.2 No member, employee, agent or consultant of the Consortium Member or any partner organisation of the Consortium Member is, has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:

5.2.1 access to properties delivered or, disposed of pursuant to this Agreement; or

5.2.2 the prices at which such properties are let or disposed of.

Part 2B

Representations and Warranties – LA Providers

Representations and Warranties

1 Powers, vires and consents

1.1 It has the power to enter into and to exercise its rights and perform its obligations under this Agreement and has taken all necessary action to authorise the execution by it of and the performance by it of its obligations under this Agreement.

1.2 It is not subject and will not become subject to any other obligation, compliance with which will or is likely to, have a Material Adverse Effect in relation to the Approved Capital Bid or any Firm Scheme.

1.3 Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with its terms.

1.4 The execution, delivery and performance by it of this Agreement do not:

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

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

1.4.3 contravene or conflict with its standing orders or other constitutional documents binding upon it (as applicable) from time to time.

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

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

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

1.8 It has not committed any Prohibited Act.

2 Deliverability

2.1 It has obtained or will by Firm Scheme Completion have obtained all Consents and to the extent that such Consents have been obtained they have not been withdrawn.

- 2.2 It is not aware, after due enquiry, of anything which materially threatens the success or successful completion of the intention or purpose of this Agreement.
- 2.3 No Default Event has occurred and is continuing.
- 2.4 All information supplied by or on behalf of it to Homes England or its agents or employees in connection with the Relevant Consortium Member's initial application for grant funding or in the course of the subsequent discussions was at the time of submission and as far as it was aware (or ought to have been aware) having made all reasonable and proper enquiries true, complete and accurate in all respects.
- 2.5 It has informed Homes England of any material change that has occurred since:
- 2.5.1 the date of submission of the Approved Capital Bid prior to the date of this Agreement; and
- 2.5.2 the Approved Capital Bid, as the same may be amended, added to, supplemented, substituted or varied in accordance with this Agreement, on each occasion of its amendment, addition, supplementation, substitution or variation of which it is aware (or ought to be aware) having made all reasonable and proper enquiries which would render such information untrue, incomplete or inaccurate in any material respect including without limitation the provision or offer of any additional Public Sector Funding.
- 2.6 It is not aware of any material fact or circumstance that has not been disclosed to Homes England and which might, if disclosed materially, adversely affect the decision of anyone considering whether or not to contract with it.
- 2.7 All data or other information submitted on IMS in respect of the Approved Capital Bid, any Indicative Scheme, Substitute Scheme, Additional Scheme and each Firm Scheme is accurate and the Relevant Consortium Member is not aware (having made all reasonable enquiries) of any circumstances which would give rise to that information becoming inaccurate.
- 2.8 All data or other information supplied to Homes England and/or the Regulator in connection with, or related to the Approved Capital Bid, any Firm Scheme (including that submitted pursuant to clause 12 (*Review, Monitoring and Reporting*)) any Disposal Notification and/or Constitutional Change Notification is complete and accurate.
- 2.9 It is not in breach of its Transparency Obligations.
- 2.10 Save where expressly agreed by Homes England, no Firm Scheme which is a Planning Scheme is being subsidised by Firm Scheme Grant or RCGF.
- 2.11 Save where expressly agreed by Homes England, all AHP Dwellings have been let or disposed of (as applicable) in accordance with the terms of the applicable Firm Scheme Details.
- 2.12 So far as it is aware (having made all reasonable enquiries) each Firm Scheme (including, inter alia, each Start on Site Date and Firm Scheme Completion Date) of which it is the Landlord is capable of being Delivered without the need for a change to the Firm Scheme Details.

2.13 It has issued any Disposal Notification and/or Constitutional Change Notification in accordance with the requirements of this Agreement where required to do so under this Agreement.

2.14 It will not advance or on-lend any Firm Scheme Grant to a third party (in whole or in part).

3 Application of Approved Capital Bid

Save where expressly agreed by Homes England, none of the AHP Dwellings to be provided pursuant to this Agreement has received or is intended to receive funding from Homes England other than as provided for in this Agreement nor has it been included amongst the projected units to be delivered under any Previous AHP Programme.

4 Authority of Lead Partner's Representative

The Lead Partner's Representative is empowered to act on behalf of the Consortium Members for all purposes connected with this Agreement.

5 Propriety

5.1 None of its members, employees, agents or consultants or those of any of its partner organisation has any personal, proprietary or pecuniary interest in:

5.1.1 any person from whom it is purchasing land or property for the purposes of or in connection with this Agreement;

5.1.2 any contractor engaged or to be engaged by it in connection with this Agreement;

5.1.3 any land or other property to be acquired or developed refurbished or improved by it for the purposes of or in connection with this Agreement.

5.2 None of its members, employees, agents or consultants or those of any of its partner organisation has or will be entitled to any preferential treatment by virtue of their position or associations whether in terms of:

5.2.1 access to properties developed, Rehabilitated or, disposed of pursuant to this Agreement; or

5.2.2 the prices at which such properties are let or disposed of.

6 Local Government Act 1999

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

7 Local Government Finance Act 1988

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

Schedule 2

Empty Homes Schemes

- 1 The parties agree that in relation to any Empty Homes Schemes:
- 1.1 the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations and modifications specified in this Schedule 2 (*Empty Homes Schemes*); and
- 1.2 the term "AHP Dwellings" shall include all those dwellings delivered as part of an Empty Homes Scheme.

2 In clause 1.1 (Definitions):

2.1 The following defined terms shall be inserted in the appropriate alphabetical order:

Decent Homes Standard means the standard described in Sections 4 and 5 of the Department for Communities and Local Government's publication entitled "A Decent Home: Definition and guidance for implementation June 2006 Update" or any replacement of such standard which applies at the Acceptance Date for any Empty Homes Scheme;

Lease Period means the period set out in the "Lease Length" data field within the Firm Scheme Details;

Lease Termination Date means the date upon which the Relevant Consortium Member's lease for whatever reason comes to an end;

Long Empty Homes Scheme means an Empty Homes Scheme (P&R) or an Empty Homes Scheme (L&R) in relation to which the Lease Period is equal to or greater than ten (10) years;

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

Short Empty Homes Scheme means an Empty Homes Scheme (L&R) in relation to which the Lease Period is less than ten (10) years;

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

3 Clause 5.2.2(a) (*Firm Schemes*) shall be deleted and replaced with the following:

"5.2.2(a) possesses (or with respect to an Empty Homes Scheme, will possess) a Secure Legal Interest and in the case of an Empty Homes Scheme (L&R), the relevant lease is not (and will not be) capable of being terminated (save in the case of material breach) by the landlord prior to the expiry of the Lease Period;"

4 At clause 5.2.2(c) (*Firm Schemes*) the full stop shall be deleted and the following shall be inserted at the end of the clause:

"; and".

5 A new clause 5.2.2(d) (*Firm Schemes*) shall be inserted as follows:

"(d) none of the property, buildings or dwelling-houses comprised in any Empty Homes Scheme is a Social Housing Dwelling or already owned by the Relevant Consortium Member or a Consortium Member Affiliate."

6 Clause 14.3.1 (*Grant Claim Procedures*) shall be deleted and replaced with the following:

"14.3.1 is deemed to repeat the representations and warranties set out in clause 5.2 (Firm Schemes) other than clause 5.2.2(b) (Firm Schemes) and for the purposes of this clause 14.3.1 (Grant Claim Procedures) the parties acknowledge and agree that in the case of a:

(a) Empty Homes Scheme (P&R), the Relevant Consortium Member must possess a Secure Legal Interest (Empty Homes P&R);

(b) Empty Homes Scheme (L&R), the Relevant Consortium Member must possess a Secure Legal Interest (Empty Homes L&R) where the lease granted to the Relevant Consortium Member in relation to the Site must exceed the Minimum Lease Duration and may not be capable of being terminated (save in the case of material breach) by the landlord prior to the expiry of the Lease Period;"

7 A new clause 18.2.14 (Repayment of Grant) shall be inserted as follows:

"18.2.14 in relation to an Empty Homes Scheme (L&R), the Relevant Consortium Member's lease is terminated or otherwise comes to an end prior to the date set out in the Firm Scheme Details for lease expiry."

8 A new clause 18.3.10 (Repayment of Grant) shall be inserted as follows:

"18.3.10 Clause 18.2.14 (*Repayment of Grant*) the Recoverable Amount shall:

(a) where the Minimum Lease Duration has not been reached, be an amount equal to the Firm Scheme Grant paid pursuant to clause 15.1 (*Payment of Grant*) in respect of the relevant Firm Scheme; or

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

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

where

RA is the Recoverable Amount;

FSG is the Firm Scheme Grant paid pursuant to clause 15.1 (Payment of Grant) in respect of the relevant Firm Scheme;

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

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

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

- 9 A new paragraph 2.15 of Schedule 1 Part 2A (*Representations and Warranties - RP Providers*) and Part 2B (*Representations and Warranties – LA Providers*) shall be inserted as follows:

"2.15 Where it is Delivering a:

- (a) Short Empty Homes Scheme, it will meet the Decent Homes Standard; and
- (b) Long Empty Homes Scheme, it will at least meet the Decent Homes Standard;"

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Schedule 3

HOLD Schemes and OPSO Schemes

- 1 The parties agree that in relation to any HOLD Schemes and OPSO Schemes:
- 1.1 the terms of this Agreement shall apply, be interpreted and take effect subject to the exceptions and adaptations and modifications specified in this Schedule 3 (*HOLD Schemes and OPSO Schemes*); and
- 1.2 the term "AHP Dwellings" shall include all those dwellings intended for occupation by the Agreed Client Groups delivered as part of the HOLD Scheme and/or OPSO Scheme.

2 In clause 1.1 (Definitions):

2.1 The following defined terms shall be inserted in the appropriate alphabetical order:

Agreed Client Group means in relation to each:

- (a) HOLD Scheme, the HOLD Client Group; and
- (b) OPSO Scheme, the OPSO Client Group;

Eligible Purchaser means a person who:

- (a) falls within the Agreed Client Group; and
- (b) satisfies the applicable eligibility criteria set out in the Capital Funding Guide and/or otherwise issued from time to time by Homes England in relation to those entitled to purchase HOLD Housing or OPSO Housing (as applicable);

HOLD Client Group means individuals over the age of 18 with a long-term disability (including autism, learning, physical or sensory disabilities or with mental health problems);

HOLD Dwelling means AHP Dwellings intended for occupation by the Agreed Client Group;

HOLD/OPSO Standards means that:

- (a) each HOLD Dwelling and OPSO Dwelling must be an individual dwelling and have (unless Homes England agrees otherwise) its own front door;
- (b) each OPSO Dwelling must be located within a OPSO Scheme which affords easy access to residents to GP or equivalent health services and other local facilities and services appropriate to the needs of the Agreed Client Group served by the relevant OPSO Scheme; and
- (c) each HOLD Dwelling and OPSO Dwelling and associated HOLD Scheme or OPSO Scheme must be procured, constructed and/or capable of adaption, including through the installation of equipment or assistive technology, to permit their long term use by the appropriate Agreed Client Group;

Older People's Shared Ownership Lease means a Shared Ownership Lease which in addition complies with the specific requirements of the Capital Funding Guide relating to Older Persons Shared Ownership and is granted only to a person aged 55 or over;

OPSO Client Group means individuals over the age of fifty five (55);

OPSO Dwelling means AHP Dwellings intended for occupation by the Agreed Client Group;

Residential Care Home means a residential building or set of buildings in which residents occupy rooms (as opposed to separate dwellings) and have access to on site personal care or nursing care services.

3 The definition of "Shared Ownership Dwelling" shall be deleted and replaced with the following definition:

"**Shared Ownership Dwelling** means an AHP Dwelling to be disposed of on Shared Ownership Lease terms or, in respect of an OPSO Scheme, on Older People's Shared Ownership Lease terms;"

4 The word "and" after the semicolon at the end of clause 5.2.1(a) (*Firm Schemes*) shall be deleted.

5 A new clause 5.2.1(c) (*Firm Schemes*) shall be inserted as follows:

"(c) where the Firm Scheme is a HOLD Scheme or an OPSO Scheme:

- i and the Relevant Consortium Member is an RP Provider, it has received the support of the Local Housing Authority (which it acknowledges will be verified by Homes England with the Local Housing Authority):
- ii does not and will not (when developed or remodelled) fall in whole or in part within the definition of a Residential Care Home; and
- iii will comprise no dwellings which have not been procured, constructed and/or designed for use by those in the relevant Agreed Client Group."

6 Clause 10.1.2 (*Delivery Obligations*) shall be deleted and replaced with the following:

"10.1.2 actively market or allocate the AHP Dwellings with a view to ensuring (as far as practicable) the disposal or letting of such dwellings to Eligible Purchasers (in the case of any HOLD Dwelling or OPSO Dwelling) or to individuals as AHP Housing at Firm Scheme Completion (or as soon as reasonably possible thereafter);"

7 Clause 11.5.1 (*Operational Obligations*) shall be deleted and replaced with the following:

"11.5.1 subject to clause 18.1 (*Repayment of Grant*) not without Homes England's prior written consent use the AHP Dwellings:

- (a) for any purpose other than the Agreed Purposes; or
- (b) with respect to any HOLD Dwelling and/or OPSO Dwelling, to accommodate individuals from outside of the Agreed Client Group;"

8 At clause 11.5.5(b) (*Operational Obligations*) the following words shall be inserted after the word "Lease":

"or, with respect to any OPSO Scheme, any Older People's Shared Ownership Lease (including those eligible to enter into such leases)"

9 A new clause 11.5.5(g) (*Operational Obligations*) shall be inserted as follows:

"11.5.5(g) the minimum and maximum amounts of equity which an Eligible Purchaser may acquire in a Shared Ownership Dwelling and the maximum amount of rent payable by the Eligible Purchaser in relation to the unpurchased equity within such dwelling from time to time;"

10 The word "and" after the semicolon at the end of clause 11.5.11 (*Operational Obligations*) shall be deleted.

11 At clause 11.5.13 (*Operational Obligations*) the full stop shall be deleted and the following shall be inserted at the end of the clause:

"; and".

12 A new clause 11.5.14 (*Operational Obligations*) shall be inserted as follows:

"11.5.14 with respect to any OPSO Schemes, register with the Housing Learning and Improvement Network (HLIN) website to participate in knowledge and information exchange opportunities from time to time and to supply HLIN with details of the completed OPSO Schemes;"

13 The word "and" after the semicolon at the end of clause 14.3.2(l) (*Grant Claim Procedures*) shall be deleted.

14 A new clause 14.3.2(q) (*Grant Claim Procedures*) shall be inserted as follows:

"14.3.2(q) any HOLD Scheme and/or OPSO Scheme does not fall in whole or in part within the definition of a Residential Care Home; and"

15 A new clause 14.3.2(r) (*Grant Claim Procedures*) shall be inserted as follows:

"14.3.2(r) any HOLD Scheme and/or OPSO Scheme only comprises dwellings which have been procured, constructed and/or designed for use by those in the relevant Agreed Client Group."

16 Clause 14.4.1 (*Grant Claim Procedures*) shall be deleted and replaced with the following:

"14.4.1 in the terms set out in clauses 14.3.1 (*Grant Claim Procedures*), 14.3.2(a) to 14.3.2(c) (inclusive) (*Grant Claim Procedures*) and 14.3.2(e) to clause 14.3.2(m) (inclusive) (*Grant Claim Procedures*);"

17 Clause 18.7 (*Repayment of Grant*) shall be deleted and replaced with the following:

"18.7 Each Consortium Member acknowledges and agrees that the disposal or letting of a AHP Dwelling to any person for any purpose other than the relevant Agreed Purpose or, in the case of any HOLD Scheme and/or OPSO Scheme, to any person who does not

fall within the relevant Agreed Client Group, constitutes a failure to comply with a condition attached to the making of Capital Grant for the purposes of paragraph 7(e) of the Recovery Determination."

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Schedule 4

Development Costs

Part 1

Development Costs

Heads of expenditure

1 Acquisition

- 1.1 Purchase price of land/Site/buildings.
- 1.2 Stamp Duty Land Tax on the purchase price of land/Site.

2 Works Costs

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

3 On costs

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

- 3.9 Borrowing administration charges (including associated legal and valuation fees).
- 3.10 An appropriate proportion of the Relevant Consortium Member's development and administration costs.
- 3.11 Irrecoverable VAT on the above.

Note 1

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

Note 2

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

Examples of these are as follows:

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

Note 3

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

Part 2

Costs which are not Development Costs

- 1 Capital costs incurred:
 - 1.1 which are not eligible for social housing assistance as defined in Section 32(13) of the HRA 2008;
 - 1.2 on land (forming part of the total site acquired) which will not be used exclusively for housing provision purposes directly related to the Firm Scheme;
 - 1.3 on estate offices, factories, letting offices;
 - 1.4 on stores;
 - 1.5 on medical or dental surgeries, clinics;
 - 1.6 on police stations, public libraries, bus shelters;
 - 1.7 on shops, restaurants, public houses, offices;
 - 1.8 on transformer and other related buildings;
 - 1.9 on maintenance depots, tools, plant and vehicles;
 - 1.10 on garages (other than integral garages on market purchase scheme types) and greenhouses; and
 - 1.11 on separate commercial laundry blocks and related equipment.

Schedule 5

Form of Health and Safety Report

Consortium Member: []

Firm Scheme: []

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

Reporting period: [] to []

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

Schedule 6

Anti-Bribery and Anti-Corruption

- 1 Each Consortium Member must:
 - 1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);
 - 1.2 not engage in any activity, practice or conduct which would constitute an offence under Sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 1.3 have and maintain in place throughout the duration of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements and paragraph 1.2 of this Schedule 6 (Anti-Bribery and Anti-Corruption), and will enforce them where appropriate;
 - 1.4 if required by Homes England, produce a written certificate to it signed by an officer of it, confirming compliance with this Schedule 6 (Anti-Bribery and Anti-Corruption) by it and all persons associated with it under paragraph 1.55 of this Schedule 6 (Anti-Bribery and Anti-Corruption). Each Consortium Member shall provide such supporting evidence of compliance as Homes England may reasonably request from it;
 - 1.5 ensure that any person associated with it who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the it in this Schedule 6 (Anti-Bribery and Anti-Corruption) (Relevant Terms). Each Consortium Member shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms;
 - 1.6 immediately report to Homes England's Head of Financial Crime Compliance and Assurance Services from time to time (or any person holding a successor post) any request or demand for any undue financial or other advantage of any kind received by the it in connection with the performance of this Agreement; and

for the purpose of this Schedule 6 (*Anti-Bribery and Anti-Corruption*), the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act), Sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively.

For the purposes of this Schedule 6 (*Anti-Bribery and Anti-Corruption*) a person associated with a Consortium Member includes any subcontractor of the Consortium Member.
- 2 Where any Consortium Member is aware that it is in breach of an obligation under this Schedule 6 (*Anti-Bribery and Anti-Corruption*) it must promptly notify Homes England of the fact and take all such steps as are appropriate in the circumstances to remedy the breach.
- 3 If any Consortium Member has any grounds for suspecting financial irregularity in the use of any Agreement Funding, it must:

- 3.1 notify Homes England immediately;
- 3.2 explain to Homes England what steps are being taken to investigate the suspicion; and
- 3.3 keep Homes England informed about the progress of the investigation.

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

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Schedule 7

Information and Confidentiality

- 1 Each party recognises that under this Agreement it may receive Confidential Information belonging to the other.
- 2 Each party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to Homes England arising or coming to its attention during the currency of this Agreement to any third party without the prior written consent of the other party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 3 The obligations of confidence referred to in this Schedule 7 (*Information and Confidentiality*) shall not apply to any Confidential Information which:
 - 3.1 is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information;
 - 3.2 is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential;
 - 3.3 is lawfully in the possession of the other party before the date of this Agreement and in respect of which that party is not under an existing obligation of confidentiality; or
 - 3.4 is independently developed without access to the Confidential Information of the other party.
- 4 Each party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - 4.1 to enable the disclosing party to perform its obligations under this Agreement or any loan agreement or proposed loan agreement or funding documentation with a commercial lender;
 - 4.2 by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA or EIR and each Consortium Member 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;
 - 4.3 by any Regulatory Body (including any investment exchange and the Regulator) acting in the course of proceedings before it or acting in the course of its duties; or
 - 4.4 in order to give proper instructions to any professional adviser of that party who also has an obligation to keep any such Confidential Information confidential.
- 5 Each Consortium Member shall ensure that all Confidential Information obtained from Homes England under or in connection with this Agreement:
 - 5.1 is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;

- 5.2 is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement; and
- 5.3 where it is considered necessary in the opinion of Homes England it shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.
- 6 Nothing in this Schedule 7 (Information and Confidentiality) shall prevent Homes England:
- 6.1 disclosing any Confidential Information for the purpose of:
- 6.1.1 the examination and certification of Homes England's accounts; or
- 6.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which Homes England has used its resources;
- 6.2 disclosing any Confidential Information obtained from a Consortium Member:
- 6.2.1 to any other department, office or agency of the Crown; or
- 6.2.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 6.2.3 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights obligations or liabilities under this Agreement;
- 6.2.4 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,
- provided that in disclosing information under any of paragraphs 6.2.1 (*Information and Confidentiality*) to 6.2.4 (*Information and Confidentiality*) of this Schedule 7 (*Information and Confidentiality*) inclusive, 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.
- 7 Nothing in this Schedule 7 (*Information and Confidentiality*) shall prevent a party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 8 Homes England and any LA Provider(s) are FOIA Authorities and:
- 8.1 Each Consortium Member acknowledges that Homes England and any LA Provider(s):
- 8.1.1 are subject to legal duties which may require the release of information under FOIA and/or EIR; and
- 8.1.2 FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.

- 9 The FOIA Authority in receipt of or to receive the Request for Information (the **Relevant FOIA Authority**) shall be responsible for determining in its absolute discretion whether:
- 9.1 any Information is Exempted Information or remains Exempted Information; or
- 9.2 any Information is to be disclosed in response to a Request for Information,
- and in no event shall any party, other than the Relevant FOIA Authority, respond directly to a 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 the Relevant FOIA Authority unless otherwise expressly authorised to do so by the Relevant FOIA Authority.
- 10 Notwithstanding any other provision of this Agreement but subject to paragraph 11 of this Schedule 7 (*Information and Confidentiality*) below, each party acknowledges that the Relevant FOIA Authority may be obliged under FOIA or EIR to disclose Information:
- 10.1 without consulting the them (or any one of them); or
- 10.2 following consultation with them (or any one of them) and having taken (or not taken, as the case may be) its views into account.
- 11 Without in any way limiting paragraph 9 of this Schedule 7 (*Information and Confidentiality*) or paragraph 10 of this Schedule 7 (*Information and Confidentiality*), in the event that the Relevant FOIA Authority receives a Request for Information, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the other parties.
- 12 Each party will assist and co-operate with the Relevant FOIA Authority as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents contractors and sub-contractors will), at their own cost:
- 12.1 transfer any Request for Information received to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
- 12.2 provide all such assistance as may be required from time to time by the Relevant FOIA Authority and supply such data or information as may be requested by the Relevant FOIA Authority;
- 12.3 provide the Relevant FOIA Authority with any Information already in its possession or power in the form the Relevant FOIA Authority requires within five (5) Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information; and
- 12.4 permit the Relevant FOIA Authority to inspect any records as requested from time to time.
- 13 Nothing in this Agreement will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and/or EIR in relation to any Exempted Information.

- 14 The obligations in this Schedule 7 (*Information and Confidentiality*) will survive the expiry or termination of this Agreement for a period of two (2) years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information.
- 15 Each Consortium Member must regularly review its security arrangements in relation to its access to (if any) and operation of (if any) IMS and in particular the it must:
- 15.1 notify Homes England immediately if there is any change in the identity of the individual discharging the role of the security administrator on its behalf or if such person leaves the its employment or relinquishes that role;
- 15.2 maintain a list of those of its employees and consultants authorised to use IMS and keep such list under regular review to ensure that access to IMS is given only to appropriate persons;
- 15.3 ensure that IMS passwords are kept confidential and not shared by or with its employees or consultants; and
- 15.4 ensure that systems are in place to prevent any person accessing IMS under a "User ID" other than his own.
- 16 Each Consortium Member acknowledges and agrees that the Relevant FOIA Authority may in its absolute discretion redact all or part of the Information within a Request for Information prior to its publication. In so doing and in its absolute discretion, the Relevant FOIA Authority may take account of any EIR Exceptions and FOIA Exemptions. The Relevant FOIA Authority may in its absolute discretion consult with the Consortium Members regarding any redactions to the Information to be published pursuant to this Schedule 7 (*Information and Confidentiality*). The Relevant FOIA Authority will make the final decision regarding publication and/or redaction of the Information.

Schedule 8

Data Protection

- 1 In so far that Shared Personal Data is Processed under this Agreement it is understood that the parties will each act in the capacity of an independent Data Controller.
- 2 Each Consortium Member (including its employees agents or officers) shall at all times during the period of this Agreement comply with the provisions and obligations imposed by this Schedule 8 (Data Protection) and the Data Protection Legislation generally, including any requirement to obtain registrations, consents, and provide notifications and relevant privacy information to Data Subjects as required for the purposes of their obligations under this Agreement.
- 3 Each Consortium Member warrants and represent that they each have in place appropriate technical and organisational measures to protect the Shared Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected.
- 4 A Consortium Member shall notify Homes England without undue delay on it becoming aware of any breach of the applicable Data Protection Legislation in relation to the Shared Personal Data.
- 5 Whilst each party shall be responsible for responding to any complaint in relation to the Shared Personal Data Processed pursuant to this Agreement, or any request by individuals to exercise the Data Subject's rights, if necessary the parties will co-operate with each other and provide reasonable assistance with any request, proceedings or inquiry by any affected Data Subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with the Shared Personal Data Processed under this Agreement.
- 6 The provision of this Schedule 8 (Data Protection) shall apply during the continuance of the Agreement and indefinitely after its termination.
- 7 Each Consortium Member 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 Consortium Member's destruction of and/or damage to any of the Shared Personal Data processed by it, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Schedule 8 (Data Protection) by it, its employees, agents or sub-contractors.
- 8 Each Consortium Member shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning its Processing of the Shared Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly, including those from the Information Commissioner.
- 9 Each Consortium Member undertakes to include obligations no less onerous than those set out in this Schedule 8 (Data Protection) in all contractual arrangements with agents engaged by it in performing its obligations under this Agreement to Homes England.

Schedule 9

Intellectual Property

- 1 Subject to paragraph 5 of this Schedule 9 (*Intellectual Property*) each Consortium Member shall, to the extent that it is able to do so without incurring material cost, grant to Homes England a perpetual, transferable, non-exclusive, royalty-free licence (carrying the right to grant sub-licences) to copy and use (from computer disk or otherwise) all and any Intellectual Property Rights in any, drawings, reports, specifications, calculations and other documents provided by it or which are or become owned by the Consortium Member and which relate to the Firm Schemes for which it is the Landlord, for any purpose relating to this Agreement.
- 2 To the extent that any of the data, materials and documents referred to in paragraph 2 of this Schedule 9 (*Intellectual Property*) are generated by or maintained on a computer or in any other machine readable format, each Consortium Member shall if requested by Homes England use its reasonable endeavours (without having to incur material cost) procure for the benefit of Homes England for the duration of this Agreement at the cost of that Consortium Member the grant of a licence or sub-licence and supply any relevant software and/or database to enable Homes England making such request to access and otherwise use such data for the purposes referred to in paragraph 1 of this Schedule 9 (*Intellectual Property*).
- 3 Neither party shall infringe any third party's Intellectual Property Rights in connection with this Agreement.
- 4 Each Consortium Member shall fully indemnify Homes England within five (5) Business Days of demand under this paragraph 4 of this Schedule 9 (*Intellectual Property*) against any action, claim, demand, proceeding, cost, charge or expense arising from or incurred by it by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party by the activities described in this Schedule 9 (*Intellectual Property*), any breach by that Consortium Member of this Schedule 9 (*Intellectual Property*) and against all costs and damages of any kind which Homes England may incur in connection with any actual or threatened proceedings before any court or adjudication body.
- 5 Each Consortium Member shall only be entitled to revoke the licence granted to Homes England under paragraph 1 of this Schedule 9 (*Intellectual Property*) in the following circumstances and upon the following terms:
 - 5.1 on the termination of the whole of this Agreement in circumstances where no Allocated Capital Grant has been paid to the Lead Partner; or
 - 5.2 on the termination of this Agreement (in whole or in part) in circumstances where some Allocated Capital Grant has been paid to the Lead Partner **provided that** nothing in this paragraph 5.2 of this Schedule 9 (*Intellectual Property*) shall entitle a Consortium Member to revoke such licence insofar as it relates to:
 - 5.2.1 Firm Schemes in respect of which Firm Scheme Grant has been paid or in respect of which a valid entitlement to claim Firm Scheme Grant has arisen; or
 - 5.2.2 Continuing Firm Schemes.

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Schedule 10

Legal Opinion

[TO BE TYPED ON COUNCIL NOTEPAPER]

Our ref

Your ref

Date

Email address

Homes England
AHG Contracting Team
Windsor House
50 Victoria Street
London
SW1H 0TL

To: Homes and Communities Agency (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry, CV1 2GN (including any statutory successor) (**Homes England**)

Dear Sirs,

Legal Opinion re Grant Agreement (Consortium) and related matters

I refer to the proposed Grant Agreement to be entered into between [] (the **Council**) and [INSERT OTHER CONSORTIUM MEMBER PARTIES] and Homes England (the **Agreement**) for the purposes of, inter alia, providing affordable housing which is dated on or about the date hereof. In connection with the giving of this opinion, I have examined:

- (a) the Agreement in its final form prior to execution and delivery thereof by the Council;
- (b) the Council's Standing Orders for approving entry into and the execution and delivery of deeds by the Council and for the delegation of its authority and the powers of the Council's Executive;
- (c) such other documents I consider appropriate for the purposes of giving this opinion.

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

I am of the opinion that, as at the date hereof, as a matter of English law, the Council has the power and authority to enter into, observe and perform the terms and obligations on its part to be observed and performed by it under the Agreement and has taken all necessary action and has obtained all

relevant consents and approvals (statutory or otherwise) to authorise the execution and delivery of the Agreement and the performance and validity of the obligations under it.

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

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

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

Yours faithfully

Council Solicitor²

Print Name:

There follows the specimen signatures and titles of those who will or may attest the execution as a deed of the Agreement referred to above.³

| Name | Title | Specimen Signature |
|--|-------|--------------------|
| [Redacted area for specimen signatures and titles] | | |

² Council to ensure that the signatory to the Grant Agreement is different to the Council Solicitor signing the Legal Opinion

³ Please note that the Legal Opinion will not be in a form satisfactory to Homes England unless the person executing the Agreement is identified in this table.

Schedule 11

Deed of Adherence

This deed is made the day of 20[]

Parties

- (1) [] (Incoming Consortium Member);
- (2) [], [], [] (Original Consortium Member);
- (3) Homes and Communities Agency (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**).

WHEREAS

- (A) The Original Consortium Members entered into or adhered to a grant agreement with Homes England dated [] (the **Grant Agreement**) as the same may be varied amended or supplemented in accordance with its terms in connection with inter alia the delivery of affordable housing pursuant to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement.
- (B) The Incoming Consortium Member has agreed to assume and be bound by the same obligations liabilities and duties of the Consortium Members under the Grant Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

1 Interpretation

Capitalised terms defined in the Grant Agreement shall have the same meaning in this Deed unless the context shall admit otherwise.

2 Observance

2.1 The Incoming Consortium Member confirms that it has been given a copy of the Grant Agreement.

2.2 With effect from the date of this Deed (the **Effective Date**) the Incoming Consortium Member agrees to:

2.2.1 observe adhere to perform and be fully bound by all of the provisions of the Grant Agreement in all respects as if it were an original party to the Grant Agreement and was referred to therein as a Consortium Member; and

2.2.2 where the Incoming Consortium Member will assume the role of Lead Partner, it also agrees to observe adhere to perform and be fully bound by the obligations of the Lead Partner under the Grant Agreement.

3 **Further assurance**

The parties shall do all such acts and things as shall be necessary to give effect to this Deed.

4 **Governing Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and the parties submit themselves to the exclusive jurisdiction of the English Courts.

5 **Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

In witness whereof this Deed has been executed the day and year set out above.

[EXECUTION CLAUSES]

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Schedule 12

Deed of Release

This deed is made the day of 20[]

Between

- (1) []([Outgoing] [Removed] Consortium Member);
- (2) [], [], [] (Remaining Consortium Members);
- (3) Homes and Communities Agency (trading as Homes England), a body corporate under Section 1 of the Housing and Regeneration Act 2008 of One Friargate, Coventry CV1 2GN (including any statutory successor) (**Homes England**).

WHEREAS

- (A) Together, the Remaining Consortium Members and the [Outgoing] [Removed] Consortium Member entered into or adhered to a grant agreement with Homes England dated [] (the **Grant Agreement**) as the same may be varied amended or supplemented in accordance with its terms in connection with inter alia the delivery of affordable housing pursuant to the Affordable Homes Programme 2021-2026 for Continuous Market Engagement.
- (B) It has been agreed that the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member and party to the Grant Agreement upon the terms and conditions hereinafter appearing.

IT IS NOW HEREBY AGREED as follows:

1 Interpretation

Capitalised terms defined in the Grant Agreement shall have the same meaning in this Deed unless the context shall admit otherwise.

2 Release

2.1 With effect from the date of this Deed (the **Effective Date**) the [Outgoing] [Removed] Consortium Member shall cease to be a Consortium Member for the purposes of, and a party to, the Grant Agreement.

2.2 The Remaining Consortium Members agree that from the Effective Date they shall continue to be liable for each of their obligations under the Grant Agreement.

3 Allocation of Grant

The [Outgoing] [Removed] Consortium Member acknowledges that the amount of grant allocated in respect of each Firm Scheme where it is the Landlord is as follows:

[Insert Relevant Details]

4 **Continuing Obligations/Rights of the [Outgoing] [Removed] Consortium Member**

4.1 Notwithstanding the fact that the [Outgoing] [Removed] Consortium Member shall from the Effective Date no longer be a Consortium Member nor a party to the Grant Agreement:

4.1.1 the [Outgoing] [Removed] Consortium Member shall continue to be bound by:

- (a) the terms of the Grant Agreement insofar as there are any Firm Schemes of the type described in clause 19.9.2 (*Default Events and Termination*) of the Grant Agreement;
- (b) clauses 3 (*Acknowledgements, Representations and Warranties*), 6 (*Empty Homes Schemes, HOLD Schemes and OPSO Schemes*), 10 (*Delivery Obligations*), 11 (*Operational Obligations*), 12.11 (*Review, Monitoring and Reporting*) to 12.20 (inclusive) (*Review, Monitoring and Reporting*), 13 (*Transparency Obligations*), 14 (*Grant Claim Procedures*), 18 (*Repayment of Grant*), 19 (*Default Events and Termination*) to 26 (*Construction Industry Scheme*) (inclusive), 28 (*Dispute resolution*), 29 (*Further assurance*), 35.2 (*Cumulative rights and enforcement*), 36 (*Waiver*) to 38 (*Survival of this Agreement*), 39 (*Execution*) and 40 (*Governing law*) of the Grant Agreement;
- (c) Part 1 of Schedule 1 (*Agreed Principles*), and Schedules 2 (*Empty Homes Schemes*), 3 (*HOLD Schemes and OPSO Schemes*), Schedule 5 (*Health and Safety*) and 10 (*Legal Opinion*) (inclusive) (where applicable); and

4.1.2 the [Outgoing] [Removed] Consortium Member shall, until such time as the Regulator prescribes otherwise, be entitled to continue to charge an Affordable Rent in respect of those Affordable Rent Dwellings where it is the Landlord.

5 **Further assurance**

The parties shall do all such acts and things as shall be necessary to give effect to this Deed.

6 **Governing Law and Jurisdiction**

This Deed shall be governed by and construed in accordance with the laws of England and the parties submit themselves to the exclusive jurisdiction of the English Courts.

7 **Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

In witness whereof this Deed has been executed the day and year set out above.

[EXECUTION CLAUSES]

Schedule 13

Relevant Consortium Member – Obligations Matrix

Where the term **Relevant Consortium Member** is used in the Agreement that obligation attaches to the Consortium Member specified in the matrix below.

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|------------------------------------|-------------------------|---|--------------------------------------|-------|
| Clause 1.1 (<i>Definitions</i>): | | | | |
| "Acquisition Date" | ✓ | | | |
| "Acquisition Stage" | ✓ | | | |
| "Actual Development Costs" | ✓ | | | |
| "Applicable Tranche" | ✓ | | | |
| "Balancing Sum" | ✓ | | | |
| "Building Contract" | ✓ | | | |
| "Building Contractor" | ✓ | | | |
| "Completion" | ✓ | | | |
| "Consortium Member Affiliate" | ✓ | | | |
| "Development Costs" | ✓ | | | |
| "Empty Homes Scheme" | ✓ | | | |
| "Empty Homes Scheme (L&R)" | ✓ | | | |
| "Empty Homes Scheme (P&R)" | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|-------------------------------|-------------------------|---|--------------------------------------|---|
| "Excused Scheme" | ✓ | | | |
| "First Claim Date" | ✓ | | | |
| "First Tranche" | ✓ | | | |
| "Fundamental (B) Default" | ✓ | | | |
| "GB Scheme" | ✓ | | | |
| "Golden Brick SLI" | ✓ | | | |
| "GW2 Event" | ✓ | | | |
| "Indicative First Claim Date" | ✓ | | | |
| "Legal Opinion" | | | | ✓* *The Consortium Member that is an LA Provider and will be the Landlord of the LA Scheme |
| "Local Housing Authority" | ✓ | | | |
| "Milestone Extension Events" | ✓ | | | |
| "Milestone Failure" | ✓ | | | |
| "MMC Stage" | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---|-------------------------|---|--------------------------------------|-------|
| "Professional Team" | ✓ | | | |
| "Public Sector Funding" | ✓ | | | |
| "RCGF" | ✓ | | | |
| "RCGF Proceeds" | ✓ | | | |
| "Relevant Authority" | ✓ | | | |
| "Relevant Claim Stage" | ✓ | | | |
| "Scheme Default" | ✓ | | | |
| "Secure Legal Interest" | ✓ | | | |
| "Secure Legal Interest (Empty Homes P&R)" | ✓ | | | |
| "Secure Legal Interest (Empty Homes L&R)" | ✓ | | | |
| "SLI (SO Accommodation)" | ✓ | | | |
| "SLI (Rented Accommodation)" | ✓ | | | |
| "SLI (Excused)" | ✓ | | | |
| "SPEI Allowable Costs" | ✓ | | | |
| "SPEI Revenue" | ✓ | | | |
| "Start on Site" | ✓ | | | |
| "Subcontractor" | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|------------------------------------|-------------------------|---|--------------------------------------|---|
| "SW1 Event" | ✓ | | | |
| "SW2 Event" | ✓ | | | |
| "SW3 Event" | ✓ | | | |
| "Waiver Condition" | | | | ✓ The Consortium Member(s) which are responsible for or associated with the Prohibited Act |
| Clause 1.2.13 (Interpretation) | | | | ✓ The Consortium Member seeking the relevant consent or approval |
| Clause 1.2.20 (Interpretation) | ✓ | | | |
| Clause 1.2.29 (Interpretation) | ✓ | | | |
| Clause 4.5 (Indicative Schemes) | | | | ✓ The Consortium Member who |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---------------------------------|-------------------------|---|--------------------------------------|--|
| | | | | holds or will hold the Secure Legal Interest and which will be the landlord of the AHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme |
| Clause 4.7 (Indicative Schemes) | | | | <p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the AHP Dwellings comprised in the relevant Firm Scheme or as the context requires,</p> |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---|-------------------------|---|--------------------------------------|--|
| | | | | Substitute Scheme or Additional Scheme |
| Clause 4.8.2 (<i>Indicative Schemes</i>) | ✓ | | | |
| Clause 5.2 (<i>Firm Schemes</i>) | ✓ | | | |
| Clause 7.1 (<i>Changes to Firm Schemes or the Consortium</i>) | ✓ | | | |
| Clause 7.3 (<i>Changes to Firm Schemes or the Consortium</i>) | ✓ | | | |
| Clause 7.5 (<i>Changes to Firm Schemes or the Consortium</i>) | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|--|-------------------------|---|--------------------------------------|---|
| Clause 9.2 (<i>Firm Scheme substitution and additions</i>) | | | | <p style="text-align: center;">✓</p> <p style="text-align: center;">The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the AHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p> |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|--|-------------------------|---|--------------------------------------|---|
| Clause 9.3 (<i>Firm Scheme substitution and additions</i>) | | | | <p style="text-align: center;">✓</p> <p style="text-align: center;">The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the AHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p> |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---|---|---|--------------------------------------|---|
| Clause 9.5.3 (<i>Firm Scheme substitution and additions</i>) | | | | <p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the AHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p> |
| Clauses 9.6 and 9.7 (<i>Firm Scheme substitution and additions</i>) | <p style="text-align: center;">✓</p> <p>(in relation to the Undeliverable Scheme)</p> | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---|-------------------------|---|--------------------------------------|---|
| Clauses 9.9 and 9.10.2 <i>(Firm Scheme substitution and additions)</i> | | | | <p style="text-align: center;">✓</p> <p>The Consortium Member who holds or will hold the Secure Legal Interest and which will be the landlord of the AHP Dwellings comprised in the relevant Firm Scheme or as the context requires, Substitute Scheme or Additional Scheme</p> |
| Clause 9.12.3 <i>(Firm Scheme substitution and additions)</i> | ✓ | | | |
| Clause 10.1 <i>(Delivery Obligations)</i> | ✓ | | | |
| Clauses 11.1-11.5 (inclusive) <i>(Operational Obligations)</i> | ✓ | | | |
| Clause 11.6 <i>(Firm Scheme substitution and additions)</i> | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|--|-------------------------|---|--------------------------------------|--|
| Clause 11.7 (<i>Firm Scheme substitution and additions</i>) | ✓ | | | |
| Clause 11.10 - 11.12 (inclusive) (<i>Firm Scheme substitution and additions</i>) | ✓ | | | |
| Clause 12.7.2 (<i>Review, Monitoring and Reporting</i>) | | | | ✓ The Consortium Member requesting a review meeting under clause 12.7 |
| Clause 12.22 (<i>Review, Monitoring and Reporting</i>) | | ✓ | | |
| Clause 14.1 (<i>Grant Claim Procedures</i>) | ✓ | | | |
| Clause 14.3 (<i>Grant Claim Procedures</i>) | ✓ | | | |
| Clause 14.6 (<i>Grant Claim Procedures</i>) | ✓ | | | |
| Clause 14.8 (<i>Grant Claim Procedures</i>) | ✓ | | | |
| Clause 14.9 (<i>Grant Claim Procedures</i>) | ✓ | | | |
| Clause 14.10 (<i>Grant Claim Procedures</i>) | ✓ | | | |
| Clause 15.3 (<i>Payment of Grant</i>) | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|--|-------------------------|---|--------------------------------------|--|
| Clause 16.1 (<i>Adjustments to Remaining Tranches</i>) | ✓ | | | |
| Clause 16.2 (<i>Adjustments to Remaining Tranches</i>) | ✓ | | | |
| Clause 16.3 (<i>Adjustments to Remaining Tranches</i>) | ✓ | | | |
| Clause 16.5 (<i>Adjustments to Remaining Tranches</i>) | ✓ | | | |
| Clause 18.1 (<i>Repayment of Grant</i>) | ✓ | | | |
| Clause 18.2 (<i>Repayment of Grant</i>) | | | | ✓ To be determined in accordance with the allocation of responsibility in relation to clauses 18.2.1 to 18.2.13 below |
| Clause 18.2.1 (<i>Repayment of Grant</i>) | | ✓ | | |
| Clause 18.2.2 (<i>Repayment of Grant</i>) | | ✓ | | |
| Clause 18.2.5 (<i>Repayment of Grant</i>) | ✓ | | | |
| Clause 18.2.6 (<i>Repayment of Grant</i>) | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---|-------------------------|---|--------------------------------------|--|
| Clause 18.3.3 (<i>Repayment of Grant</i>) | ✓ | | | |
| Clause 18.5 (<i>Repayment of Grant</i>) | ✓ | | | |
| Clause 18.6 (<i>Repayment of Grant</i>) | | | | ✓ The Consortium Member to which clause 18.2 allocates responsibility for payment of the Recoverable Amount |
| Clause 18.9 (<i>Repayment of Grant</i>) | | | | ✓ The Consortium Member to which clause 18.2 allocates responsibility for payment of the Recoverable Amount |
| Clause 18.10 (<i>Repayment of Grant</i>) | | ✓ | | |
| Clause 19.1 (<i>Default Events and Termination</i>) | ✓ | | | |

| Clause Number | Landlord of Firm Scheme | Applicable to Consortium Member responsible for the act, omission, event or default giving rise to Homes England's rights/remedies in respect thereof | Applicable to all Consortium Members | Other |
|---|-------------------------|---|--------------------------------------|-------|
| Clause 19.4 (<i>Default Events and Termination</i>) | | ✓ | | |
| Clause 19.8.1 (<i>Default Events and Termination</i>) | | ✓ | | |
| Clause 20.2 (<i>Subsidy</i>) | | ✓ | | |
| Clause 20.2.3 (<i>Subsidy</i>) | | ✓ | | |
| Clause 25 (<i>Health and Safety</i>) | ✓ | | | |
| Clause 26.3 (<i>Construction Industry Scheme</i>) | ✓ | | | |
| Clause 37.3 (<i>VAT</i>) | ✓ | | | |
| Schedule 1 (<i>Acknowledgement, Representations and Warranties</i>) | ✓ | | | |
| Schedule 2 (<i>Empty Homes Schemes</i>) | ✓ | | | |
| Schedule 3 (<i>HOLD and OPSO Schemes</i>) | ✓ | | | |
| Schedule 4 (<i>Development Costs</i>) | ✓ | | | |

Schedule 14

SPEI Entrustment

Tasks entrusted under this Agreement: as set out in clause 2.1 (*Purpose*) of this Agreement (the **Tasks**).

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

DRAFT

EXECUTION PAGE TO THE GRANT AGREEMENT

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

Homes and Communities Agency (trading as Homes England)

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

Authorised Signatory:

Print Name:

[Grant Recipient]

OPTION FOR SOCIETY

Executed as a deed by affixing the Common)
Seal of **[RP NAME]**)
In the presence of:)

.....
Authorised Signatory

Print Name:

[Grant Recipient]

OPTION FOR LIMITED COMPANY

Executed as a deed by **[COMPANY NAME]**)
acting by a Director and)
a Director or Secretary)

.....
Director

Print Name:

.....
Director or Secretary

Print Name:

[OPTION FOR LOCAL AUTHORITY]

[Grant Recipient]

EXECUTED as a **DEED** by affixing **THE COMMON**)
SEAL of **[LOCAL AUTHORITY]**)
In the presence of:)

.....
Authorised Officer

Print Name:

